

**Board of Directors Meeting
Thursday, October 19, 2023
7:00 P.M.**

MCE Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
MCE Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920
Office of Contra Costa Supervisor John Gioia, 11780 San Pablo Ave., Suite D, El Cerrito, CA 94530
City of Napa, City Hall Committee Room, 955 School Street, Napa, CA 94559
Offices of Barbara Coler, 14 Ace Court, Fairfax, CA 94930
Offices of K. Patrice Williams, 4825 Fernwood Court, Fairfield, CA 94534

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/86784992940?pwd=SDF1NUpjZWZVRy9BRnBTSFJYcXZpUT09>

Dial: (669) 900-9128
Webinar ID: 867 8499 2940
Passcode: 314955

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 8.17.23 Meeting Minutes
 - C.2 Approval of 9.29.23 MCE Special Meeting Minutes
 - C.3 Approved Contracts for Energy Update

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6. Proposed Amended and Restated MCE Policy No. 003 - Records Retention (Discussion/Action)
7. Proposed Resolution 2023-10: Authorizing the Execution and Delivery of a Clean Energy Purchase Contract and Certain Other Documents in Connection with the Issuance of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith (Discussion/Action)
8. Energy Storage Agreement with Corby Energy Storage, LLC (Discussion/Action)
9. Energy Storage Agreement with Key Energy Storage, LLC (Discussion/Action)
10. MCE Climate Action Leadership Award (Discussion)
11. Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy (Discussion/Action)
12. Report on MCE FY2022/23 Financial Audit (Discussion)
13. CCA Update on Bay Area Air Quality Management District Nitrogen Oxides Appliance Ban (Discussion)
14. Adjourn

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

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation or an alternative format, please call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.

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MCE BOARD MEETING MINUTES

Thursday, August 17, 2023

7:00 P.M.

Present: Eli Beckman, Town of Corte Madera
Kari Birdseye, City of Benicia
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Tarrell Kullaway, Alternate, Town of San Anselmo
David Fong, Town of Danville
Ryan Gregory, The County of Napa and Four Napa Cities
Maika Llorens Gulati, City of San Rafael
Kerry Hillis, Town of Moraga
Caroline Joaquim, Alternate, City of Mill Valley
Janelle Kellman, City of Sausalito
C. William Kircher, Town of Ross
Eduardo Martinez, City of Richmond
Aaron Meadows, City of Oakley
Devin Murphy, City of Pinole
Laura Nakamura, Alternate, City of Concord
Beth Painter, City of Napa
Scott Perkins, City of San Ramon
Patricia Ponce, City of San Pablo
Gabriel Quinto, City of El Cerrito
Katie Rice, County of Marin
Matt Rinn, City of Pleasant Hill
Shanelle Scales-Preston, City of Pittsburg
Holli Thier, Town of Tiburon
K. Patrice Williams, City of Fairfield
Brianne Zorn, City of Martinez

Absent: Gina Dawson, City of Lafayette
John Gioia, Contra Costa County
Gabe Paulson, City of Larkspur
Charles Palmares, City of Vallejo
John Vasquez, County of Solano
Susan Wernick, City of Novato
Sally Wilkinson, City of Belvedere

**Staff
& Others:** JB Ackemann, Vice President of Public Affairs
Jessica Brooks, Board Clerk
Vidhi Chawla, Interim Vice President of Power Resources
Stephanie Chen, Director of Legislative Affairs

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John Dalessi, Consultant, Pacific Energy Advisors
Darlene Jackson, Lead Board Clerk
Vicken Kasarjian, COO
Caroline Lavenue, Legal Counsel
Tanya Lomas, Internal Operations Coordinator
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Coordinator
Zae Perrin, Director of Customer Operations
Garth Salisbury, Chief Financial Officer & Treasurer
Daniel Settlemyer, Internal Operations Coordinator
Jamie Tuckey, Chief of Staff
Dawn Weisz, CEO

1. Roll Call

Chair Scales-Preston called the regular meeting to order at 7:04 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no comments.

3. Public Open Time (Discussion)

Chair Scales-Preston opened the public comment period and there were no comments.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

5. Consent Calendar (Discussion/Action)

- C.1 Approval of 6.15.23 Meeting Minutes
- C.2 Approved Contracts for Energy Update

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Rinn/Darling) **to approve Consent Calendar items C.1 and C.2.** Motion carried by roll call vote. (Abstained: Kullaway, Gulati, Joaquim, Perrey, Ponce, Thier, and Zorn). (Absent: Dawson, Gioia, Painter, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

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6. Deep Green Update and Adjustment to Default (Discussion/Action)

Vidhi Chawla, Interim Vice President of Power Resources and John Dalessi, Consultant, Pacific Energy Advisors, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Coler) to:

1. **Pause Deep Green auto enrollments and make Light Green the default service option at the end of the current billing cycle.**
2. **Direct Staff to explore a new service offering - 100% GHG-Free product that will match hourly customer load with supply.** Motion carried by roll call vote. (Absent: Dawson, Gioia, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

7. Approval of Amendment to the MCE Operating Rules and Regulations (Discussion/Action)

Caroline Lavenue, Legal Counsel, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Murphy/Thier) to **approve the Proposed Amendment to MCE Operating Rules and Regulations for final adoption.** Motion carried by unanimous roll call vote. (Absent: Dawson, Gioia, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

8. MCE Climate Action Leadership Award Nomination (Discussion/Action)

Stephanie Chen, Director of Legislative Affairs, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Beckman/Thier) to **approve staff's recommendation to present 2023 Climate Action Leadership Award to Assemblymember Damon Connolly at the annual Board Retreat.** Motion carried by roll call vote. (Abstained: Martinez and Kullaway). (Absent: Dawson, Gioia, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

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9. **Resolution No. 2023-09 Accepting Congressionally Directed Spending Project from the Golden Gate Fields Office of the U.S. Department of Energy (Discussion/Action)**

Catalina Murphy, General Counsel, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Rice/Quinto) to **approve Proposed Resolution No. 2023-09 Accepting Congressionally Directed Spending Project from the Golden Fields Office of the U.S. Department of Energy**. Motion carried by unanimous roll call vote. (Absent: Dawson, Gioia, Murphy, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

10. **Proposed Fiscal Year 2022/23 Deposit to MCE's Operating Reserve Fund (Discussion/Action)**

Garth Salisbury, Chief Financial Officer & Treasurer, introduced this item and addressed questions from Board members.

Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Darling) to **approve a deferral of \$15 million in Fiscal Year 2022/23 revenues into the Operating Reserve Fund**. Motion carried by unanimous roll call vote. (Absent: Dawson, Gioia, Murphy, Palmares, Paulson, Vasquez, Wernick, and Wilkinson).

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

There were no comments.

12. **Adjournment**

Chair Scales-Preston adjourned the meeting at 8:49 p.m. to the next scheduled Board Meeting on September 21, 2023.

Shanelle Scales-Preston, Chair

Attest:

Dawn Weisz, Secretary

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MCE SPECIAL MEETING MINUTES

Friday, September 29, 2023

9:00 A.M.

**San Rafael Community Center
618 B Street, San Rafael, CA 94901**

Call to Order: Chair Scales-Preston called the Special Meeting to order at 9:27 a.m.

Present:

- Eli Beckman, Town of Corte Madera
- Kari Birdseye, City of Benicia
- Edi Birsan, City of Concord
- Barbara Coler, Town of Fairfax
- Alexis Fineman, Town of San Anselmo
- Ryan Gregory, The County of Napa and Four Napa Cities
- Maika Llorens Gulati, City of San Rafael
- Kerry Hillis, Town of Moraga
- Janelle Kellman, City of Sausalito
- C. William Kircher, Town of Ross
- Devin Murphy, City of Pinole
- Charles Palmares, City of Vallejo
- Beth Painter, City of Napa
- Gabe Paulson, City of Larkspur
- Mark Armstrong, Alternate, City of San Ramon
- Max Perrey, City of Mill Valley
- Patricia Ponce, City of San Pablo
- Katie Rice, County of Marin
- Shanelle Scales-Preston, City of Pittsburg
- Holli Thier, Town of Tiburon
- Sally Wilkinson, City of Belvedere

Absent:

- Gina Dawson, City of Lafayette
- Cindy Darling, City of Walnut Creek
- David Fong, Town of Danville
- John Gioia, Contra Costa County
- Eduardo Martinez, City of Richmond
- Aaron Meadows, City of Oakley
- Gabriel Quinto, City of El Cerrito
- Matt Rinn, City of Pleasant Hill
- John Vasquez, County of Solano
- K. Patrice Williams, City of Fairfield
- Susan Wernick, City of Novato
- Brianne Zorn, City of Martinez

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Staff

& Others:

JB Ackemann, VP of Public Affairs
Jessica Brooks, Board Clerk
Vidhi Chawla, Interim VP of Power Resources
Stephanie Chen, Director of Legislative Affairs
John Dalessi, Consultant, Pacific Energy Advisors
Kirby Dusel, Consultant, Pacific Energy Advisors
Alice Havenar-Daughton, VP of Customer Programs
Darlene Jackson, Lead Board Clerk
Vicken Kasarjian, COO
Shaheen Khan, VP of Human Resources, Diversity & Inclusion
Tanya Lomas, Internal Operations Coordinator
Alexandra McGee, Director of Strategic Initiatives
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Coordinator
Justine Parmelee, Director of Internal Operations
Garth Salisbury, Chief Financial Officer & Treasurer
Enyonam Senyo-Mensah, Office Manager
Daniel Settlemyer, Internal Operations Coordinator
Karamvir Singh, Manager of Analytics, Data Systems
Jamie Tuckey, Chief of Staff
Dawn Weisz, CEO

1. Roll Call

Chair Scales-Preston called the regular meeting to order at 9:27 a.m. with quorum established by roll call.

2. Public Open Time (Discussion)

There were no comments.

3. Welcome & Introductions

Chair Scales-Preston welcomed the Board and extended round table introductions by Board members.

4. Review of Mission, Vision, and Key Priorities (Discussion)

Dawn Weisz, CEO, introduced this item and several staff presented and addressed questions from Board members. Chair Scales-Preston opened the public comment period and there were no comments.

5. MCE Investments Program (Discussion)

Garth Salisbury, Chief Financial Officer & Treasurer and **Efren Oxlaj**, Financial Analyst II, introduced this item and addressed questions from Board members.

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Chair Scales-Preston opened the public comment period and there were no comments.

Action: No action required.

6. 2022 Power Supply Statistics and Content Label (Discussion/Action)

Kirby Dusel, Pacific Energy Advisors, Consultant introduced this item and addressed questions from Board members. Chair Scales-Preston opened the public comment period and there were no comments.

Action: It was M/S/C (Coler/Thier) to endorse the accuracy of information presented in MCE's 2022 Power Source Disclosure reports for Light Green, Deep Green, Local Sol and Green Access service as well as the related Power Content Lable reflecting such products. Motion carried by unanimous roll call vote. (Absent: Directors Beckman, Dawson, Darling, Fong, Gioia, Martinez, Meadows, Paulson, Quinto, Rinn, Vasquez, Williams, Wernick, and Zorn).
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7. Fieldtrip: MCE Solar One at 835 Castro Street, Richmond, CA 94801. No transportation provided; Meeting will Adjourn from this location.

Chair Scales-Preston adjourned the Special Meeting at 1:26 p.m. to the next Regular Board Meeting on October 19, 2023.

Shanelle Scales-Preston, Chair

Attest:

Dawn Weisz, Secretary



October 19, 2023

TO: MCE Board of Directors

FROM: Anne-Reed Arnaudo, Power Procurement Manager

RE: Approved Contracts for Energy Update (Agenda Item #05 C.3)

Dear Board Members:

SUMMARY:

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

Review of Procurement Authorities

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

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

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

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

<i>Item #</i>	<i>Month of Execution</i>	<i>Purpose</i>	<i>Average Annual Contract Amount</i>	<i>Contract Term</i>
1	August 2023	Purchase of Renewable Energy	\$1,999,968	Under 1 Year
2	August 2023	Purchase of Renewable Energy	\$8,183,088	1-5 Years
3	August 2023	Purchase of Renewable Energy	\$650,000	Under 1 Year
4	August 2023	Purchase of Renewable Energy	\$3,250,000	Under 1 Year
5	August 2023	Purchase of System Energy (Hedge)	\$212,500	Under 1 Year
6	August 2023	Purchase of System Energy (Hedge)	\$656,000	Under 1 Year
7	August 2023	Purchase of Renewable Energy	Up to \$6,720,000	Under 1 Year
8	August 2023	Purchase of Renewable Energy	\$1,625,000	Under 1 Year
10	August 2023	Sale of Resource Adequacy	\$34,000	Under 1 Year
11	August 2023	Sale of Resource Adequacy	\$500,000	Under 1 Year
12	September 2023	Purchase of Resource Adequacy	\$80,000	Under 1 Year
13	September 2023	Purchase of System Energy (Hedge)	\$33,826,753	1-5 Years
14	September 2023	Purchase of System Energy (Hedge)	\$33,326,209	1-5 Years
15	September 2023	Purchase of Resource Adequacy, Import Capability & Carbon-free energy	\$12,892,800	Under 1 Year
16	September 2023	Purchase of Resource Adequacy	\$12,988,800	1-5 Years
17	September 2023	Purchase of Resource Adequacy	\$13,600,000	Under 1 Year
18	September 2023	Amendment of Agreement to Purchase Renewable Energy	Up to \$7,600,000	1-5 Years
19	September 2023	Sale of Resource Adequacy	\$255,000	Under 1 Year
20	September 2023	Purchase of Renewable Energy	\$8,460,000	1-5 Years

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

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

After evaluation and prior to finalizing any energy contract for execution, an approval matrix is implemented whereby the draft contract is routed to key support staff and

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

<i>Review Owner</i>	<i>Review Category</i>
Vidhi Chawla (MCE, Interim Vice President of Power Resources)	Procurement/Commercial
John Dalessi (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Nathaniel Malcolm (MCE, Senior Policy Counsel)	Legal/CPUC Compliance
Garth Salisbury (MCE, Chief Financial Officer & Treasurer)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts: Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2023/24 are within the FY 2023/24 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



October 19, 2023

TO: MCE Board of Directors

FROM: Catalina Murphy, General Counsel

RE: Proposed Amended and Restated MCE Policy No. 003- Records Retention (Agenda Item #06)

ATTACHMENT: Proposed Amended and Restated MCE Policy No. 003 - Records Retention

Dear Board Members:

Summary:

MCE is committed to effective records management. With MCE's development of an in-house Customer Relationship Management ("CRM") system and Data Analytics Platform ("DAP"), it's important to ensure MCE's Records Retention Policy No. 003, as amended and restated, ("Proposed Policy") is current to reflect the needs of the agency. The attached Proposed Policy seeks to:

- Promote compliance with legal requirements for record retention
- Promote the efficient management, sharing, and transfer of information among authorized MCE staff and constituents
- Dispose of records no longer needed to satisfy legal, regulatory or other requirements
- Ensure that no record is disposed of unless authorized
- Ensure that the means of deletion or removal is appropriate for the type of record under consideration
- Ensure the preservation of records of permanent value

The attached Proposed Policy, if approved by your Board, would apply to all records, regardless of whether they are maintained in hard (paper) copy, electronically, or in some other fashion.

Fiscal Impacts:

None.

Recommendation:

Approve Proposed Amended and Restated MCE Policy No. 003 – Records Retention.



POLICY NO. 003 – RECORDS RETENTION

Records will be retained according to the following schedule. After the required retention date has passed all documents or electronic files will be deleted or discarded. If MCE is required to retain records not listed herein or required retention timelines for those records that are listed herein change due to updates in law, MCE will retain those records pursuant to the current law.

Record Type	Required Retention	Sample Descriptions
Executed Contracts	Operational Contracts (non-energy) - 10 years after termination date of the contract	Contracts with vendors or consultants for goods and services
	Energy Procurement Contracts - In perpetuity	Power supply contracts
Invoices from Vendors	Operational Contracts - 2 years after completion of contract	Vendors or consultant invoices for payment for goods and services
	Energy Procurement Contracts - In perpetuity	Power contract vendor invoices for payment
	Customer Program Implementers - In perpetuity	Customer program Implementer invoices for payment
Non-Successful Bids and Proposals	Non-Energy Procurement - 2 years after close of solicitation	Open season bids, other competitive procurements
	Energy Procurement – 5 years after close of solicitation	
Non-Disclosure Agreements	In perpetuity	NDA with vendor, employee, Board member or advisor
Board/Committee Approved Decisions	In perpetuity	Resolutions, meeting minutes, and other items approved at regular or special Board/Committee meetings
Board and Committee Meeting Materials	In perpetuity	Agendas, staff reports and other material provided to Board members in preparation for meetings, real time materials
Board Approved Budgets	In perpetuity	Final, approved budgets
Drafts of Documents	30 days after final version is approved	Draft of contracts, programs, RFPs, etc.
General Electronic Correspondence	3 years	Email correspondence

Customer Data Requests	5 years	Cost comparisons, bill analyses, usage history, billing history, including ad hoc requests
Customer Database Information	20 years	Customer lists, data reports, program data, account balances
Data Analytics Platform Information	In perpetuity	Detailed customer information
AMI Data Lists and Reports supporting CPUC Savings Claims	7 years or longer, as required by the California Public Utilities Commission	Non-aggregated customer AMI data
Other AMI Data Lists and Reports	Deletion after staff use is completed	Non-aggregated customer AMI data
Process Data	5 years	Non-aggregated, non-AMI customer data pulled from MCE's Data Analytics Platform
Marketing Material	In Perpetuity	Flyers, brochures, electronic advertisements
General Educational or Informational Material	In Perpetuity	Brochures, reports, electronic information
Employee Files	6 years after employee end date	Resume, offer letter, change of status, benefits, evaluations, new hire forms
Recruitment Files	3 years after employee end date	Application, job announcement, testing materials, rating sheets, interview notes
Timecards and Other Payroll Records	Current year of employee plus 3 years	Timecards and employee wage records
I-9 Forms	The longer of 3 years after employee hire date or 1 year after termination	Forms retained for I-9 work authorization
Background Checks	5 years from consent or report issued, unless continuing consent obtained	Background consent forms, reports
Employee Leaves of Absence	3 years after employee end date	Forms, leave plans, etc. related to an employee leave of absence
COVID-19 Vaccination Status	30 years	Confidential medical records associated with COVID-19
Workers' Compensation Related Records	18 years	Employer's report of injury and related records
Miscellaneous Personnel Information	6 years after employee end date	Benefit plan documents, training materials



October 19, 2023

TO: MCE Board of Directors

FROM: Garth Salisbury, Chief Financial Officer & Treasurer
Vidhi Chawla, Interim Vice President of Power Resources
Catalina Murphy, General Counsel

RE: Proposed Resolution 2023-10: Authorizing the Execution and Delivery of a Clean Energy Purchase Contract and Certain Other Documents in Connection with the Issuance of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith (Agenda Item #07)

ATTACHMENTS: A. Proposed Resolution 2023-10
B. Form of Transaction Documents to which MCE is a party or is represented:
[B.1 Clean Energy Purchase Contract](#)
[B.2 Limited Assignment Agreement](#)
[B.3 Letter Agreement re Limited Assignment Agreements](#)
[B.4 Custodial Agreement](#)
[B.5 Operational Services Agreement](#)
[B.6 Appendix A of Preliminary Official Statement](#)
C. Form of Additional Transaction Documents for reference:
[C.1 Preliminary Official Statement](#)
[C.2 Trust Indenture](#)
[C.3 Master Power Supply Agreement](#)

Dear Executive Committee Members:

SUMMARY:

In October 2021, MCE completed the first 100% renewable energy prepayment transaction; a \$602,655,000 issuance of Clean Energy Project Revenue Bonds, Series 2021A (Green Bonds, Climate Certified) issued through the California Community Choice

Financing Authority (CCCFA). This prepayment of four renewable power purchase agreements (PPAs) is saving MCE ratepayers \$3.3 million annually on the cost of the energy from the projects.

In preparation for the prepayment transaction, in April 2021 the Board also authorized MCE to become a founding member of CCCFA, a joint powers authority that would be the issuer of the prepayment bonds and an ongoing conduit entity that would be authorized to enter into the necessary contracts and agreements to effectuate prepayment transactions. Since that time, there have been over \$6 billion of renewable energy prepayment bonds issued through CCCFA saving CCA ratepayers untold millions on 100% renewable energy. One CCA has completed three prepayments since the fall of 2021 and two others have completed two.

Currently Proposed Prepayment Transaction: MCE staff has begun work on our second prepayment transaction anticipated to prepay 4-6 existing renewable energy PPAs. The exact number of PPAs to be included in the transaction will depend upon market conditions at the time the bonds are sold to investors. Favorable market conditions might allow a larger number of renewable PPAs to be prepaid thus increasing the size of the transaction and the savings. The lawyers, consultants, advisors, and underwriters are the same transaction team participants as in MCE's first transaction, significantly reducing the time and expense necessary to put together the proposed prepayment. All contracted participants work on a contingency basis and are only paid out of bond proceeds if the transaction closes. The parties that have contracted with MCE included Chapman and Cutler LLP as project participant counsel, Orrick Herrington & Sutcliffe LLP as bond and tax counsel, and Municipal Capital Markets Group, Inc. as financial advisor to MCE and CCCFA on the transaction.

A different financial institution may be added to the deal team in 2023 to receive the prepayment. During the 2021 transaction, Goldman Sachs was the underwriter of the bonds and received the prepayment. This time, if another bank or financial institution is willing to pay a higher rate of return for the prepayment, then Goldman Sachs will simply underwrite the bonds and facilitate the delivery of renewable energy through CCCFA. The flexibility to use a different highly rated bank or financial institution to take the prepayment can increase the savings from the transaction – an option that MCE wants to retain as we approach the sale of the bonds.

Executive Committee Action: On October 4, 2023 the MCE Executive Committee voted to recommend that the MCE Board of Directors approve Resolution 2023-10 at the October 19th meeting.

Prepayment Transaction Summary: The proposed prepayment transaction would reduce the cost of energy from existing PPAs that MCE has already executed. To effectuate the prepayment and to satisfy tax law requirements, MCE must assign the

contracts through Limited Assignment Agreements to a highly rated financial institution that will be in the role of the prepaid supplier, in this case the commodities subsidiary of Goldman Sachs; J. Aron & Company LLC (J. Aron). Once the PPAs are assigned, tax-exempt bonds would be issued to finance the prepayment. These bonds would be issued by CCCFA and would be secured by the contractual rights and transaction cashflows pursuant to a Trust Indenture. MCE would not be responsible to repay the bonds and the bonds would not be a debt of MCE. The bonds would carry the credit ratings of Goldman Sachs Group based upon the contractual arrangements ultimately securing the bonds or would carry the credit ratings of the financial institution that takes in the prepayment.

Under the proposed prepayment transaction, MCE would continue to receive the energy from the assigned PPA through a Clean Energy Purchase Contract executed with CCCFA. The prepaid energy from the PPAs would be purchased by MCE at a discount of 8-10% or more, representing a savings of approximately \$5 million per year. The final amount of the prepayment (and the number and consequent value of the PPAs included) will vary determined by market conditions at the time of the actual pricing/sale of the bonds. More favorable market conditions may allow more PPAs to be prepaid that produce the minimum 8% savings.

The transaction, as proposed, would be structured as a 30-year prepayment transaction. The 30-year term of the prepayment transaction exceeds the terms of the PPAs which generally run from 15-20 years. MCE may assign new or different PPAs in the future to maintain the required cashflow from the prepaid PPAs.

The initial term of the bonds is expected to be 7-10 years. At the end of the first bond pricing period, the bonds would be refinanced or "remarketed" if a minimum savings threshold is met. In the unlikely event the minimum savings thresholds cannot be met for the remarketed bonds, or if the transaction is terminated for any reason, the Limited Assignment Agreements also terminate and PPAs included in the prepayment transaction would revert to MCE at their original terms and prices. Consequently, the financial risk to MCE in the proposed transaction is simply the "loss of the savings" – the financial risk of the possible loss of the discount in the price of the energy from the PPAs.

Transaction Documents Summary:

Clean Energy Purchase Contract - Between MCE and CCCFA. The Clean Energy Purchase Contract provides for the sale of the renewable energy to be delivered by CCCFA to MCE over the term of the prepayment. The energy will be comprised of quantities of electricity designated under the assigned PPAs that have been prepaid and any excess quantities delivered under the assigned PPAs as produced by the projects. Under the Clean Energy Purchase Contract, CCCFA would agree to deliver, and MCE would agree to purchase, all the energy delivered under the assigned PPAs and to

purchase the prepaid amounts of energy at a discount during the Delivery Period. The payments for energy delivered under the Clean Energy Purchase Contract would be payable solely from MCE customer revenues generated from the sale of electricity. Note that this obligation to take and pay for all energy delivered under the PPAs is the same obligation that MCE currently has under those contracts. The primary difference is that the cost of the prepaid energy is reduced by 8% or more as a result of the transaction.

Limited Assignment Agreements – Among MCE, J. Aron and the original power purchase agreement counterparty assigning certain rights and obligations of MCE under the PPA to J. Aron. There are four or more proposed Limited Assignment Agreements. These Limited Assignment Agreements transfer certain rights including the right to purchase the energy and renewable energy attributes to J. Aron to allow them to be prepaid and eventually resold to MCE under the Clean Energy Purchase Contract.

Operational Services Agreement – Between MCE and CCCFA and provides for MCE to perform all operations, scheduling, invoicing, and all aspects of managing the PPAs and delivery of the prepaid energy on behalf of CCCFA.

Custodial Agreement – Among MCE, J. Aron and U.S. Bank Trust Company, National Association (US Bank) as Custodian, providing for US Bank to collect and distribute amounts payable by MCE and J. Aron to the PPA counterparties as appropriate to facilitate the proposed prepayment transaction.

Appendix A of Preliminary Official Statement – This is the Appendix of the disclosure document for the bonds describing MCE as the purchaser of the prepaid renewable energy in the proposed transaction. Appendix A describes the history of MCE, MCE's service area, customers, sources of renewable energy and other facts to inform bond investors of the financial and operational strength of the organization.

Proposed Resolution 2023-10 – The proposed Resolution would give staff the authority to complete negotiations on the prepayment transaction and to finalize and execute the necessary documents and contracts to complete the proposed transaction. The authority provided to staff under the proposed Resolution to finalize all negotiations and execute all necessary contracts and documents is contingent upon the following parameters being satisfied: 1) the bonds issued to finance the prepayment shall not be obligations of MCE, 2) the aggregate stated principal amount of the bonds shall not exceed \$1,250,000,000, 3) the Annual Discount Percentage (savings) from the transaction shall be at least 8% and 4) CCCFA total cost of issuance including all underwriting, legal and consultant fees will not exceed 1% of the amount of the bond proceeds. The authority provided for under the proposed Resolution is important because the execution of the proposed transaction will be extremely market sensitive; MCE expects that final documentation would need to be executed within a 24 hour to 48-hour period when market conditions permit. As such, the proposed Resolution provides the authority needed so that staff may quickly and efficiently complete the transaction to capture the

required savings when available in the market.

If the parameters of the prepayment transaction are satisfied, the proposed Resolution would also give authorization to staff to direct CCCFA to pay vendors that provided services to MCE, including drafting, preparing, and finalizing the transaction documents in order to complete the proposed prepayment transaction. These professional services include legal counsel, bond counsel, tax counsel, municipal financial advisor, swap advisor, trustee, underwriter of the bonds, and any other vendor required to complete the issuance of the bonds. Payment to these vendors would be considered a cost of issuance and would be paid by CCCFA directly out of the proceeds of the sale of the bonds. Per the Resolution, the total cost of issuance to CCCFA, including all underwriting, legal, and consultant fees, would not exceed 1% of the bond proceeds.

Fiscal Impacts: If executed, the proposed prepayment transaction would save MCE \$4.5 to more than \$6 million per year on the cost of the energy from the prepaid PPAs after all upfront and ongoing costs of the transaction are paid. Actual savings will depend upon market conditions at the time of the sale of the bonds and the number of PPAs included in the transaction.

Recommendation¹: Approve Resolution 2023-10: Authorizing the Execution and Delivery of a Clean Energy Purchase Contract and Certain Other Documents in Connection with the Issuance of the California Community Choice Financing Authority Clean Energy Project Revenue Bonds; and Certain Other Actions Required to Ensure the Reduction in the Costs of Renewable Energy Therewith.

¹ Pursuant to MCE's Operating Rules and Regulations, the issuance of bonds or any other financing requires a majority vote of the full membership. Therefore, with MCE's current number of member communities, at least 19 votes in favor of Resolution 2023-10 are needed for approval.

RESOLUTION NO. 2023-10

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING THE EXECUTION AND DELIVERY OF A CLEAN ENERGY PURCHASE CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY CLEAN ENERGY PROJECT REVENUE BONDS; AND CERTAIN OTHER ACTIONS REQUIRED TO ENSURE THE REDUCTION IN THE COSTS OF RENEWABLE ENERGY THEREWITH

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, pursuant to the provisions of the Act, MCE and certain other California “community choice aggregators” entered into a joint powers agreement (the “Joint Powers Agreement”) pursuant to which the California Community Choice Financing Authority (the “Issuer”) was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist MCE in financing the acquisition of supplies of clean energy; and

WHEREAS, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created; and

WHEREAS, MCE has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer; and

WHEREAS, MCE is requesting that the Issuer agree to purchase certain quantities of clean energy from Aron Energy Prepay LLC, a Delaware

limited liability company (“Prepay LLC”) on a prepaid basis (the “Project”) and to sell such clean energy to MCE, as contemplated herein; and

WHEREAS, MCE is requesting that the Issuer finance the costs of the Project with the proceeds of its Clean Energy Project Revenue Bonds, with such series designation as may be determined by the Issuer (the “Bonds”); and

WHEREAS, MCE has determined to authorize the officers of MCE to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale, and delivery of the Bonds; and

WHEREAS, there have been made available to the MCE Board of Directors for approval forms of the following agreements to which MCE is a party (collectively, the “MCE Documents”):

1. Clean Energy Purchase Contract between MCE and the Issuer;
2. Custodial Agreement by and among MCE, J. Aron & Company LLC, a New York limited liability company (“J. Aron”), Prepay LLC, and U.S. Bank Trust Company, National Association, as custodian;
3. Form of Limited Assignment Agreement, by and among MCE, the counterparty to the power purchase agreement described therein, and J. Aron;
4. Letter Agreement between MCE and J. Aron regarding matters relating to Limited Assignment Agreements; and
5. Operational Services Agreement relating to the Project, by and between MCE and the Issuer; and

WHEREAS, there have also been made available to the Board of Directors of MCE forms of the following additional documents relating to the Project:

1. Trust Indenture (the “Indenture”) between the Issuer and U.S. Bank Trust Company, National Association, as trustee, providing for, among other things, the issuance of and security for the Bonds;
2. Master Power Supply Agreement (the “Master Power Supply Agreement”) between the Issuer and the Prepay LLC, providing for the delivery of the Prepaid Energy Supply to the Issuer; and
3. Preliminary Official Statement (the “Preliminary Official Statement”), to be used in connection with the offering and sale of the Bonds, including the information relating to MCE included as Appendix A thereto (the Indenture,

the Master Power Supply Agreement and the Preliminary Official Statement, together with the MCE Documents, the “Project Documents”).

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

Section 1. The proposed forms of the MCE Documents, as made available to the Board of Directors for this meeting, are hereby approved. The form of Limited Assignment Agreement may be used, in substantially the same form, for assignments of the initial or any additional MCE power purchase agreements, as needed to maintain the transactions approved hereby, and any such Limited Assignment Agreements shall be included in the MCE Documents hereby approved.

Section 2. The following named individuals are the authorized officers of MCE with the respective titles specified below (collectively referred to as “Authorized Officers” and individually referred to as an “Authorized Officer”):

NAMES	TITLES
Dawn Weisz	Chief Executive Officer
Vicken Kasarjian	Chief Operating Officer
Garth Salisbury	Chief Financial Officer & Treasurer
Catalina Murphy	General Counsel

Section 3. Subject to the parameters set forth in Section 6 of this Resolution, any two of the Chief Executive Officer, Chief Operations Officer, Chair of the Board, and the Chief Financial Officer are hereby authorized and directed, for and on behalf of MCE, to execute and deliver the MCE Documents in substantially said form, with such changes and insertions therein as the Authorized Officers executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The proposed form of the Preliminary Official Statement, as made available to the Board of Directors for this meeting, is hereby approved. Any Authorized Officer is hereby authorized and directed, for and on behalf of MCE, to execute and deliver a certificate as to the information regarding MCE contained therein and in the final version of the Official Statement, with such changes and insertions therein as the Authorized Officer approving the same may deem necessary or appropriate. Subject to approval by the Issuer, MCE hereby authorizes the distribution of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds, and the delivery of the Official Statement in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

Section 5. The Authorized Officers, each acting alone, are hereby authorized and directed, for and in the name and on behalf of MCE, to execute and deliver any and all documents, including, without limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which MCE has approved in this Resolution, for the issuance,

sale and delivery of the Bonds, and to consummate by MCE the transactions contemplated by the MCE Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

Section 6. The approvals provided for herein shall be subject to the following parameters:

- a) the Bonds will not be obligations of MCE, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged therefor under the Indenture, including amounts payable by MCE under the Clean Energy Purchase Contract;
- b) the aggregate principal amount of the Bonds shall not exceed \$1,250,000,000;
- c) the “Monthly Discount Percentage” as provided for in the Clean Energy Purchase Contract shall result in at least 8% savings on an annual basis; and
- d) CCCFA total cost of issuance including all underwriting, legal and consultant fees will not exceed 1% of the amount of the bond proceeds.

Section 7. Execution and delivery of the MCE Documents by an Authorized Officer or Officers shall be conclusive evidence that the parameters set forth in Section 6 have been met, and all actions heretofore taken by the Authorized Officers with respect to the issuance of the Bonds are hereby ratified, confirmed and approved.

Section 8. If Section 6 and Section 7 listed herein have been met, an Authorized Officer may direct CCCFA to make payments to vendors that provided services to MCE to complete the MCE Documents and ultimately the issuance of the bonds. These professional services include legal counsel, bond counsel, tax counsel, municipal financial advisor, swap advisor, trustee and trustee counsel, underwriter of the bonds, underwriter’s counsel and any other vendor required to complete the issuance of the bonds. Payment to these vendors is considered a cost of issuance and will be paid by CCCFA out of the proceeds of the sale of the Bonds.

Section 9. This Resolution shall take effect immediately.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 19th day of October, 2023, by the following vote:

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

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

CHAIR, MCE

Attest:

SECRETARY, MCE



October 19, 2023

TO: MCE Board of Directors

FROM: David Potovsky, Manager of Power Resources

RE: Energy Storage Agreement with Corby Energy Storage, LLC
(Agenda Item #08)

ATTACHMENT: Energy Storage Agreement with Corby Energy Storage, LLC

Dear Board Members:

Background:

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

1. Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage.
2. Add Resource Adequacy (RA) supply to MCE's portfolio.
3. Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040.

As a result of the solicitation, staff received an offer from Corby Energy Storage, LLC (Corby) for a new stand-alone battery energy storage system (BESS) that will be coming online in 2027. The proposed facility would satisfy MCE's MTR procurement obligation for 2027.

Summary:

The Corby project is being developed by NextEra Energy, and will be sited in Solano County. The project is at a mature stage in the development process with an executed interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

Staff negotiated the attached draft Energy Storage Agreement (ESA) for the purchase of all resources associated with the Corby project including energy, RA, and Ancillary Services. The agreement outlines the terms for the guaranteed delivery of 100 megawatts (MW) from the installation. In addition to contributing to MCE's MTR compliance obligation, the contract would make a valuable addition to MCE's RA portfolio.

Rationale:

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

- RA capacity produced by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications, and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- The project is being developed and will be operated by an experienced team. NextEra has a long track record of successfully delivering projects to load serving entities including MCE, Clean Power Alliance, Clean Power SF, East Bay Community Energy, PG&E and SCE.

Additional Information:

NextEra Energy

- Headquartered in Juno Beach, Florida with 15,000 full-time employees.
- Incorporated in 1984, NextEra energy is the world's largest generator of renewable energy from wind and solar as well as a leader in battery storage.
- NextEra Energy owns and operates 230 renewable energy and energy storage facilities across the US and Canadian with an aggregate capacity of 33,000 MW (enough to power approximately 12 million homes).
- NextEra Energy is a Fortune 200 company (NYSE: NEE) with a market cap of \$150 billion. They have an A- credit rating from S&P and Fitch.

Contract Overview

- Project: 100 MW, 4-hour duration lithium-ion battery energy storage system
- Contracted resources: Energy, RA and Ancillary Services
- Price: Fixed with no escalation for the Delivery Term
- Project location: Solano County, California
- Guaranteed commercial operation date: April 1, 2027
- Contract term: 15 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor requirement: Union contractors would be required for all on-site construction trades
- Community Benefit Package: Seller would make a cash contribution of \$100,000. MCE and Seller would identify community benefits initiatives that are of mutual interest such as apprenticeships, scholarships, food programs, open space preservation, parks, etc.

Fiscal Impacts:

There would be no impact on the Fiscal Year 2023/24 budget. Incremental costs would be accounted for starting in FY 2027/28.

Recommendation:

Authorize execution of the Energy Storage Agreement with Corby Energy Storage, LLC. for the purchase of all resources associated with the project including energy, RA, and Ancillary Services.

CONFIDENTIAL
 NEXTERA (CORBY) PROJECT
 6 OCTOBER 2023
 FINAL DRAFT

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Corby Energy Storage, LLC (“**Seller**”)

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

Description of Facility: A 100 MW/ 400 MWh battery energy storage facility as further described below (the “**Facility**”), located in Solano County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Completed
Executed Interconnection Agreement	Completed
Obtain Federal and State Discretionary Permits	12/1/2024
Procure Major Equipment	6/1/2026
Expected Construction Start Date	6/1/2026
Expected Commercial Operation Date	4/1/2027
Full Capacity Deliverability Status Obtained	Completed

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

Storage Contract Capacity: 100 MW

Storage Contract Output: 400 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	
6	

7			
8			
9			
10			
11			
12			
13			
14			
15			

Contract Price

The Contract Price shall be:

Contract Year	Contract Price
1 – 15, plus two months	

Delivery Point: Facility Pnode

Product:

- ☒ Discharging Energy
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status
- ☒ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security:

Performance Security:

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ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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 intends to develop, design, permit, construct, own, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.5.

“**AD/CVD**” means antidumping and/or countervailing duty.

“**Actual Monthly NOC**” means the amount of Net Qualifying Capacity from the Facility that is eligible to count toward meeting Resource Adequacy Requirements by both the CPUC and CAISO.

“**Additional Cycles Payment Amount**” has the meaning set forth in Exhibit Q.

“**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 Transfer” and “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. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such

as a “yield co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NEP, NEOP, NEER, NEECH, and NEE and their respective direct or indirect Affiliate subsidiaries.

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

“**Ancillary Services**” means all ancillary services, ancillary services-related products and other ancillary services-related attributes, if any, associated with the Facility. For the avoidance of doubt, Black Start is excluded from Ancillary Services.

“**Annual Availability**” means, for each Contract Year, a simple average of the Monthly Storage Availability values in the Contract Year as calculated in accordance with Exhibit P.

“**Availability Adjustment**” has the meaning set forth in Exhibit C.

“**Available Charge Capacity**” means the level at which the Facility may be charged, expressed in MW_{AC}.

“**Available Discharge Capacity**” means the level at which the Facility may be discharged, expressed in MW_{AC}.

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

“**BESS Equipment**” means batteries, battery modules, onboard sensors, control components, inverters, sub-inverters, or any of their components.

“**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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

“**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, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time Charging Energy and Discharging Energy.

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

“CAISO Metered Entity” has the meaning set forth in the CAISO Tariff.

“CAISO Operating Order” means the Operating Instruction or Dispatch 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 (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC; or (g) any reduction or impairment of Capacity Attributes under the CPUC’s “slice of day” framework including without limitation Decision 23-04-010.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, 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; 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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller; and,

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

“Charging Energy” means the energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to charge with Charging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Seller Initiated Test shall not be considered a Charging Notice. Any Buyer Initiated Test shall be considered a Charging Notice.

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

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

“COD Certificate” has the meaning set forth in Section 2.2(a)(i).

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

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

“Compliance Actions” has the meaning set forth in Section 3.5.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.5.

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

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

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

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

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

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

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

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

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

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

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

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, by S&P, Fitch or Moody’s. If ratings by Fitch, S&P and Moody’s are not equivalent, the two (2) lowest ratings shall apply.

“Curtailment Order” means any of the following:

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

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

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

(d) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Product from the Facility or there is a reduction of the delivery of Charging Energy pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Damage Payment” means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

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

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

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

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

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

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” has the meaning set forth on the Cover Sheet.

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

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

“Discharging Energy” means all energy delivered to the Delivery Point from the Facility, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

“DOC” means the U.S. Department of Commerce.

“Early Termination Date” has the meaning set forth in Section 11.2(a) and Section 11.9, as applicable.

“Efficiency Rate” means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility Meter and the Delivery Point for the receipt of Charging Energy and delivery of Discharging Energy, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

“Energy” means electrical energy measured in MWh.

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

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller (or Seller’s Affiliate) and the PTO as set forth on the Cover Sheet.

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

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

“Facility” means the energy storage 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 Product (but excluding any Shared Facilities).

“Facility Meter” means the CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy and Discharging Energy.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Fitch” means Fitch Ratings Ltd., or its successor.

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

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

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

“Gains” means, with respect to any 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. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

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

“Guaranteed Efficiency Rate” means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet.

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

“Guaranteed RA Amount” means at any point in time on or after the RA Guarantee Date, the lesser of

[REDACTED] pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings, the CPUC’s “slice of day” framework including Decision 23-04-010, and the CAISO Tariff applicable to Resource Adequacy Resources.

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

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

“Guarantor” means, with respect to Seller, (a) an Affiliate of Seller with an Investment Grade Credit Rating, or (b) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [REDACTED] (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amounts of Charging Energy or Discharging Energy

deviates from the amount of Scheduled Energy.

“Incentives” means, as applicable to the Facility: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, operation, investment in, ownership, or storage of electricity by the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits; and (c) any other form of incentive that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) future environmental attributes.

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

“Initial Synchronization” means the commencement of “Trial Operation” as defined in the CAISO Tariff.

“Installed Battery Capacity” means the maximum dependable operating capability of the Facility to discharge electric energy, not to exceed the Storage Contract Capacity, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement dated as of June 9, 2021 associated with CAISO Queue position Q1270 among Seller or Seller’s Affiliate, the CAISO, and the Participating Transmission Owner (as such agreement has been or may be further amended), pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48, 48E, or other applicable provisions of the United States Internal Revenue Code of 1986, as amended.

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

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

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

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having assets of at least \$10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s in a form substantially similar to the letter of credit set forth in Exhibit K.

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

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

“Losses” means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid

trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Capacity Attributes and Incentives.

“Master File” has the meaning set forth in the CAISO Tariff.

“Maximum Charging Capacity” has the meaning set forth in in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in in Exhibit A.

“Non-Merchant Agreement” means any agreement to sell any Product from the Facility, each as applicable, for a delivery term that is longer than one (1) year.

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

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

“Moody’s” means Moody’s Investors Service, Inc., or its successors.

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

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

“NEE” means NextEra Energy, Inc.

“NEER” means NextEra Energy Resources, LLC.

“NEECH” means NextEra Energy Capital Holdings, Inc.

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

“NEOP” means NextEra Energy Operating Partners, LP.

“NEP” means NextEra Energy Partners, LP.

“NEPA” means the National Environmental Policy Act.

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

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

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

“New Trade Measure Event” means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

(a) Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment;

(b) Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment; or

(c) Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including but not limited to AD/CVD, or other trade measures on BESS Equipment.

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

“Notice” shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (email).

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

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

“Off-Peak Hour” means any hour that is not an On-Peak Hour.

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

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

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

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

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

“Permitted Transfer” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that: (i) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) A Change of Control of Ultimate Parent, NEECH, NEP, NEOP, or NEER;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that 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;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER’s or Ultimate Parent’s renewable energy generation portfolio; or (iii) all or substantially all of NEER’s or Ultimate Parent’s solar generation and/or energy storage portfolio; or (iv) 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, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

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

(a) A tangible net worth of [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) Has at least [REDACTED] of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such operations experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent [REDACTED]

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

“Planned Outage” has the meaning set forth in Section 4.6(a).

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

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 or 45Y of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualified Operator” means Seller or an operator of battery storage facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery storage facilities, each having a nameplate capacity rating of ten (10) MW or more, for not less than two (2) years.

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

“RA Change in Law” has the meaning set forth in Section 3.3(c).

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(b).

“RA Guarantee Date” means the first day of the month that is two calendar months following the Commercial Operation Date. For illustrative purposes, if the Commercial Operation Date is June 30, the RA Guarantee Date shall be September 1.

“RA Shortfall” has the meaning set forth in Section 3.3(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.3(b), any month during the Delivery Term during which there is an RA Shortfall.

“Real-Time Forecast” means any Notice of any change to the Storage Capacity 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.

“Reduced MNQC” has the meaning set forth in Section 3.3(c).

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the date set forth in Section 3.3(b).

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

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

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

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

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

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

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

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

“Seller Initiated Test” has the meaning provided in Section 4.9.

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Capacity Attributes and Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with Affiliates and /or with third parties or by Seller for facilities owned by Seller other than the Facility.

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

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

“Site Control” means that, for the Delivery Term, Seller or a Seller Affiliate: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns 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.

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“Station Use” means energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Seller Initiated Test, Buyer Initiated Test, Charging Notice or Discharging Notice.

“Storage Capacity” means the maximum operating capability of the Facility to discharge electric energy that can be sustained for four (4) consecutive hours.

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

“Storage Contract Capacity” means the total capacity (in MW_{AC}) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“Storage Contract Output” means the total output (in MWh-_{AC}) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

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

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means, as applicable to the Facility, the PTC, ITC, and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the storage of energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

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

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

“Test Product” means Product delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver any Product to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (ii) ending upon the occurrence of the Commercial Operation Date.

“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*, Seller shall be limited to one such failure during the Contract Term for Force Majeure Event purposes.

“Transmission Provider” means any entity or entities transmitting or transporting the Charging Energy and Discharging 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 within the CAISO grid from the Delivery Point.

“Ultimate Parent” means [REDACTED] and includes any combination thereof.

“WRO Restraint” means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any BESS Equipment into the United States and such order, despite the use by Seller of commercially reasonable efforts to avoid procurement or sourcing of BESS Equipment that was reasonably foreseeable to become subject to such restraint, prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Facility.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement, means such document, agreement, or this Agreement, including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement, or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided, however*, subject to Buyer's obligations in Section 4.13, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent.**

(a) The Delivery Term shall not commence until Seller completes each of the following conditions and delivers to Buyer a notice that such conditions have been satisfied, which notice Buyer shall review and either confirm or provide notice to Seller of any deficiencies with four (4) Business Days of Seller's notice; provided, Buyer shall be deemed to confirm that such conditions have been satisfied if Buyer does not provide notice to Seller of any deficiencies within such four (4) Business Day period; and further provided for clarification purposes to the extent no such deficiencies are found to have existed, the confirmation shall be deemed to have occurred on the date that Seller delivered to Buyer Seller's notice that such conditions have been satisfied:

(i) Seller has delivered to Buyer (i) a completed certificate from a Licensed Professional Engineer substantially in the form of Exhibit H (the "**COD Certificate**") and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Battery Capacity on the Commercial Operation Date;

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

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

(iv) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

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

(vi) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(vii) Seller has certified in writing to Buyer that Seller has complied with the prevailing wage and project labor agreement requirements as set forth in Section 13.4;

(viii) Seller has certified in writing to Buyer that Seller has satisfied the other Seller commitments set forth in Exhibit S, and provided reasonably requested documentation demonstrating such compliance;

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

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

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's 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 into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Capacity Attributes.** Seller shall have obtained either Interim Deliverability Status or Full Capacity Deliverability Status by the Commercial Operation Date. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

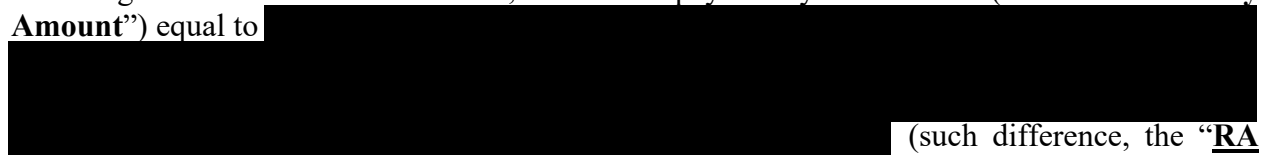
(a) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.3 **Resource Adequacy Failure.**

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to

 (such difference, the "**RA Shortfall**"), multiplied by the Replacement Price, provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall,

provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer's purchase of the Product to comply with the requirements of CPUC Decision 21-06-035, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under this Agreement. "**Replacement Price**" means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Resource Adequacy Benefits not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Resource Adequacy Benefits, or at Buyer's option, (b) the market price for such replacement Resource Adequacy Benefits not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. Upon request from Seller, Buyer shall provide reasonable documentation demonstrating the Replacement Price amounts sought by Buyer from Seller were incurred or determined, as applicable, by Buyer in a commercially reasonable manner consistent with the components set forth in the immediately preceding sentence. Notwithstanding anything to the contrary herein,

(c) **RA Change in Law**. Notwithstanding anything in this Agreement to the contrary, if, in any given month, following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that resources of the same type and operational characteristics as the Facility are eligible to provide, (including, without limitation, due to effective load carrying capability (ELCC) adjustments) (an "**RA Change in Law**"), thereby reducing the maximum achievable Net Qualifying Capacity of the Facility, then the RA Shortfall for such month shall be equal to

For the purposes of this subsection (c), (i) the "**CIL Adjustment Factor**" means the Guaranteed RA Amount divided by the Reduced MNQC, and (ii) the "**Reduced MNQC**" means the new maximum achievable Net Qualifying Capacity of the Facility, where such Reduced MNQC shall be calculated by disregarding any Planned Outages that are otherwise permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility. For the avoidance of doubt, the Reduced MNQC shall take into account any CAISO or CPUC adjustments to the Net Qualifying Capacity that are generally applicable to all resources of the same type as the Facility.

3.4 **CPUC Mid-Term Reliability Requirements.**

(a) The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decisions D.21-06-035 and D.23-02-040. Seller represents and warrants to Buyer that:

(i) The Facility shall be incremental to the CPUC baseline list identified in CPUC Decision 21-06-035, provided that Seller shall be deemed to have satisfied this requirement by the absence of the Facility (i.e., the Facility not having been listed) on the CPUC

baseline list identified in CPUC Decision 21-06-035;

(ii) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040;

(iii) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040 during the Delivery Term to any other person or entity; and

(iv) Upon reasonable request of Buyer, Seller will provide additional information and documentation to assist Buyer with compliance with CPUC requests for additional information for the Facility to meet the procurement mandates set forth in CPUC Decision 21-06-035 and D.23-02-040, and Seller will cooperate with Buyer to identify, gather and provide the requested information to the CPUC.

(b) Buyer as of the Effective Date is required to demonstrate procurement progress to the CPUC through the Commercial Operation Date, and in connection with such obligation, Buyer is obligated to provide certain documentation to the CPUC for this Facility, including copies of the execution version of this Agreement, the execution version of the Interconnection Agreement, land leases, title deed or other documentation demonstrating Site Control, information regarding Facility development timelines, copies of notices to proceed with construction and similar evidence of Construction Start and Commercial Operation. Notwithstanding Article 18 (Confidentiality), except to the extent that the CPUC no longer requires submission of such documentation, Seller hereby authorizes Buyer to submit this and similar documentation to the CPUC as may be required by the CPUC in connection with satisfying Buyer's compliance obligations for the Facility under this Agreement; provided that Buyer shall use reasonable efforts to obtain from the CPUC confidential treatment for all information that qualifies as Confidential Information under this Agreement and is eligible for confidential or protective treatment under the CPUC's rules, orders, and decisions on confidential or protected information. Buyer's reasonable efforts shall include the following: designating such Confidential Information as "confidential" and "protected materials" (or similar designations) under the CPUC's orders and decisions governing the protection of confidential information submitted by load serving entities including as set forth in CPUC D.20-12-044 page 13; and either filing motion(s) to file under seal or submitting supporting declarations attesting to such designations when required by such orders and decisions.

3.5 **Compliance Expenditure Cap.**

(a) If a Change in Law, including, but not limited, to an RA Change in Law, occurs after the Effective Date that affects the Product's eligibility to qualify for or maintain Resource Adequacy, then Seller shall use commercially reasonable efforts to comply with such Change in Law as necessary to maintain the Product eligibility described above, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [REDACTED]

[REDACTED] (the “**Compliance Expenditure Cap**”); provided, for avoidance of doubt, Seller shall not be liable for any Compliance Costs to the extent such changes are already contemplated in this Agreement including the defined term “Guaranteed RA Amount” and in Section 3.3(c). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs and the anticipated date to complete such actions. Seller shall have no obligation to take any actions that cannot be implemented in accordance with Accepted Electrical Practices.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller shall not be obligated to take any Compliance Actions described in such Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law, and (iii) with respect to Resource Adequacy, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the Change in Law.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver Discharging Energy to Buyer at the Delivery Point, and Buyer shall take delivery of Discharging Energy at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including without limitation, Station Use,

Electrical Losses, any costs associated with delivering the Charging Energy from the Delivery Point to the Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss.** Title to and risk of loss related to the Discharging 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.

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) **[Reserved].**

(b) **Monthly Forecast of Storage Capacity.** No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Storage Capacity in MW and Storage Contract Output in MWh for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Day-Ahead Forecast.** During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Monthly Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity or changes in Storage Contract Output by one (1) MWh or more no later than 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If either the Available Discharge Capacity or Available Charge Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify

Buyer as soon as reasonably possible. Such Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and the SC (if applicable); *provided* that Buyer or its SC specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by email to Buyer and the Buyer's SC (if applicable).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC 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) Failure to provide Real-Time Forecast. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure to provide such forecast, Seller shall be responsible for such losses and penalties in accordance with Exhibit D.


(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Discharging Energy delivered from the Facility, by the amount and for the period set forth in any Curtailment Order; *provided* that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Reserved.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal



(d) Seller Equipment Required for Instruction Communications. Subject to the last sentence of this Section, 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 as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a 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 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 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 reasonably 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 or other applicable Law, then the installation and implementation of such facilities, communications links, or other equipment, protocols, or practices facilities will be at Buyer's sole expense, and Buyer shall prepay or reimburse Seller at Seller's discretion for any such amounts.

4.5 Charging Energy Management.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility.

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

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Product) associated with such discharge.

(d) Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement,

including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders, and Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order, or Curtailment Order consistent with the Operational Procedures.

(f) The Facility shall be capable of receiving Charging Energy from the CAISO Grid; *provided*, Buyer shall be responsible for all Charging Energy costs related to charging of the Facility.

(g) The Facility will be able to provide the full suite of ancillary services in CAISO markets to the extent any such services are available in the CAISO markets as of the Effective Date, or after the Effective Date, provided that with respect to any such Ancillary Service the Facility is, at the relevant time, is actually physically capable of providing such service in accordance with the limitations set forth in the Operating Restrictions and without modification of the Facility or its operations, and Buyer has agreed to reimburse Seller for any costs Seller incurs in connection therewith including in connection with conducting any such additional CAISO approval. The Ancillary Services include Regulation Up, Regulation Down, Spinning Reserve and Non-Spinning Reserve. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Black Start is excluded from Ancillary Services.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(a) **Facility Maintenance.** Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the storage capability 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 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “**Planned Outage**”). 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. Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Storage Facility without the prior consent of Buyer which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Seller may add or replace batteries in order to maintain the Storage Contract Capacity available to Buyer at the Interconnection Point.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage, to the extent reasonably required by (i.e., to the extent Seller is not reasonably able to deliver Product due to) such Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product to the extent reasonably required (i.e., to the extent Seller is not reasonably able to deliver Product) during any period of System Emergency, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent Seller is not reasonably able to deliver Product during such Force Majeure Event.

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

4.7 [Reserved].

4.8 Storage Availability.

(a) During the Delivery Term, the Facility shall maintain a Monthly Availability of no less than [REDACTED] (the “Guaranteed Storage Availability”). Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an Availability Adjustment payment calculated in accordance with Exhibit C and Exhibit P.

4.9 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. After the Commercial Operation Date, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access. For any Storage Capacity Tests, or other operational tests during Off-

Peak Flexible Ramp Hours as defined by CAISO, initiated by Seller (“**Seller Initiated Test**”) including all tests conducted prior to Storage Facility Commercial Operation, any Storage Facility Commercial Operation Storage Capacity Test, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is [REDACTED] of the Installed Battery Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy and Ancillary Services.

(c) No dispatch notices shall be issued during any Seller Initiated Test. The Facility shall be deemed unavailable during any Seller Initiated Test. For any Seller Initiated Test other than a Storage Capacity Test required by Exhibit O, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); *provided, however*, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer’s cooperation for Seller to perform such tests shall not be unreasonably withheld.

(d) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer’s dispatch rights of the Facility to be fully reflected in the CAISO’s market optimization and not result in CAISO market awards that are not physically feasible (collectively, the “**Dedicated Interconnection Capacity**”). For avoidance of doubt, the Dedicated Interconnection Capacity shall not exceed the Installed Battery Capacity. Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller’s inability to provide, or any third-party use of, the Dedicated Interconnection Capacity.

4.11 **Station Use**. Seller shall be responsible for providing all energy to serve Station Use (including paying the cost of any Energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility’s retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance.** Buyer shall at all times during the Delivery Term retain dispatch control of the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **Pre-Commercial Operation Date Period.** Prior to Commercial Operation, (i) Buyer and Buyer's SC shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices except pursuant to Seller direction, (ii) Seller shall have exclusive rights to charge and discharge the Facility by providing such direction to Buyer or Buyer's SC (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Product), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing including without limitation for the Test Product shall be for Seller's account. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 4.13.

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 Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's cost, throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. 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. Metering will be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a

form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

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 be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) days after, but not prior to, the end of each month of the Delivery Term. Each invoice for the Delivery Term shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any

other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within ten (10) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, subject to Section 11.7, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security if such replenishment would exceed the liability limits set forth in Section 11.7.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Except as otherwise set forth in this Section 8.8, Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Within ten (10) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet; provided, that Seller's obligation to replenish the Performance Security after the initial posting is limited to an amount equal to [REDACTED] provided, further, that notwithstanding any provision herein to the contrary, such limitation on replenishment is not intended to and shall not be deemed to limit Seller's liability for a Termination Payment. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (C) fails to honor Buyer's properly documented request to draw on such Letter

of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as change the issuer of Letter of Credit for any such Development Security or Performance Security, subject to the issuer and the replacement Letter of Credit meeting the requirements of this Agreement.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security and the Performance Security, to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 Financial Statements. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor's ultimate parent (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, and as posted on the website of the Guarantor's ultimate parent or the Securities Exchange

Commission. Upon request of Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred twenty (120) days after the end of each fiscal year; provided, however, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with GAAP.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery without any bounce back or rejection, and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **"Force Majeure Event"** means any act or event occurring on or after the Effective Date (provided, that, for clarification purposes, but without limiting a claiming Party's obligations under this Article 10, the Parties agree that the term "occurring" does not exclude events that may have occurred or existed prior to the Effective Date for which there is no known impact as of the Effective Date actually affecting claiming Party's obligations or ability to perform under this Agreement, such as COVID-19 or any Import Restriction Actions, if such events later are discovered to have such impacts on or after the Effective Date) that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement, if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic (including the impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 and any mutations thereof); quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority, including WRO Restraint and New Trade Measure; landslide; strikes or other labor difficulties caused or suffered by a Party or any third party, except as set forth below; or a Transformer Failure.

(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 (provided, for clarification purposes, any such exception shall not preclude any schedule relief Seller may be entitled to pursuant to any New BESS Trade Measures Event), Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility, or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event or a Transformer Failure. For the avoidance of doubt, the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer’s right to declare an

Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 Notice. Within five (5) Business Days of becoming aware of the commencement and effect of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of becoming aware of the commencement and effect of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure of the claiming Party to provide written notice as required in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods prior to other Party's receipt of such written notice to the extent the non-claiming Party is materially adversely affected by the claiming Party's failure to provide timely notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) 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 this Section 10.4, 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 sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for Resource Adequacy Failure, the exclusive remedies for which are set forth in Section 3.3, failures to comply with Curtailment Orders or charging the Facility, the exclusive remedies for which are set forth in Sections 4.4(c) and 4.5(c), respectively, failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, Section (b), and failures related to Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P), 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) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) The failure of Seller to achieve Construction Start [REDACTED]
[REDACTED] after the Guaranteed Construction Start Date;

(ii) The failure of Seller to achieve Commercial Operation [REDACTED] after the Guaranteed Commercial Operation Date;

(iii) if, except to the extent excused by any Force Majeure Event, in any two consecutive Contract Years, the average Annual Availability over the two-year period is [REDACTED] and Seller fails to deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [REDACTED], and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition, [REDACTED] (unless the cure plan requires: (i) replacement of at least fifty percent (50%) of the battery capacity; (ii) replacement of at least fifty percent (50%) of the inverter capacity or sub-inverter capacity; and/or (iii) replacement of the generator step-up transformer (the GSU), in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a “Availability Cure Plan”);

(iv) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain an Efficiency Rate of [REDACTED] over a rolling 12-month period;

(v) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain a Storage Contract Capacity (as determined pursuant to Exhibit O) equal [REDACTED] (a “Capacity Cure Plan”);

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, with respect to the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment, or a Termination Payment, as applicable;

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

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

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

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

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

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

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

(ix) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The termination payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not

otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to 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 the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

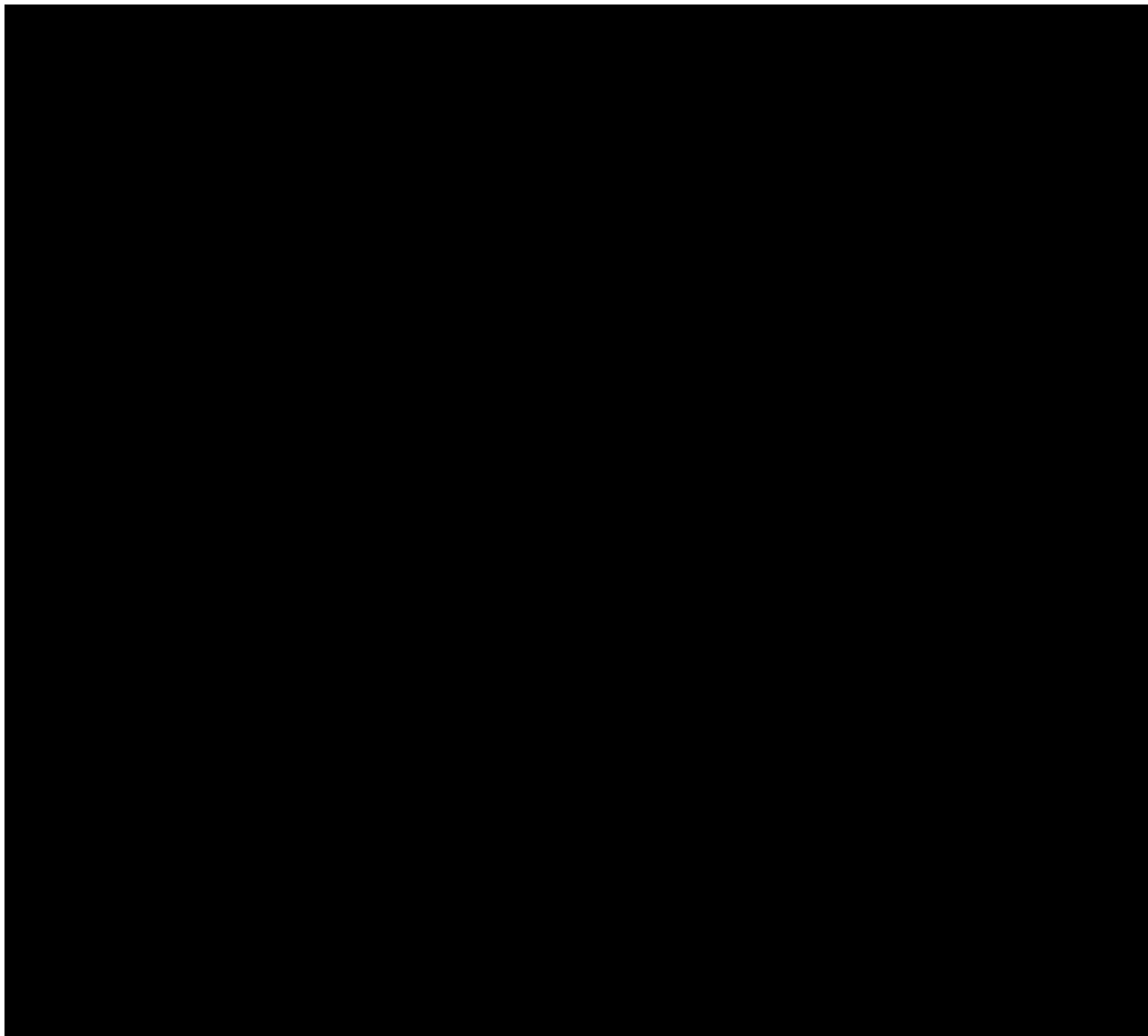
11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Subject to Seller's compliance with Section 11.8, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for any Event of Default other than arising due to fraud, misrepresentation, or willful misconduct shall be equal to



11.8 **Seller Post-Termination Obligations.** If this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party or pursuant to Section 11.9, Seller shall not enter into any Non-Merchant Agreement to sell any Product from the Facility within two (2) years after the effective date of such termination without first having provided Notice to Buyer of an offer to purchase such Product (a "**ROFO Offer**"). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer (the "**ROFO Exercise Period**"). If Buyer provides notice to Seller accepting the ROFO Offer within the ROFO Exercise Period, then the Parties shall negotiate in good faith to enter into a binding agreement (the "**ROFO Agreement**"), within ninety (90) days after Seller's receipt of Buyer's notice of acceptance (the "**ROFO Negotiation Period**"), for purchase and sale of the Product in accordance

with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of this Agreement. If Buyer does not provide notice accepting the ROFO Offer within the ROFO Exercise Period, or if the Parties fail to enter into the ROFO Agreement within the ROFO Negotiation Period, then Seller shall have the right to enter into any Non-Merchant Agreement, within one hundred eighty (180) days after the end of the ROFO Exercise Period or ROFO Negotiation Period, as applicable, to sell such Storage Product to any third parties, so long as the prices under such Non-Merchant Agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such a Non-Merchant Agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any Non-Merchant Agreement to sell any Product from the Facility that Seller enters into within two (2) years after the termination of this Agreement pursuant to Section 11.2 or Section 11.9.



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, BY STATUTE, IN TORT, BY CONTRACT, OR OTHERWISE.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY INCENTIVES, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3, 11.2, 11.3, 11.7, 11.9 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES

AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) Seller shall comply with all applicable 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 those related to non-discrimination, non-preference, and conflict of interest.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

(h) Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”). The Parties acknowledge that pursuant to the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

(i) Despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer’s sole remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of any such delays.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim 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 limited within a venue permitted in law and under this 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.).

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller 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 applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller agrees to have its primary EPC contractor enter into one or more project labor agreements for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements. Seller shall provide a Seller's officer's certificate in a form reasonably acceptable to Buyer certifying Seller's compliance with the requirements of the foregoing prevailing wage

and project labor agreement requirements and such certificate shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws.

13.5 **Other Seller Commitments.** Seller shall perform the additional Seller commitments as set forth in Exhibit S.

13.6 **Diversity Reporting.** Seller shall request that its primary EPC contractor for the Facility to complete the Supplier Diversity and Labor Practices questionnaire available at <https://forms.gle/4VahoVD3h7pvE4dF6>, as may be non-materially updated from time to time, or a similar questionnaire for the period between the Construction Start Date and the Commercial Operation Date, and Seller shall provide the completed Supplier Diversity and Labor Practices questionnaire to Buyer within forty-five (45) days after the Commercial Operation Date. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit T.

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, conditioned or delayed. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out in this Article 14 shall be null and void. Neither Party shall be obligated to provide any consent, or enter into any agreement, that materially and adversely affects that Party's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment; Financing Cooperation.** 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, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in Exhibit U ("**Collateral Assignment Agreement**") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit V ("**Estoppel Certificate**").

14.3 **Permitted Assignment By Seller; Change in Control.** Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, Buyer's consent shall not be

required if: (a) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee.. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Judicial Reference.** Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **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 forth (40) days after Notice of the dispute, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 Mutual Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and

hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an “**Indemnified Party**” and collectively, the “**Indemnified Group**”) from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Indemnifying Party or any of its subcontractors or anyone that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Indemnified Party’s sale or use of the Product, deliverables or other items provided by the of the Seller pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement (collectively, “**Indemnifiable Losses**”).

(b) The Indemnifying Party’s indemnity obligations apply to the maximum extent allowed by Law, subject to limitations on consequential and similar damages set forth in Article 12 herein, and includes defending the Indemnified Party. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations.

(c) Nothing in this Article 16 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

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

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such

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

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

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

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with 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), endorsed to provide contractual liability in said amount,

specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000). Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured. Insurance may be evidenced through primary and excess policies.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) 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. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18.2; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18.2; and (c) use such Confidential Information solely for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by the Receiving Party if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure (i.e., there are no applicable disclosure exceptions).

under the California Public Records Act.

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

18.4 **Disclosure to Lenders, Etc..** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board of directors; documentation submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

ARTICLE 19 MISCELLANEOUS

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

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

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

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

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

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

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public

entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties intend 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 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**CORBY ENERGY STORAGE, LLC, a
Delaware limited liability company**

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Corby Energy Storage (for clarification, the Facility will comprise only a portion of the larger Corby energy complex)

Site includes all or some of the following APNs: Facility will comprise a portion of APN 0141-030-090, which APN will also include one (1) or more other generation and/or storage facilities owned and/or operated by Seller and/or its Affiliates.

County: Solano County

Type of Facility: Lithium-Ion

Energy Management Software: Seller must provide 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve

To the extent not already provided above, Seller shall use commercially reasonable efforts to provide telemetry and other data to Buyer and Buyer's SC in an electronic format compatible with bid optimization software used by Buyer and Buyer's SC for input into bid optimization software.

Operating Characteristics of Facility:

Maximum Stored Energy Level at COD (MWh): 400 MWh

Maximum Charging Capacity at COD: 100 MW

Maximum Discharging Capacity at COD: 100 MW

Operating Restrictions of Facility: See Exhibit Q

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: 100 MW

Delivery Point: Facility Pnode

Facility Meter Locations: See Exhibit R

Facility Interconnection Point: The Project shall interconnect to Vaca-Dixon 230kV Substation

Facility Pnode: (TBD)

Participating Transmission Owner: Pacific Gas and Electric Company

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Facility Construction.**

(a) “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c) If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start [REDACTED]

[REDACTED] Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of Construction Delay Damages set forth in such invoice. If Seller fails to pay the Construction Delay Damages within 10 Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such Construction Delay Damages from the Development Security, subject to Section 11.7. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2(a). The “**Commercial Operation Date**” shall be the later of (x) [REDACTED] or (y) the date on which Commercial Operation is achieved.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) If Seller achieves Commercial Operation for the Facility [REDACTED] all Construction Delay Damages paid by Seller shall be refunded to Seller.

Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. [REDACTED]

[REDACTED] but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation [REDACTED] after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** "**Development Cure Period**" means, collectively, permitted extensions for delays due to:

(a) Force Majeure Events [REDACTED];

[REDACTED]

(d) Buyer-caused delays (including any failure by Buyer to make necessary arrangements to receive the Discharging Energy) (no limit).

For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously on a day-for-day basis. Seller may only claim one day of extension for each day of delay notwithstanding any overlapping permitted extensions. The total Development Cure Period, excluding any delays under (d) above, shall not exceed [REDACTED] days on a cumulative basis.

No extension shall be given under the Development Cure Period (1) if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, or (2) Seller does not provide notice and documentation as required below. Seller shall provide written notice to Buyer of a delay promptly (other than a Force Majeure Event, which notice provisions are set

forth in Section 10.3 of this Agreement), but in no case more than thirty (30) days after Seller became aware of such delay and its effects on the Guaranteed Construction Start Date and/or the Guaranteed COD, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within ten (10) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

- (a) Contract Price. All Product shall be paid on a monthly basis at the Contract Price

[REDACTED]

- (b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated

[REDACTED]

- (c) Availability Adjustment. If during any month during the Delivery Term the monthly Storage Availability is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an availability adjustment payment ("**Availability Adjustment**") equal to

[REDACTED]

- (d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

- (e) Test Product

[REDACTED]

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility. Seller shall provide Buyer or Buyer's SC access to real-time data associated with operating the Facility in a manner reasonably prescribed 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 and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 4.13 with respect to Test Product, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for Charging Energy, 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 Discharging Energy, CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Except due to the actions or omissions of Buyer or Buyer's Scheduling Coordinator, Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions (i) incurred by Buyer because of Seller's failure to perform, including pursuant to Section 4.3(d), (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)), if applicable or (iv) to the extent arising as a result of Seller's

failure to comply with a Curtailment Order, Charging Notice or Discharging Notice, if such failure results in incremental costs to Buyer; provided, however, that if any such costs, charges or sanctions are due to the actions or omissions of each of Buyer or its Scheduling Coordinator, on the one hand, and Seller on the other hand, the liability for such amounts shall be allocated proportionally between Buyer and Seller based on the proportion of fault. Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or energy storage facility 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 any CAISO directive, including Curtailment Orders, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

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

Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

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

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

[RESERVED]

EXHIBIT G

[RESERVED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

(a) The Facility is fully operational, and interconnected, fully integrated and synchronized with the Transmission System.

(b) Seller has installed equipment for the Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.

(c) Seller has commissioned all Facility equipment in accordance with its respective manufacturer's specifications.

(d) Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and the CAISO.

(e) The Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

(f) Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

(g) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

(h) The CAISO has provided notification supporting Commercial Operation of the Facility (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff.

(i) Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Battery Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of ___ MW_{AC} to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Battery Capacity").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____
(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

BBVA

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

_____, 2023

BENEFICIARY:

MARIN CLEAN ENERGY
1125 TAMALPAIS AVENUE
SAN RAFAEL, CA 94901
ATTENTION: CHIEF FINANCIAL OFFICER

EMAIL: finance@mcecleanenergy.org

APPLICANT:

NEXTERA ENERGY CAPITAL HOLDINGS, INC.
ON BEHALF OF **CORBY ENERGY STORAGE, LLC**
700 UNIVERSE BLVD
JUNO BEACH, FLORIDA 33408
ATTENTION: TREASURY

Re: **BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH**

Irrevocable Standby Letter of Credit No. [REDACTED]

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. [REDACTED] (the “**Letter of Credit**”) for the account of **NextEra Energy Capital Holdings, Inc.** on behalf of **Corby Energy Storage, 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 **Energy Storage Service Agreement** dated _____.

1. **Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be _____ (US\$ _____) (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 (signed 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: [REDACTED] (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 [the date which is one day prior to the first anniversary of this Letter of Credit's Date of Issuance] (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 notices to Beneficiary shall be via email to Finance@mcecleanenergy.org followed up in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Attn: Chief Financial Officer, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect. 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. [REDACTED] (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the [REDACTED] 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 [REDACTED] U.S. dollars (US\$ [REDACTED]), 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 **Energy Storage Service Agreement dated** _____.
- (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.

MARIN CLEAN ENERGY

By: _____
Title: _____
Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. [REDACTED]

TO: [ISSUING BANK]

[Address]

Date:

PAY TO: **MARIN CLEAN ENERGY**

U.S.\$ _____

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

MARIN CLEAN ENERGY

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 **Corby Energy Storage, LLC**, under the **Energy Storage Service Agreement** dated _____ 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.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [Entity name, state of formation, type of entity] (“Guarantor”), and Marin Clean Energy (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [Entity name, state of formation, type of entity] (“Seller”), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “ESSA”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESSA, as required by Section 8.8 of the ESSA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

Agreement

1. **Guaranty.** For value received and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA (the “**Obligations**”), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA; provided, that Guarantor’s aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed _____ Dollars (\$_____) (the “**Guaranteed Amount**”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA or (z) the sixteenth anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the ESSA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*]/[*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, materially adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:

If delivered to Guarantor, to it at
Attn:

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer except (i) with the prior written consent of Guarantor, which consent shall not be unreasonably withheld or (ii) to an assignee of the ESSA in conjunction with an assignment of the ESSA in its entirety accomplished in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in

accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. **Waiver of Jury Trial.** BUYER (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.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [Entity name, state of formation, type of entity] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). 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 3.3(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.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N**NOTICES**

Corby Energy Storage, LLC	Marin Clean Energy
All Notices: 700 Universe Blvd Juno Beach, FL 33408 Attn: Business Management Phone: (561) 691-3062 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@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: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: NextEra Energy Marketing, LLC Phone: (561) 304-5215 Facsimile: (561) 625-7604 Email: DL-NEPM-DAYAHEADDESKWECC@nexteraenergy.com	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

Corby Energy Storage, LLC	Marin Clean Energy
Credit and Collections: Attn: Brantley Pierce Phone: 561-694-3296 Facsimile: 561-304-5849 Email: CreditMailbox@nee.com	Credit and Collections: Attn: Chief Financial Officer Phone: (415) 464-6037 Email: finance@mcecleanenergy.org
With additional Notices of an Event of Default to: Attn: 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

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than five (5) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility and the initial Efficiency Rate determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. Buyer shall have the right (i) once per Contract Year, to require Seller to schedule and complete a Storage Capacity Test upon no less than five (5) Business Days prior written Notice and (ii) to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test (any such test, a “**Buyer Initiated Test**”). Buyer shall be responsible for all costs and entitled to all revenues associated with any such Buyer-requested Storage Capacity Tests. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a “**SCT**”. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity (including but not limited to additional inverters and batteries) in excess of the initially installed Storage Contract Capacity identified on the cover sheet; provided, for all purposes of this Agreement, the amount of Installed Battery Capacity shall never be deemed to exceed the Storage Contract Capacity, and all SOC measurements associated with a Storage Capacity Test shall be based on the Storage Contract Capacity without taking into account any capacity that exceeds the Storage Contract Capacity amount listed on the cover sheet.

(a) Purpose of Test. Each SCT shall:

- a. Determine an updated Storage Contract Capacity;
- b. Determine the amount of Energy required to fully charge the Facility;
- c. Determine the Facility charge ramp rate;
- d. Determine the Facility discharge ramp rate;
- e. Determine an updated Efficiency Rate.

(b) Test Elements. Each SCT shall include the following test elements:

- (a) The measurement of charging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("Energy In");
- (b) The measurement of discharging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("Energy Out");
- (c) Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- (d) Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter ((MW);
- (e) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- (f) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;

- (g) Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.
- (c) Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:
 - (1) discharge time (minutes);
 - (2) charging energy (MWh);
 - (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
- (d) Test Showing. Each SCT must demonstrate that the Facility:
 - (1) successfully started;
 - (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
 - (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity; and
 - (4) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity;
- (e) Test Conditions.
 - (a) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
 - (b) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (c) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- (f) Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if

Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties; provided, that if Seller is unable to complete an SCT within ten (10) Business Days of a Force Majeure Event, the Storage Capacity shall be deemed to be zero (0) until such time as Seller completes a SCT demonstrating a Storage Capacity greater than 0 MW.

- (g) Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

- (h) Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to conducting the initial Commercial Operation Date Storage Capacity Test, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- (i) Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh-_{AC}) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on

the Cover Sheet may have been adjusted (if at all) under this Agreement, , shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW_{AC}, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

- (j) Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), measured at the Facility Meter location, exclusive of Electrical Losses to the Delivery Point and separately metered Station Use associated with battery cooling and other thermal management equipment, and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.
- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.
- The Round-Trip Efficiency Test will be repeated annually.

B. Storage Contract Capacity and Efficiency Rate Test

- Procedure:
 - (1) System Starting State: The Facility shall be balanced using original equipment manufacturer procedures as appropriate and will be in the on-line state at 0% SOC.

- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Storage Contract Capacity. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Storage Contract Capacity (or at or above the Installed Battery Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.B.6(a), the SOC will be deemed 0 for the purposes of calculating the Storage Contract Capacity.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Storage Contract Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.B.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.B.6 until the Facility has reached a 0% SOC pursuant to either Part III.B.7 or Part III.B.9, as applicable.

- Test Results:

- (1) The resulting Storage Contract Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Part III.A.8 at the Facility Meter divided by four (4) hours.
- (2) The quotient of (x) the total amount of Discharging Energy (as reported under Section III.B(10) above), divided by (y) the total amount of Charging

Energy (as reported under Section III.B(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

C. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 30 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 30 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of PMAX at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

E. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 50 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

F. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 50 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

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

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{[\text{MNTHHRS}_m]}$$

where:

m = relevant month “ m ” in which availability is calculated;

MNTHHRS_m is the total number of On-Peak Hours for the month;

UNAVAILHRS_m , is the total number of On-Peak Hours in the month during which the Facility was unavailable to deliver Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Curtailments, Buyer Default, Storage Capacity Tests, System Emergencies, [REDACTED] or the Operating Restrictions in Exhibit Q; provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed an Excused Event, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, then such impact on UNAVAILHRS_m shall be reduced [REDACTED]. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the UNAVAILHRS_m for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Factor

The applicable “**Availability Factor**” or “**AF**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AF = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [REDACTED], then:

[REDACTED]

- (iii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability is less than [REDACTED] but greater than or equal to [REDACTED], then:

[REDACTED]

- (iv) If the Monthly Storage Availability is less than [REDACTED] then:

[REDACTED]

EXHIBIT Q**OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and Communications Protocols.

Interconnection Capacity Limit:	100 MW
Maximum Stored Energy Level:	400 MWh
Minimum Stored Energy Level:	0 MWh
Maximum Charging Capacity:	100 MW
Minimum Charging Capacity:	0 MW
Maximum Discharging Capacity:	100 MW
Minimum Discharging Capacity:	0 MW
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	100 MW/minute
Annual Cycles:	<p>365 cycles per Contract Year (maximum annual throughput of [REDACTED] with no more than two cycles per day; provided, however, Seller shall provide Notice to Buyer within at least 180 days prior to the Guaranteed Commercial Operation Date the amount payable by Buyer for each MWh of throughput (i.e., discharged MWh) that Buyer dispatches in excess of [REDACTED] during a Contract Year (the "<u>Additional Cycles Payment Amount</u>").</p> <p>Within thirty (30) days after Seller's providing such Notice to Buyer, Buyer shall provide Notice to Seller stating whether it accepts the Additional Cycles Payment Amount or not.</p>

	<p>If Buyer does not accept the Additional Cycles Payment Amount, or fails to timely provide such a response Notice to Seller, within that thirty (30) day period, Buyer shall not be allowed to discharge the Facility in excess of 365 cycles during a Contract Year.</p> <p>If Buyer provides Notice to Seller accepting the Additional Cycles Payment Amount, Buyer shall be allowed to discharge the Facility in excess of 365 cycles during a Contract Year subject to Buyer's payment to Seller of the Additional Cycles Payment Amount for any Throughput that exceeds [REDACTED] during a Contract Year.</p>
Maximum Average Annual Stored Energy Level:	<p>[REDACTED] If the year-to-date average Stored Energy Level exceeds [REDACTED] at any time during the second half of a Contract Year, then the Parties shall confer and determine a mutually agreeable cure plan to achieve an annual averaged Stored Energy Level of [REDACTED] for such Contract Year.</p> <p>If Parties cannot reach a mutually agreeable cure plan within a two (2) week period following initiation of discussions, then Seller may provide Buyer upon seventy-two (72) hours advance notice that the maximum allowed Stored Energy Level shall be limited until the CYTDA Stored Energy Level ("<u>Cumulative Year-to-Date Stored Energy Level</u>") is less than [REDACTED], at which point in time the limitation shall be released.</p>
Daily Dispatch Limits:	<p>Charging: 2 per day Discharging: 2 per day</p>
Grid Charging of Facility:	Yes
Other Operating Limits:	N/A
Ancillary Services Capability:	<p>Yes. Buyer is entitled to all Ancillary Services, products and other attributes, if any, associated with the Storage Facility, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with the terms and conditions of this Agreement, applicable Law, the Interconnection Agreement, the Operating Restrictions, and Prudent Operating Practice.</p>

EXHIBIT R
METERING DIAGRAM

Preliminary Metering Diagram; Final Metering Diagram shall be provided by Seller at least thirty (30) days prior to the Commercial Operation Date

EXHIBIT S

OTHER SELLER COMMITMENTS

Seller to check as applicable:

- ☐ Inclusion of contractors or subcontractors that are Veteran owned or from a DAC Zone
- ☐ At least fifty percent (50%) of labor sourced within a 50-mile radius
- ☐ At least [XX]% of materials sourced within a 50-mile radius
- ☐ US made equipment and components
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) [REDACTED]

EXHIBIT T

DIVERSITY REPORTING



MCE Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

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

amcgee@mcecleanenergy.org [Switch account](#)



* Required

Email *

Your email

Business Name *

Your answer

Where is your business located/headquartered?

Your answer



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

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

- ☐ Yes
- ☐ No
- ☐ Qualified as a WMDVLGBTBE but not GO 156 Certified

If certified, when does your certification expire?

Date

mm/dd/yyyy 

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

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

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



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

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

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

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE_SIC_Commodity_Codes.pdf

Your answer

If certified, please list a) your business's annual revenue as reported to the Supplier Clearinghouse and b) what was your revenue last year?

Your answer

If your business is qualified but not GO 156 certified, please explain why your business has not gone through the certification process, found here: <http://www.supplierdiversity.pro/apply.html>

Your answer



If your business used subcontractors for your MCE contract, please include a list of their business names, if their subcontract was for products or services, and their subcontract amount.

Example: Electrical Design Technology, Inc; products (batteries); \$100,000. If MCE is audited, we'll ask you for demonstration that subcontractor payments have occurred, such as a canceled check, bank statement, etc.

Your answer

What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

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

Your answer



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

Local hires can be defined as labor sourced from within MCE's service area which includes the towns, cities, and unincorporated counties of Marin, Napa, Contra Costa, and Solano.

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

If you answered yes, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with MCE.

Your answer _____



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

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

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

Is there anything else you'd like to add? If you'd like for us to promote your survey participation on our social media, please include your handles here.

Your answer

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

☐ Send me a copy of my responses.

Submit

Clear form



Never submit passwords through Google Forms.



EXHIBIT U

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT

([NAME OF CONTRACTING PARTY])

([NAME OF ASSIGNED AGREEMENT])

This **COLLATERAL ASSIGNMENT AGREEMENT** (this “Consent”), dated as of _____, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the “Contracting Party”), [_____] a [_____] (the “Project Owner”), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [_____] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. **Consent to Assignment.** The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. **Representations and Warranties.** The Contracting Party represents and warrants the following as of the date hereof:

(a) **No Amendments.** [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) **No Previous Assignments.** The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) **No Termination Event: No Disputes.** After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the actual knowledge of Contracting Party there exists no event or condition (a "**Termination Event**") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] to the actual knowledge of Contracting Party there are no unresolved disputes between the parties under the Assigned Agreement and all amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. **RIGHT TO CURE.**

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; **provided**, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section __ of the Assigned Agreement)]¹ or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section __ of the Assigned Agreement)]², and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. The Collateral Agent shall have the right to cure such Termination Event if Collateral Agent sends a written notice of its intention to cure to Contracting Party before the later of (i) the expiration of any cure period provided to the Project Owner and (ii) ten (10) Business Days after Collateral Agent's receipt of notice of such default from Contracting Party. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of [30]³ days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent must remedy or cure the default within ninety (90) days (or one hundred eighty (180) days in the event of bankruptcy of Project Owner or any foreclosure or similar proceeding if required by Collateral Agent to cure any default) after Contracting Party's receipt of Collateral Agent's notice of its intention to cure the applicable default; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT

¹ Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

² Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

³ Or longer cure period specified in Assigned Agreement.

THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST MADE WITHIN FORTY-FIVE (45) DAYS AFTER SUCH REJECTION OR TERMINATION, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT; PROVIDED THAT CONTRACTING PARTY'S OBLIGATION TO ENTER INTO THE NEW AGREEMENT IS SUBJECT TO THE COLLATERAL AGENT, OR THE COLLATERAL AGENT'S DESIGNEE, AS APPLICABLE, SATISFYING THE REQUIREMENTS OF A PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND IS AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW [IN ADDITION, IF COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER CONTRACTING PARTY'S WRITTEN REQUEST, COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH CONTRACTING PARTY].⁴

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT SUCH PURCHASER, ASSIGNEE OR TRANSFEREE MUST (I) MEET THE DEFINITION OF PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND (II) BE AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS

⁴ Drafting Note: Bracketed language for consideration by and negotiation with Lenders.

THE “CUSTOMER” UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT’S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING AND DELIVERED VIA CERTIFIED MAIL AND EMAIL AND SHALL INCLUDE CONTACT INFORMATION FOR AN AUTHORIZED PERSON WHO IS AVAILABLE BY TELEPHONE TO VERIFY THE AUTHENTICITY OF SUCH REQUESTED CHANGES. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY’S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.

8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]

9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A)

THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HERewith), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS RECEIVED; PROVIDED THAT ANY FACSIMILE COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]
Facsimile No.: [_____]

The Project Owner: _____

The Contracting Party: _____

10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.

11. LIABILITY. COLLATERAL AGENT AND PROJECT OWNER HEREBY ACKNOWLEDGE AND AGREE THAT CONTRACTING PARTY IS AUTHORIZED TO ACT IN ACCORDANCE WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT, AND THAT CONTRACTING PARTY SHALL BEAR NO LIABILITY TO COLLATERAL AGENT, PROJECT OWNER OR ANY OTHER PERSON UNDER THIS CONSENT OR THE ASSIGNED AGREEMENT FOR ACTING IN ACCORDANCE WITH THIS CONSENT OR WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT.

12. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.

13. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT V

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE **(Energy Storage Service Agreement)**

This ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of _____, 202_, is provided by _____, a _____ ("Buyer").

RECITALS

A. Buyer and _____, a Delaware limited liability company (the "Project Company") are parties to that certain Energy Storage Service Agreement, dated as of _____, 202_ (the "Energy Storage Service Agreement"), in connection with the _____ storage project ("Storage Project").

B. Pursuant to that certain [describe Lender financing agreement].

C. Pursuant to Section ____ of the [Lender financing agreement], the [Lenders] have required that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions described therein.

NOW, THEREFORE, in consideration of the foregoing recitals, Buyer hereby certifies, agrees and acknowledges as follows as of the date hereof:

1. To Buyer's actual knowledge, no default or event of default with respect to Buyer nor any other party has occurred under the Energy Storage Service Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Energy Storage Service Agreement.
2. To Buyer's actual knowledge, there exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Energy Storage Service Agreement.
3. As of the date hereof, to Buyer's actual knowledge: (i) the Energy Storage Service Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which

purports to affect the legality, validity or enforceability of the Energy Storage Service Agreement, (iv) there is no event, act, circumstance or condition constituting an event of force majeure under the Energy Storage Service Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Energy Storage Service Agreement.

4. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
5. [Additional provisions to be included if necessary to clarify the Energy Storage Service Agreement.]
6. This Estoppel Certificate shall be governed by the laws of the State of California, without regard to principles of conflict of law.

[Signature page follows]

IN WITNESS WHEREOF, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer as of the date first set forth above.

By: _____

Name:

Title



October 19, 2023

TO: MCE Board of Directors

FROM: David Potovsky, Manager of Power Resources

RE: Energy Storage Agreement with Key Energy Storage, LLC
(Agenda Item #09)

ATTACHMENT: Energy Storage Agreement with Key Energy Storage, LLC

Dear Board Members:

Background:

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

1. Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage.
2. Add Resource Adequacy (RA) supply to MCE's portfolio.
3. Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040.

As a result of the solicitation, staff received an offer from Key Energy Storage, LLC (Key) for a new stand-alone battery energy storage system (BESS) that will be coming online in 2027. The proposed facility would satisfy MCE's MTR procurement obligation for 2028.

Summary:

The Key project is being developed by NextEra Energy, and will be sited in Fresno County. The project is at a mature stage in the development process with an executed interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

Staff negotiated the attached draft Energy Storage Agreement (ESA) for the purchase of all resources associated with the Key project including energy, RA and Ancillary Services. The agreement outlines the terms for the guaranteed delivery of 35 megawatts (MW) from the installation. In addition to contributing to MCE's Long Duration Storage MTR compliance obligation, the contract would make a valuable addition to MCE's RA portfolio.

Rationale:

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

- RA capacity produced by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications, and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- The project is being developed and will be operated by an experienced team. NextEra has a long track record of successfully delivering projects to load serving entities including MCE, Clean Power Alliance, Clean Power SF, East Bay Community Energy, PG&E and SCE.

Additional Information:

NextEra Energy

- Headquartered in Juno Beach, Florida with 15,000 full-time employees.
- Incorporated in 1984, NextEra energy is the world's largest generator of renewable energy from wind and solar as well as a leader in battery storage.
- NextEra Energy owns and operates 230 renewable energy and energy storage facilities across the US and Canadian with an aggregate capacity of 33,000 MW (enough to power approximately 12 million homes).
- NextEra Energy is a Fortune 200 company (NYSE: NEE) with a market cap of \$150 billion. They have an A- credit rating from S&P and Fitch.

Contract Overview

- Project: 35 MW, 8-hour duration lithium-ion battery energy storage system
- Contracted resources: Energy, RA and Ancillary Services
- Price: Fixed with no escalation for the Delivery Term
- Project location: Fresno County, California
- Guaranteed commercial operation date: April 1, 2027
- Contract term: 15 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor requirement: Union contractors would be required for all on-site construction trades
- Community Benefit Package: Seller would make a cash contribution of \$100,000. MCE and Seller would identify community benefits initiatives that are of mutual interest such as apprenticeships, scholarships, food programs, open space preservation, parks, etc.

Fiscal Impacts:

There would be no impact on the Fiscal Year 2023/24 budget. Incremental costs would be accounted for starting in FY 2027/28.

Recommendation:

Authorize execution of the Energy Storage Agreement with Key Energy Storage, LLC. for the purchase of all resources associated with the project including energy, RA and Ancillary Services.

CONFIDENTIAL
 NEXTERA (KEY) PROJECT
 6 OCTOBER 2023
 FINAL DRAFT

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Key Energy Storage, LLC (“**Seller**”)

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

Description of Facility: A 35 MW/ 280 MWh battery energy storage facility as further described below (the “**Facility**”), located in Fresno County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Completed
Executed Interconnection Agreement	Completed
Obtain Federal and State Discretionary Permits	12/1/2025
Procure Major Equipment	6/1/2026
Expected Construction Start Date	6/1/2026
Expected Commercial Operation Date	4/1/2027
Full Capacity Deliverability Status Obtained	Completed

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

Storage Contract Capacity: 35 MW

Storage Contract Output: 280 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	
6	

7			
8			
9			
10			
11			
12			
13			
14			
15			

Contract Price

The Contract Price shall be:

Contract Year	Contract Price
1 – 15, plus two months	

Delivery Point: Facility Pnode

Product:

- ☒ Discharging Energy
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status
- ☒ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security:

Performance Security:

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ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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 intends to develop, design, permit, construct, own, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.5.

“**AD/CVD**” means antidumping and/or countervailing duty.

“**Actual Monthly NOC**” means the amount of Net Qualifying Capacity from the Facility that is eligible to count toward meeting Resource Adequacy Requirements by both the CPUC and CAISO.

“**Additional Cycles Payment Amount**” has the meaning set forth in Exhibit Q.

“**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 Transfer” and “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. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such as a “yield

co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NEP, NEOP, NEER, NEECH, and NEE and their respective direct or indirect Affiliate subsidiaries.

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

“**Ancillary Services**” means all ancillary services, ancillary services-related products and other ancillary services-related attributes, if any, associated with the Facility. For the avoidance of doubt, Black Start is excluded from Ancillary Services.

“**Annual Availability**” means, for each Contract Year, a simple average of the Monthly Storage Availability values in the Contract Year as calculated in accordance with Exhibit P.

“**Availability Adjustment**” has the meaning set forth in Exhibit C.

“**Available Charge Capacity**” means the level at which the Facility may be charged, expressed in MW_{AC}.

“**Available Discharge Capacity**” means the level at which the Facility may be discharged, expressed in MW_{AC}.

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

“**BESS Equipment**” means batteries, battery modules, onboard sensors, control components, inverters, sub-inverters, or any of their components.

“**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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

“**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, metering scheme, CAISO approved data processing gateway or remote intelligence gateway,

telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time Charging Energy and Discharging Energy.

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

“CAISO Metered Entity” has the meaning set forth in the CAISO Tariff.

“CAISO Operating Order” means the Operating Instruction or Dispatch 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 (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC; or (g) any reduction or impairment of Capacity Attributes under the CPUC’s “slice of day” framework including without limitation Decision 23-04-010.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, 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; 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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller; and,

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

“Charging Energy” means the energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to charge with Charging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Seller Initiated Test shall not be considered a Charging Notice. Any Buyer Initiated Test shall be considered a Charging Notice.

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

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

“COD Certificate” has the meaning set forth in Section 2.2(a)(i).

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

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

“Compliance Actions” has the meaning set forth in Section 3.5.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.5.

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

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

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

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

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

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

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

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

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

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

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

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, by S&P, Fitch or Moody’s. If ratings by Fitch, S&P and Moody’s are not equivalent, the two (2) lowest ratings shall apply.

“Curtailment Order” means any of the following:

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

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

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

(d) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Product from the Facility or there is a reduction of the delivery of Charging Energy pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Damage Payment” means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

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

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

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

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

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

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” has the meaning set forth on the Cover Sheet.

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

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

“Discharging Energy” means all energy delivered to the Delivery Point from the Facility, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer or CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate, for a specific period of time or to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

“DOC” means the U.S. Department of Commerce.

“Early Termination Date” has the meaning set forth in Section 11.2(a) and Section 11.9, as applicable.

“Efficiency Rate” means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility Meter and the Delivery Point for the receipt of Charging Energy and delivery of Discharging Energy, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

“Energy” means electrical energy measured in MWh.

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

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller (or Seller’s Affiliate) and the PTO as set forth on the Cover Sheet.

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

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

“Facility” means the energy storage 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 Product (but excluding any Shared Facilities).

“Facility Meter” means the CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy and Discharging Energy.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Fitch” means Fitch Ratings Ltd., or its successor.

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

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

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

“Gains” means, with respect to any 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. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

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

“Guaranteed Efficiency Rate” means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet.

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

“Guaranteed RA Amount” means at any point in time on or after the RA Guarantee Date, the lesser of

[REDACTED] pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings, the CPUC’s “slice of day” framework including Decision 23-04-010, and the CAISO Tariff applicable to Resource Adequacy Resources.

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

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

“Guarantor” means, with respect to Seller, (a) an Affiliate of Seller with an Investment Grade Credit Rating, or (b) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [REDACTED] (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amounts of Charging Energy or Discharging Energy

deviates from the amount of Scheduled Energy.

“Incentives” means, as applicable to the Facility: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, operation, investment in, ownership, or storage of electricity by the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits; and (c) any other form of incentive that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) future environmental attributes.

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

“Initial Synchronization” means the commencement of “Trial Operation” as defined in the CAISO Tariff.

“Installed Battery Capacity” means the maximum dependable operating capability of the Facility to discharge electric energy, not to exceed the Storage Contract Capacity, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement dated as of June 9, 2021 associated with CAISO Queue position Q1270 among Seller or Seller’s Affiliate, the CAISO, and the Participating Transmission Owner (as such agreement has been or may be further amended), pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48, 48E, or other applicable provisions of the United States Internal Revenue Code of 1986, as amended.

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

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

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

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having assets of at least \$10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s in a form substantially similar to the letter of credit set forth in Exhibit K.

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

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

“Losses” means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on

economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Capacity Attributes and Incentives.

“Master File” has the meaning set forth in the CAISO Tariff.

“Maximum Charging Capacity” has the meaning set forth in in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in in Exhibit A.

“Non-Merchant Agreement” means any agreement to sell any Product from the Facility, each as applicable, for a delivery term that is longer than one (1) year.

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

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

“Moody’s” means Moody’s Investors Service, Inc., or its successors.

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

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

“NEE” means NextEra Energy, Inc.

“NEER” means NextEra Energy Resources, LLC.

“NEECH” means NextEra Energy Capital Holdings, Inc.

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

“NEOP” means NextEra Energy Operating Partners, LP.

“NEP” means NextEra Energy Partners, LP.

“NEPA” means the National Environmental Policy Act.

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

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

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

“New Trade Measure Event” means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

(a) Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment;

(b) Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment; or

(c) Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including but not limited to AD/CVD, or other trade measures on BESS Equipment.

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

“Notice” shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (email).

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

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

“Off-Peak Hour” means any hour that is not an On-Peak Hour.

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

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

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

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

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

“Permitted Transfer” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that: (i) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) A Change of Control of Ultimate Parent, NEECH, NEP, NEOP, or NEER;

(c) Any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and that 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;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; or (iv) 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, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

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

(a) A tangible net worth of [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) Has at least [REDACTED] of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such operations experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent [REDACTED]

"Person" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

“Planned Outage” has the meaning set forth in Section 4.6(a).

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

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 or 45Y of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualified Operator” means Seller or an operator of battery storage facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery storage facilities, each having a nameplate capacity rating of ten (10) MW or more, for not less than two (2) years.

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

“RA Change in Law” has the meaning set forth in Section 3.3(c).

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(b).

“RA Guarantee Date” means the first day of the month that is two calendar months following the Commercial Operation Date. For illustrative purposes, if the Commercial Operation Date is June 30, the RA Guarantee Date shall be September 1.

“RA Shortfall” has the meaning set forth in Section 3.3(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.3(b), any month during the Delivery Term during which there is an RA Shortfall.

“Real-Time Forecast” means any Notice of any change to the Storage Capacity 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.

“Reduced MNQC” has the meaning set forth in Section 3.3(c).

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the date set forth in Section 3.3(b).

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

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

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

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

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

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

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

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

“Seller Initiated Test” has the meaning provided in Section 4.9.

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Capacity Attributes and Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with Affiliates and /or with third parties or by Seller for facilities owned by Seller other than the Facility.

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

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

“Site Control” means that, for the Delivery Term, Seller or a Seller Affiliate: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns 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.

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“Station Use” means energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Seller Initiated Test, Buyer Initiated Test, Charging Notice or Discharging Notice.

“Storage Capacity” means the maximum operating capability of the Facility to discharge electric energy that can be sustained for eight (8) consecutive hours.

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

“Storage Contract Capacity” means the total capacity (in MW_{AC}) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“Storage Contract Output” means the total output (in MWh-_{AC}) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

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

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means, as applicable to the Facility, the PTC, ITC, and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the storage of energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

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

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

“Test Product” means Product delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver any Product to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (ii) ending upon the occurrence of the Commercial Operation Date.

“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*, Seller shall be limited to one such failure during the Contract Term for Force Majeure Event purposes.

“Transmission Provider” means any entity or entities transmitting or transporting the Charging Energy and Discharging 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 within the CAISO grid from the Delivery Point.

“Ultimate Parent” means [REDACTED] and includes any combination thereof.

“WRO Restraint” means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any BESS Equipment into the United States and such order, despite the use by Seller of commercially reasonable efforts to avoid procurement or sourcing of BESS Equipment that was reasonably foreseeable to become subject to such restraint, prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Facility.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement, means such document, agreement, or this Agreement, including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement, or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided, however*, subject to Buyer's obligations in Section 4.13, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent.**

(a) The Delivery Term shall not commence until Seller completes each of the following conditions and delivers to Buyer a notice that such conditions have been satisfied, which notice Buyer shall review and either confirm or provide notice to Seller of any deficiencies with four (4) Business Days of Seller's notice; provided, Buyer shall be deemed to confirm that such conditions have been satisfied if Buyer does not provide notice to Seller of any deficiencies within such four (4) Business Day period; and further provided for clarification purposes to the extent no such deficiencies are found to have existed, the confirmation shall be deemed to have occurred on the date that Seller delivered to Buyer Seller's notice that such conditions have been satisfied:

(i) Seller has delivered to Buyer (i) a completed certificate from a Licensed Professional Engineer substantially in the form of Exhibit H (the "**COD Certificate**") and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Battery Capacity on the Commercial Operation Date;

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

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

(iv) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

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

(vi) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(vii) Seller has certified in writing to Buyer that Seller has complied with the prevailing wage and project labor agreement requirements as set forth in Section 13.4;

(viii) Seller has certified in writing to Buyer that Seller has satisfied the other Seller commitments set forth in Exhibit S, and provided reasonably requested documentation demonstrating such compliance;

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

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

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's 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 into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Capacity Attributes.** Seller shall have obtained either Interim Deliverability Status or Full Capacity Deliverability Status by the Commercial Operation Date. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

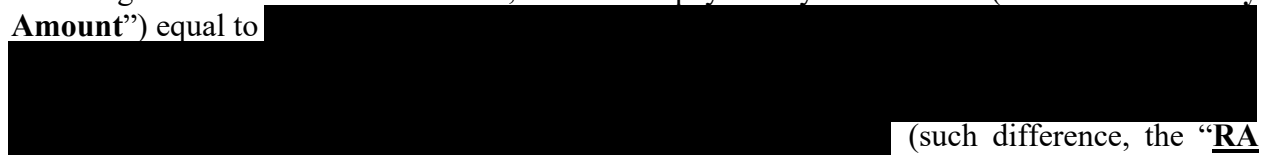
(a) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.3 **Resource Adequacy Failure.**

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to

 (such difference, the "**RA Shortfall**"), multiplied by the Replacement Price, provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall,

provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer's purchase of the Product to comply with the requirements of CPUC Decision 21-06-035, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under this Agreement. "**Replacement Price**" means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Resource Adequacy Benefits not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Resource Adequacy Benefits, or at Buyer's option, (b) the market price for such replacement Resource Adequacy Benefits not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. Upon request from Seller, Buyer shall provide reasonable documentation demonstrating the Replacement Price amounts sought by Buyer from Seller were incurred or determined, as applicable, by Buyer in a commercially reasonable manner consistent with the components set forth in the immediately preceding sentence. Notwithstanding anything to the contrary herein,

(c) **RA Change in Law**. Notwithstanding anything in this Agreement to the contrary, if, in any given month, following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that resources of the same type and operational characteristics as the Facility are eligible to provide, (including, without limitation, due to effective load carrying capability (ELCC) adjustments) (an "**RA Change in Law**"), thereby reducing the maximum achievable Net Qualifying Capacity of the Facility, then the RA Shortfall for such month shall be equal to

For the purposes of this subsection (c), (i) the "**CIL Adjustment Factor**" means the Guaranteed RA Amount divided by the Reduced MNQC, and (ii) the "**Reduced MNQC**" means the new maximum achievable Net Qualifying Capacity of the Facility, where such Reduced MNQC shall be calculated by disregarding any Planned Outages that are otherwise permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility. For the avoidance of doubt, the Reduced MNQC shall take into account any CAISO or CPUC adjustments to the Net Qualifying Capacity that are generally applicable to all resources of the same type as the Facility.

3.4 **CPUC Mid-Term Reliability Requirements**.

(a) The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decisions D.21-06-035 and D.23-02-040. Seller represents and warrants to Buyer that:

(i) The Facility shall be incremental to the CPUC baseline list identified in CPUC Decision 21-06-035, provided that Seller shall be deemed to have satisfied this requirement by the absence of the Facility (i.e., the Facility not having been listed) on the CPUC

baseline list identified in CPUC Decision 21-06-035;

(ii) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040;

(iii) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040 during the Delivery Term to any other person or entity; and

(iv) Upon reasonable request of Buyer, Seller will provide additional information and documentation to assist Buyer with compliance with CPUC requests for additional information for the Facility to meet the procurement mandates set forth in CPUC Decision 21-06-035 and D.23-02-040, and Seller will cooperate with Buyer to identify, gather and provide the requested information to the CPUC.

(b) Buyer as of the Effective Date is required to demonstrate procurement progress to the CPUC through the Commercial Operation Date, and in connection with such obligation, Buyer is obligated to provide certain documentation to the CPUC for this Facility, including copies of the execution version of this Agreement, the execution version of the Interconnection Agreement, land leases, title deed or other documentation demonstrating Site Control, information regarding Facility development timelines, copies of notices to proceed with construction and similar evidence of Construction Start and Commercial Operation. Notwithstanding Article 18 (Confidentiality), except to the extent that the CPUC no longer requires submission of such documentation, Seller hereby authorizes Buyer to submit this and similar documentation to the CPUC as may be required by the CPUC in connection with satisfying Buyer's compliance obligations for the Facility under this Agreement; provided that Buyer shall use reasonable efforts to obtain from the CPUC confidential treatment for all information that qualifies as Confidential Information under this Agreement and is eligible for confidential or protective treatment under the CPUC's rules, orders, and decisions on confidential or protected information. Buyer's reasonable efforts shall include the following: designating such Confidential Information as "confidential" and "protected materials" (or similar designations) under the CPUC's orders and decisions governing the protection of confidential information submitted by load serving entities including as set forth in CPUC D.20-12-044 page 13; and either filing motion(s) to file under seal or submitting supporting declarations attesting to such designations when required by such orders and decisions.

3.5 **Compliance Expenditure Cap.**

(a) If a Change in Law, including, but not limited, to an RA Change in Law, occurs after the Effective Date that affects the Product's eligibility to qualify for or maintain Resource Adequacy, then Seller shall use commercially reasonable efforts to comply with such Change in Law as necessary to maintain the Product eligibility described above, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [REDACTED]

[REDACTED] (the “**Compliance Expenditure Cap**”); provided, for avoidance of doubt, Seller shall not be liable for any Compliance Costs to the extent such changes are already contemplated in this Agreement including the defined term “Guaranteed RA Amount” and in Section 3.3(c). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs and the anticipated date to complete such actions. Seller shall have no obligation to take any actions that cannot be implemented in accordance with Accepted Electrical Practices.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller shall not be obligated to take any Compliance Actions described in such Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law, and (iii) with respect to Resource Adequacy, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the Change in Law.

ARTICLE 4

OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver Discharging Energy to Buyer at the Delivery Point, and Buyer shall take delivery of Discharging Energy at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including without limitation, Station Use,

Electrical Losses, any costs associated with delivering the Charging Energy from the Delivery Point to the Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss.** Title to and risk of loss related to the Discharging 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.

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) **[Reserved].**

(b) **Monthly Forecast of Storage Capacity.** No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Storage Capacity in MW and Storage Contract Output in MWh for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Day-Ahead Forecast.** During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Monthly Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity or changes in Storage Contract Output by one (1) MWh or more no later than 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in either Available Discharge Capacity or Available Charge Capacity, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If either the Available Discharge Capacity or Available Charge Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify

Buyer as soon as reasonably possible. Such Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and the SC (if applicable); *provided* that Buyer or its SC specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by email to Buyer and the Buyer's SC (if applicable).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC 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) Failure to provide Real-Time Forecast. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure to provide such forecast, Seller shall be responsible for such losses and penalties in accordance with Exhibit D.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Discharging Energy delivered from the Facility, by the amount and for the period set forth in any Curtailment Order; *provided* that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Reserved.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal



(d) Seller Equipment Required for Instruction Communications. Subject to the last sentence of this Section, 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 as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a 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 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 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 reasonably 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 or other applicable Law, then the installation and implementation of such facilities, communications links, or other equipment, protocols, or practices facilities will be at Buyer's sole expense, and Buyer shall prepay or reimburse Seller at Seller's discretion for any such amounts.

4.5 Charging Energy Management.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility.

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

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Product) associated with such discharge.

(d) Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement,

including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders, and Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order, or Curtailment Order consistent with the Operational Procedures.

(f) The Facility shall be capable of receiving Charging Energy from the CAISO Grid; *provided*, Buyer shall be responsible for all Charging Energy costs related to charging of the Facility.

(g) The Facility will be able to provide the full suite of ancillary services in CAISO markets to the extent any such services are available in the CAISO markets as of the Effective Date, or after the Effective Date, provided that with respect to any such Ancillary Service the Facility is, at the relevant time, is actually physically capable of providing such service in accordance with the limitations set forth in the Operating Restrictions and without modification of the Facility or its operations, and Buyer has agreed to reimburse Seller for any costs Seller incurs in connection therewith including in connection with conducting any such additional CAISO approval. The Ancillary Services include Regulation Up, Regulation Down, Spinning Reserve and Non-Spinning Reserve. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, Black Start is excluded from Ancillary Services.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(a) **Facility Maintenance.** Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the storage capability 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 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “**Planned Outage**”). 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. Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Storage Facility without the prior consent of Buyer which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Seller may add or replace batteries in order to maintain the Storage Contract Capacity available to Buyer at the Interconnection Point.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage, to the extent reasonably required by (i.e., to the extent Seller is not reasonably able to deliver Product due to) such Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product to the extent reasonably required (i.e., to the extent Seller is not reasonably able to deliver Product) during any period of System Emergency, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent Seller is not reasonably able to deliver Product during such Force Majeure Event.

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

4.7 [Reserved].

4.8 Storage Availability.

(a) During the Delivery Term, the Facility shall maintain a Monthly Availability of no less than [REDACTED] (the “Guaranteed Storage Availability”). Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an Availability Adjustment payment calculated in accordance with Exhibit C and Exhibit P.

4.9 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. After the Commercial Operation Date, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access. For any Storage Capacity Tests, or other operational tests during Off-

Peak Flexible Ramp Hours as defined by CAISO, initiated by Seller (“**Seller Initiated Test**”) including all tests conducted prior to Storage Facility Commercial Operation, any Storage Facility Commercial Operation Storage Capacity Test, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is [REDACTED] of the Installed Battery Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy and Ancillary Services.

(c) No dispatch notices shall be issued during any Seller Initiated Test. The Facility shall be deemed unavailable during any Seller Initiated Test. For any Seller Initiated Test other than a Storage Capacity Test required by Exhibit O, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); *provided, however*, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer’s cooperation for Seller to perform such tests shall not be unreasonably withheld.

(d) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer’s dispatch rights of the Facility to be fully reflected in the CAISO’s market optimization and not result in CAISO market awards that are not physically feasible (collectively, the “**Dedicated Interconnection Capacity**”). For avoidance of doubt, the Dedicated Interconnection Capacity shall not exceed the Installed Battery Capacity. Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller’s inability to provide, or any third-party use of, the Dedicated Interconnection Capacity.

4.11 **Station Use**. Seller shall be responsible for providing all energy to serve Station Use (including paying the cost of any Energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility’s retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance.** Buyer shall at all times during the Delivery Term retain dispatch control of the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **Pre-Commercial Operation Date Period.** Prior to Commercial Operation, (i) Buyer and Buyer's SC shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices except pursuant to Seller direction, (ii) Seller shall have exclusive rights to charge and discharge the Facility by providing such direction to Buyer or Buyer's SC (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Product), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing including without limitation for the Test Product shall be for Seller's account. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 4.13.

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 Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's cost, throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. 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. Metering will be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a

form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

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 be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) days after, but not prior to, the end of each month of the Delivery Term. Each invoice for the Delivery Term shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any

other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within ten (10) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, subject to Section 11.7, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security if such replenishment would exceed the liability limits set forth in Section 11.7.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Except as otherwise set forth in this Section 8.8, Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Within ten (10) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet; provided, that Seller's obligation to replenish the Performance Security after the initial posting is limited to an amount equal to [REDACTED]; provided, further, that notwithstanding any provision herein to the contrary, such limitation on replenishment is not intended to and shall not be deemed to limit Seller's liability for a Termination Payment. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (C) fails to honor Buyer's properly documented request to draw on such Letter

of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as change the issuer of Letter of Credit for any such Development Security or Performance Security, subject to the issuer and the replacement Letter of Credit meeting the requirements of this Agreement.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security and the Performance Security, to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 Financial Statements. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor's ultimate parent (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, and as posted on the website of the Guarantor's ultimate parent or the Securities Exchange

Commission. Upon request of Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred twenty (120) days after the end of each fiscal year; provided, however, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with GAAP.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery without any bounce back or rejection, and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **"Force Majeure Event"** means any act or event occurring on or after the Effective Date (provided, that, for clarification purposes, but without limiting a claiming Party's obligations under this Article 10, the Parties agree that the term "occurring" does not exclude events that may have occurred or existed prior to the Effective Date for which there is no known impact as of the Effective Date actually affecting claiming Party's obligations or ability to perform under this Agreement, such as COVID-19 or any Import Restriction Actions, if such events later are discovered to have such impacts on or after the Effective Date) that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement, if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic (including the impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 and any mutations thereof); quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority, including WRO Restraint and New Trade Measure; landslide; strikes or other labor difficulties caused or suffered by a Party or any third party, except as set forth below; or a Transformer Failure.

(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 (provided, for clarification purposes, any such exception shall not preclude any schedule relief Seller may be entitled to pursuant to any New BESS Trade Measures Event), Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility, or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event or a Transformer Failure. For the avoidance of doubt, the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer’s right to declare an

Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 Notice. Within five (5) Business Days of becoming aware of the commencement and effect of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of becoming aware of the commencement and effect of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure of the claiming Party to provide written notice as required in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods prior to other Party's receipt of such written notice to the extent the non-claiming Party is materially adversely affected by the claiming Party's failure to provide timely notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) 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 this Section 10.4, 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 sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for Resource Adequacy Failure, the exclusive remedies for which are set forth in Section 3.3, failures to comply with Curtailment Orders or charging the Facility, the exclusive remedies for which are set forth in Sections 4.4(c) and 4.5(c), respectively, failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, Section (b), and failures related to Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P), 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) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) The failure of Seller to achieve Construction Start [REDACTED] after the Guaranteed Construction Start Date;

(ii) The failure of Seller to achieve Commercial Operation [REDACTED] after the Guaranteed Commercial Operation Date;

(iii) if, except to the extent excused by any Force Majeure Event, in any two consecutive Contract Years, the average Annual Availability over the two-year period [REDACTED] and Seller fails to deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such [REDACTED], and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition, [REDACTED] (unless the cure plan requires: (i) replacement of at least fifty percent (50%) of the battery capacity; (ii) replacement of at least fifty percent (50%) of the inverter capacity or sub-inverter capacity; and/or (iii) replacement of the generator step-up transformer (the GSU), in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a “Availability Cure Plan”);

(iv) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain an Efficiency Rate of [REDACTED] over a rolling 12-month period;

(v) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain a Storage Contract Capacity (as determined pursuant to Exhibit O) equal [REDACTED] (a “Capacity Cure Plan”);

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, with respect to the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment, or a Termination Payment, as applicable;

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

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

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

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

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

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

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

(ix) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The termination payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not

otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to 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 the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

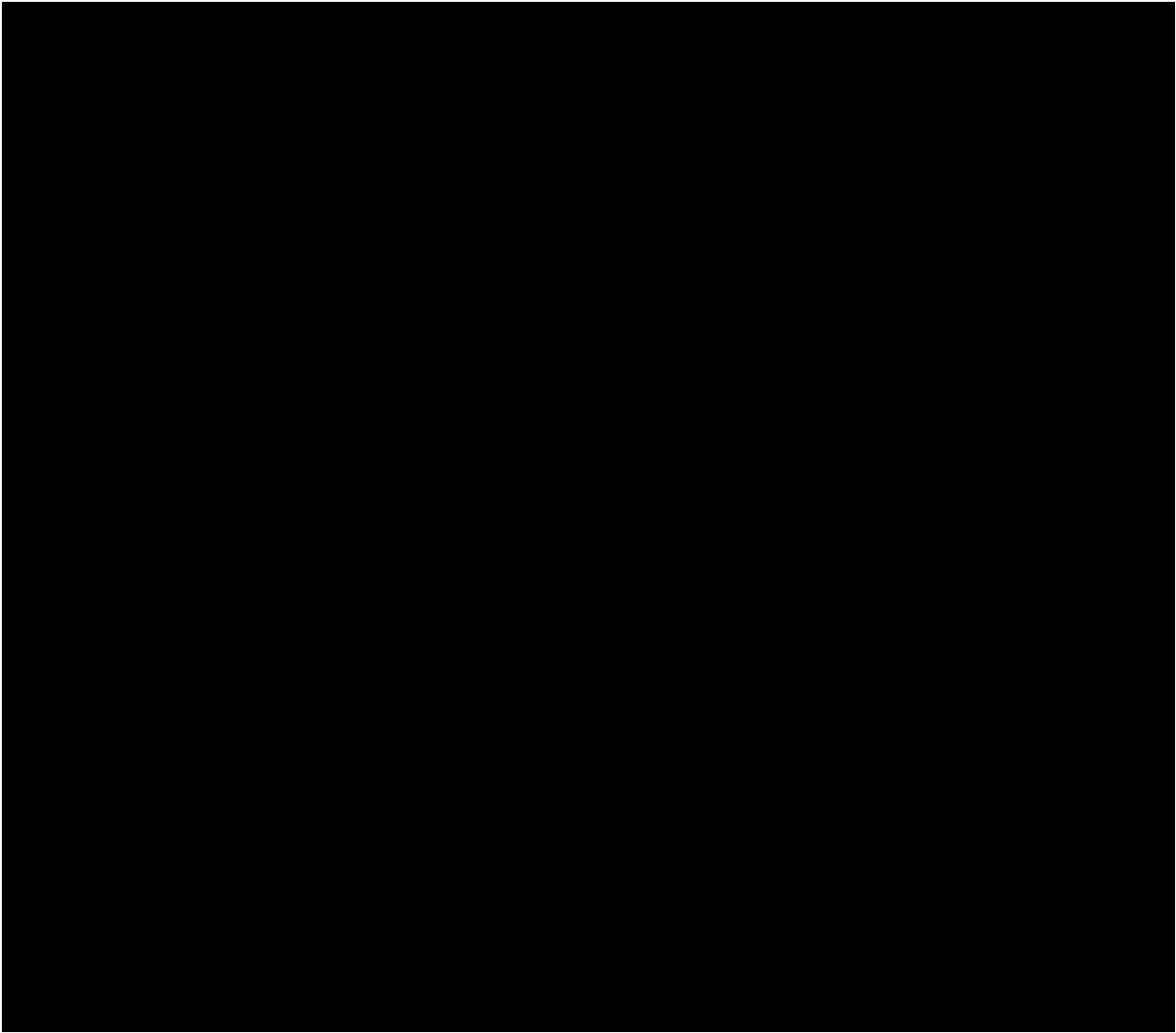
11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Subject to Seller's compliance with Section 11.8, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for any Event of Default other than arising due to fraud, misrepresentation, or willful misconduct shall be equal to



11.8 **Seller Post-Termination Obligations.** If this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party or pursuant to Section 11.9, Seller shall not enter into any Non-Merchant Agreement to sell any Product from the Facility within two (2) years after the effective date of such termination without first having provided Notice to Buyer of an offer to purchase such Product (a "**ROFO Offer**"). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer (the "**ROFO Exercise Period**"). If Buyer provides notice to Seller accepting the ROFO Offer within the ROFO Exercise Period, then the Parties shall negotiate in good faith to enter into a binding agreement (the "**ROFO Agreement**"), within ninety (90) days after Seller's receipt of Buyer's notice of acceptance (the "**ROFO Negotiation Period**"), for purchase and sale of the Product in accordance

with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of this Agreement. If Buyer does not provide notice accepting the ROFO Offer within the ROFO Exercise Period, or if the Parties fail to enter into the ROFO Agreement within the ROFO Negotiation Period, then Seller shall have the right to enter into any Non-Merchant Agreement, within one hundred eighty (180) days after the end of the ROFO Exercise Period or ROFO Negotiation Period, as applicable, to sell such Storage Product to any third parties, so long as the prices under such Non-Merchant Agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such a Non-Merchant Agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any Non-Merchant Agreement to sell any Product from the Facility that Seller enters into within two (2) years after the termination of this Agreement pursuant to Section 11.2 or Section 11.9.



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, BY STATUTE, IN TORT, BY CONTRACT, OR OTHERWISE.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY INCENTIVES, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3, 11.2, 11.3, 11.7, 11.9 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES

AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) Seller shall comply with all applicable 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 those related to non-discrimination, non-preference, and conflict of interest.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

(h) Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”). The Parties acknowledge that pursuant to the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

(i) Despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer’s sole remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of any such delays.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim 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 limited within a venue permitted in law and under this 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.).

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller 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 applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller agrees to have its primary EPC contractor enter into one or more project labor agreements for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements. Seller shall provide a Seller's officer's certificate in a form reasonably acceptable to Buyer certifying Seller's compliance with the requirements of the foregoing prevailing wage

and project labor agreement requirements and such certificate shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws.

13.5 **Other Seller Commitments.** Seller shall perform the additional Seller commitments as set forth in Exhibit S.

13.6 **Diversity Reporting.** Seller shall request that its primary EPC contractor for the Facility to complete the Supplier Diversity and Labor Practices questionnaire available at <https://forms.gle/4VahoVD3h7pvE4dF6>, as may be non-materially updated from time to time, or a similar questionnaire for the period between the Construction Start Date and the Commercial Operation Date, and Seller shall provide the completed Supplier Diversity and Labor Practices questionnaire to Buyer within forty-five (45) days after the Commercial Operation Date. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit T.

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, conditioned or delayed. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out in this Article 14 shall be null and void. Neither Party shall be obligated to provide any consent, or enter into any agreement, that materially and adversely affects that Party's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment; Financing Cooperation.** 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, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in Exhibit U ("**Collateral Assignment Agreement**") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit V ("**Estoppel Certificate**").

14.3 **Permitted Assignment By Seller; Change in Control.** Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, Buyer's consent shall not be

required if: (a) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee.. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Judicial Reference.** Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **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 forth (40) days after Notice of the dispute, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 Mutual Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and

hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an “**Indemnified Party**” and collectively, the “**Indemnified Group**”) from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Indemnifying Party or any of its subcontractors or anyone that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Indemnified Party’s sale or use of the Product, deliverables or other items provided by the of the Seller pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement (collectively, “**Indemnifiable Losses**”).

(b) The Indemnifying Party’s indemnity obligations apply to the maximum extent allowed by Law, subject to limitations on consequential and similar damages set forth in Article 12 herein, and includes defending the Indemnified Party. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations.

(c) Nothing in this Article 16 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

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

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such

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

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

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

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with 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), endorsed to provide contractual liability in said amount,

specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000). Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured. Insurance may be evidenced through primary and excess policies.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) 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. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18.2; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18.2; and (c) use such Confidential Information solely for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by the Receiving Party if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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, Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure (i.e., there are no applicable disclosure exceptions)

under the California Public Records Act.

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

18.4 **Disclosure to Lenders, Etc..** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board of directors; documentation submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

ARTICLE 19 MISCELLANEOUS

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

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

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

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

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

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

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public

entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties intend 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 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**KEY ENERGY STORAGE, LLC, a
Delaware limited liability company**

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Key Energy Storage (for clarification, the Facility will comprise only a portion of the larger Key energy complex)

Site includes all or some of the following APNs: Facility will comprise a portion of APN 085-040-58S which APN will also include one (1) or more other generation and/or storage facilities owned and/or operated by Seller and/or its Affiliates.

County: Fresno County

Type of Facility: Lithium-Ion

Energy Management Software: Seller must provide 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve

To the extent not already provided above, Seller shall use commercially reasonable efforts to provide telemetry and other data to Buyer and Buyer's SC in an electronic format compatible with bid optimization software used by Buyer and Buyer's SC for input into bid optimization software.

Operating Characteristics of Facility:

Maximum Stored Energy Level at COD (MWh): 280 MWh

Maximum Charging Capacity at COD: 35 MW

Maximum Discharging Capacity at COD: 35 MW

Operating Restrictions of Facility: See Exhibit Q

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: 35 MW

Delivery Point: Facility Pnode

Facility Meter Locations: See Exhibit R

Facility Interconnection Point: The Project shall interconnect to Gates 500kV Substation

Facility Pnode: (TBD)

Participating Transmission Owner: Pacific Gas and Electric Company

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Facility Construction.

(a) “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c) If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start [REDACTED]

[REDACTED] Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of Construction Delay Damages set forth in such invoice. If Seller fails to pay the Construction Delay Damages within 10 Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such Construction Delay Damages from the Development Security, subject to Section 11.7. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2(a). The “**Commercial Operation Date**” shall be the later of (x) [REDACTED] or (y) the date on which Commercial Operation is achieved.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) If Seller achieves Commercial Operation for the Facility [REDACTED] all Construction Delay Damages paid by Seller shall be refunded to Seller.

Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. [REDACTED]

[REDACTED] but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation [REDACTED] after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** "**Development Cure Period**" means, collectively, permitted extensions for delays due to:

(a) Force Majeure Events [REDACTED]

[REDACTED]

(d) Buyer-caused delays (including any failure by Buyer to make necessary arrangements to receive the Discharging Energy) (no limit).

For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously on a day-for-day basis. Seller may only claim one day of extension for each day of delay notwithstanding any overlapping permitted extensions. The total Development Cure Period, excluding any delays under (d) above, shall not exceed [REDACTED] days on a cumulative basis.

No extension shall be given under the Development Cure Period (1) if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, or (2) Seller does not provide notice and documentation as required below. Seller shall provide written notice to Buyer of a delay promptly (other than a Force Majeure Event, which notice provisions are set

forth in Section 10.3 of this Agreement), but in no case more than thirty (30) days after Seller became aware of such delay and its effects on the Guaranteed Construction Start Date and/or the Guaranteed COD, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within ten (10) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] [REDACTED] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

- (a) Contract Price. All Product shall be paid on a monthly basis at the Contract Price

[REDACTED]

- (b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated

[REDACTED]

- (c) Availability Adjustment. If during any month during the Delivery Term the monthly Storage Availability is less than the Guaranteed Storage Availability, then Seller shall pay to Buyer an availability adjustment payment ("**Availability Adjustment**") equal to

[REDACTED]

- (d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

- (e) Test Product.

[REDACTED]

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility. Seller shall provide Buyer or Buyer's SC access to real-time data associated with operating the Facility in a manner reasonably prescribed 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 and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 4.13 with respect to Test Product, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for Charging Energy, 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 Discharging Energy, CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Except due to the actions or omissions of Buyer or Buyer's Scheduling Coordinator, Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions (i) incurred by Buyer because of Seller's failure to perform, including pursuant to Section 4.3(d), (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)), if applicable or (iv) to the extent arising as a result of Seller's

failure to comply with a Curtailment Order, Charging Notice or Discharging Notice, if such failure results in incremental costs to Buyer; provided, however, that if any such costs, charges or sanctions are due to the actions or omissions of each of Buyer or its Scheduling Coordinator, on the one hand, and Seller on the other hand, the liability for such amounts shall be allocated proportionally between Buyer and Seller based on the proportion of fault. Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or energy storage facility 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 any CAISO directive, including Curtailment Orders, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

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

Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

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

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

[RESERVED]

EXHIBIT G

[RESERVED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] (“**Seller**”) and Buyer (“**Agreement**”). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

(a) The Facility is fully operational, and interconnected, fully integrated and synchronized with the Transmission System.

(b) Seller has installed equipment for the Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.

(c) Seller has commissioned all Facility equipment in accordance with its respective manufacturer’s specifications.

(d) Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and the CAISO.

(e) The Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

(f) Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

(g) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

(h) The CAISO has provided notification supporting Commercial Operation of the Facility (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff.

(i) Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Battery Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for eight (8) consecutive hours to discharge electric energy of ___ MW_{AC} to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Battery Capacity").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____
(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

BBVA

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

_____, 2023

BENEFICIARY:

MARIN CLEAN ENERGY
1125 TAMALPAIS AVENUE
SAN RAFAEL, CA 94901
ATTENTION: CHIEF FINANCIAL OFFICER

EMAIL: finance@mcecleanenergy.org

APPLICANT:

NEXTERA ENERGY CAPITAL HOLDINGS, INC.
ON BEHALF OF **KEY ENERGY STORAGE, LLC**
700 UNIVERSE BLVD
JUNO BEACH, FLORIDA 33408
ATTENTION: TREASURY

Re: **BANCO BILBAO VIZCAYA ARGENTARIA, S.A. NEW YORK BRANCH**
Irrevocable Standby Letter of Credit No. [REDACTED]

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. [REDACTED] (the “**Letter of Credit**”) for the account of **NextEra Energy Capital Holdings, Inc.** on behalf of **Key Energy Storage, 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 **Energy Storage Service Agreement** dated _____.

1. **Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be _____ (US\$ _____) (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 (signed 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: [REDACTED] (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 [the date which is one day prior to the first anniversary of this Letter of Credit's Date of Issuance] (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 notices to Beneficiary shall be via email to Finance@mcecleanenergy.org followed up in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Attn: Chief Financial Officer, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect. 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. [REDACTED] (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the [REDACTED] 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 [REDACTED] U.S. dollars (US\$ [REDACTED]), 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 **Energy Storage Service Agreement dated** _____.
- (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.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. [REDACTED]

TO: [ISSUING BANK]

[Address]

Date:

PAY TO: **MARIN CLEAN ENERGY**

U.S.\$ _____

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

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

TO: [ISSUING BANK]
[Address]

Irrevocable Letter of Credit No. [REDACTED]

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 **Key Energy Storage, LLC**, under the **Energy Storage Service Agreement** dated _____ 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.

MARIN CLEAN ENERGY

By: _____

Title: _____

Date: _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [Entity name, state of formation, type of entity] (“Guarantor”), and Marin Clean Energy (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [Entity name, state of formation, type of entity] (“Seller”), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “ESSA”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESSA, as required by Section 8.8 of the ESSA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESSA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

Agreement

1. **Guaranty.** For value received and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA (the “Obligations”), including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA; provided, that Guarantor’s aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed _____ Dollars (\$_____) (the “**Guaranteed Amount**”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESSA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA or (z) the sixteenth anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the ESSA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESSA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESSA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*]/[*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, materially adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:

If delivered to Guarantor, to it at
Attn:

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer except (i) with the prior written consent of Guarantor, which consent shall not be unreasonably withheld or (ii) to an assignee of the ESSA in conjunction with an assignment of the ESSA in its entirety accomplished in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in

accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. **Waiver of Jury Trial.** BUYER (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.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [Entity name, state of formation, type of entity] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). 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 3.3(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.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N**NOTICES**

Key Energy Storage, LLC	Marin Clean Energy
All Notices: 700 Universe Blvd Juno Beach, FL 33408 Attn: Business Management Phone: (561) 691-3062 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@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: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: NextEra Energy Marketing, LLC Phone: (561) 304-5215 Facsimile: (561) 625-7604 Email: DL-NEPM-DAYAHEADDESKWECC@nexteraenergy.com	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Business Management Phone: (561) 691-3062 Facsimile: (561) 304-5161 Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]

Key Energy Storage, LLC	Marin Clean Energy
Credit and Collections: Attn: Brantley Pierce Phone: 561-694-3296 Facsimile: 561-304-5849 Email: CreditMailbox@nee.com	Credit and Collections: Attn: Chief Financial Officer Phone: (415) 464-6037 Email: finance@mcecleanenergy.org
With additional Notices of an Event of Default to: Attn: 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

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than five (5) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility and the initial Efficiency Rate determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. Buyer shall have the right (i) once per Contract Year, to require Seller to schedule and complete a Storage Capacity Test upon no less than five (5) Business Days prior written Notice and (ii) to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test (any such test, a “**Buyer Initiated Test**”). Buyer shall be responsible for all costs and entitled to all revenues associated with any such Buyer-requested Storage Capacity Tests. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a “**SCT**”. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity (including but not limited to additional inverters and batteries) in excess of the initially installed Storage Contract Capacity identified on the cover sheet; provided, for all purposes of this Agreement, the amount of Installed Battery Capacity shall never be deemed to exceed the Storage Contract Capacity, and all SOC measurements associated with a Storage Capacity Test shall be based on the Storage Contract Capacity without taking into account any capacity that exceeds the Storage Contract Capacity amount listed on the cover sheet.

(a) Purpose of Test. Each SCT shall:

- a. Determine an updated Storage Contract Capacity;
- b. Determine the amount of Energy required to fully charge the Facility;
- c. Determine the Facility charge ramp rate;
- d. Determine the Facility discharge ramp rate;
- e. Determine an updated Efficiency Rate.

(b) Test Elements. Each SCT shall include the following test elements:

- (a) The measurement of charging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("Energy In");
- (b) The measurement of discharging energy exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("Energy Out");
- (c) Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- (d) Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter ((MW);
- (e) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- (f) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity;

- (g) Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.
- (c) Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:
 - (1) discharge time (minutes);
 - (2) charging energy (MWh);
 - (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
- (d) Test Showing. Each SCT must demonstrate that the Facility:
 - (1) successfully started;
 - (2) operated for at least eight (8) consecutive hours at Maximum Discharging Capacity;
 - (3) operated for at least eight (8) consecutive hours at Maximum Charging Capacity; and
 - (4) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for eight (8) consecutive hours at a rate equal to the Maximum Discharging Capacity;
- (e) Test Conditions.
 - (a) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
 - (b) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (c) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- (f) Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if

Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties; provided, that if Seller is unable to complete an SCT within ten (10) Business Days of a Force Majeure Event, the Storage Capacity shall be deemed to be zero (0) until such time as Seller completes a SCT demonstrating a Storage Capacity greater than 0 MW.

- (g) Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

- (h) Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to conducting the initial Commercial Operation Date Storage Capacity Test, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- (i) Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh-_{AC}) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on

the Cover Sheet may have been adjusted (if at all) under this Agreement, shall be divided by eight (8) hours to determine the Storage Contract Capacity, which shall be expressed in MW_{AC}, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

- (j) Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), measured at the Facility Meter location, exclusive of Electrical Losses to the Delivery Point and separately metered Station Use associated with battery cooling and other thermal management equipment, and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.
- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.
- The Round-Trip Efficiency Test will be repeated annually.

B. Storage Contract Capacity and Efficiency Rate Test

- Procedure:
 - (1) System Starting State: The Facility shall be balanced using original equipment manufacturer procedures as appropriate and will be in the on-line state at 0% SOC.

- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following one (1) hour rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Storage Contract Capacity. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Storage Contract Capacity (or at or above the Installed Battery Capacity after a Commercial Operation Storage Capacity Test) for eight (8) consecutive hours pursuant to Part III.B.6(a), the SOC will be deemed 0 for the purposes of calculating the Storage Contract Capacity.
- (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Storage Contract Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.B.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.B.6 until the Facility has reached a 0% SOC pursuant to either Part III.B.7 or Part III.B.9, as applicable.

- Test Results:

- (1) The resulting Storage Contract Capacity measurement is the sum of the total Discharging Energy as recorded pursuant to Part III.A.8 at the Facility Meter divided by eight (8) hours.
- (2) The quotient of (x) the total amount of Discharging Energy (as reported under Section III.B(10) above), divided by (y) the total amount of Charging

Energy (as reported under Section III.B(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate liquidated damages in Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

C. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 30 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 30 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

E. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 17.5 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

F. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 17.5 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

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

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{[\text{MNTHHRS}_m]}$$

where:

m = relevant month “m” in which availability is calculated;

MNTHHRS_m is the total number of On-Peak Hours for the month;

UNAVAILHRS_m , is the total number of On-Peak Hours in the month during which the Facility was unavailable to deliver Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Curtailments, Buyer Default, Storage Capacity Tests, System Emergencies, [REDACTED], or the Operating Restrictions in Exhibit Q; provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed an Excused Event, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, then such impact on UNAVAILHRS_m shall be reduced [REDACTED]. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the UNAVAILHRS_m for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Factor

The applicable “**Availability Factor**” or “**AF**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AF = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [REDACTED], then:

[REDACTED]

- (iii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability is less than [REDACTED] but greater than or equal to [REDACTED] then:

[REDACTED]

- (iv) If the Monthly Storage Availability is less than [REDACTED], then:

[REDACTED]

EXHIBIT Q**OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and Communications Protocols.

Interconnection Capacity Limit:	35 MW
Maximum Stored Energy Level:	280 MWh
Minimum Stored Energy Level:	0 MWh
Maximum Charging Capacity:	35 MW
Minimum Charging Capacity:	0 MW
Maximum Discharging Capacity:	35 MW
Minimum Discharging Capacity:	0 MW
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	70 MW/minute
Annual Cycles:	<p>365 cycles per Contract Year (maximum annual throughput of [REDACTED] with no more than two cycles per day; provided, however, Seller shall provide Notice to Buyer within at least 180 days prior to the Guaranteed Commercial Operation Date the amount payable by Buyer for each MWh of throughput (i.e., discharged MWh) that Buyer dispatches in excess of [REDACTED] during a Contract Year (the "<u>Additional Cycles Payment Amount</u>").</p> <p>Within thirty (30) days after Seller's providing such Notice to Buyer, Buyer shall provide Notice to Seller stating whether it accepts the Additional Cycles Payment Amount or not.</p>

	<p>If Buyer does not accept the Additional Cycles Payment Amount, or fails to timely provide such a response Notice to Seller, within that thirty (30) day period, Buyer shall not be allowed to discharge the Facility in excess of 365 cycles during a Contract Year.</p> <p>If Buyer provides Notice to Seller accepting the Additional Cycles Payment Amount, Buyer shall be allowed to discharge the Facility in excess of 365 cycles during a Contract Year subject to Buyer's payment to Seller of the Additional Cycles Payment Amount for any Throughput that exceeds [REDACTED] during a Contract Year.</p>
Maximum Average Annual Stored Energy Level	<p>[REDACTED]. If the year-to-date average Stored Energy Level exceeds [REDACTED] at any time during the second half of a Contract Year, then the Parties shall confer and determine a mutually agreeable cure plan to achieve an annual averaged Stored Energy Level of [REDACTED] for such Contract Year.</p> <p>If Parties cannot reach a mutually agreeable cure plan within a two (2) week period following initiation of discussions, then Seller may provide Buyer upon seventy-two (72) hours advance notice that the maximum allowed Stored Energy Level shall be limited until the CYTDA Stored Energy Level ("<u>Cumulative Year-to-Date Stored Energy Level</u>") is less than [REDACTED], at which point in time the limitation shall be released.</p>
Daily Dispatch Limits:	<p>Charging: 2 per day Discharging: 2 per day</p>
Grid Charging of Facility:	Yes
Other Operating Limits:	N/A
Ancillary Services Capability:	<p>Yes. Buyer is entitled to all Ancillary Services, products and other attributes, if any, associated with the Storage Facility, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with the terms and conditions of this Agreement, applicable Law, the Interconnection Agreement, the Operating Restrictions, and Prudent Operating Practice.</p>

EXHIBIT R
METERING DIAGRAM

Preliminary Metering Diagram; Final Metering Diagram shall be provided by Seller at least thirty (30) days prior to the Commercial Operation Date.

EXHIBIT S

OTHER SELLER COMMITMENTS

Seller to check as applicable:

- ☐ Inclusion of contractors or subcontractors that are Veteran owned or from a DAC Zone
- ☐ At least fifty percent (50%) of labor sourced within a 50-mile radius
- ☐ At least [XX]% of materials sourced within a 50-mile radius
- ☐ US made equipment and components
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) [REDACTED]

EXHIBIT T

DIVERSITY REPORTING



MCE Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

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

amcgee@mcecleanenergy.org [Switch account](#)



* Required

Email *

Your email

Business Name *

Your answer

Where is your business located/headquartered?

Your answer



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

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

- ☐ Yes
- ☐ No
- ☐ Qualified as a WMDVLGBTBE but not GO 156 Certified

If certified, when does your certification expire?

Date

mm/dd/yyyy 

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

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

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



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

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

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

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE_SIC_Commodity_Codes.pdf

Your answer

If certified, please list a) your business's annual revenue as reported to the Supplier Clearinghouse and b) what was your revenue last year?

Your answer

If your business is qualified but not GO 156 certified, please explain why your business has not gone through the certification process, found here: <http://www.supplierdiversity.pro/apply.html>

Your answer



If your business used subcontractors for your MCE contract, please include a list of their business names, if their subcontract was for products or services, and their subcontract amount.

Example: Electrical Design Technology, Inc; products (batteries); \$100,000. If MCE is audited, we'll ask you for demonstration that subcontractor payments have occurred, such as a canceled check, bank statement, etc.

Your answer

What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

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

Your answer



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

Local hires can be defined as labor sourced from within MCE's service area which includes the towns, cities, and unincorporated counties of Marin, Napa, Contra Costa, and Solano.

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

If you answered yes, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with MCE.

Your answer _____



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

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

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

Is there anything else you'd like to add? If you'd like for us to promote your survey participation on our social media, please include your handles here.

Your answer

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

☐ Send me a copy of my responses.

Submit

Clear form



Never submit passwords through Google Forms.



EXHIBIT U

FORM OF COLLATERAL ASSIGNMENT AGREEMENT FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This **COLLATERAL ASSIGNMENT AGREEMENT** (this “Consent”), dated as of _____, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [] (the “Contracting Party”), [], a [] (the “Project Owner”), and [], as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [], as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. **Consent to Assignment.** The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. **Representations and Warranties.** The Contracting Party represents and warrants the following as of the date hereof:

(a) **No Amendments.** [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) **No Previous Assignments.** The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) **No Termination Event: No Disputes.** After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the actual knowledge of Contracting Party there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] to the actual knowledge of Contracting Party there are no unresolved disputes between the parties under the Assigned Agreement and all amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. **RIGHT TO CURE.**

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an "event of default" or "default" (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement [(other than pursuant to Section ___ of the Assigned Agreement)]¹ or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first

¹ Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section ___ of the Assigned Agreement)]², and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. The Collateral Agent shall have the right to cure such Termination Event if Collateral Agent sends a written notice of its intention to cure to Contracting Party before the later of (i) the expiration of any cure period provided to the Project Owner and (ii) ten (10) Business Days after Collateral Agent's receipt of notice of such default from Contracting Party. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of [30]³ days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent must remedy or cure the default within ninety (90) days (or one hundred eighty (180) days in the event of bankruptcy of Project Owner or any foreclosure or similar proceeding if required by Collateral Agent to cure any default) after Contracting Party's receipt of Collateral Agent's notice of its intention to cure the applicable default; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST MADE WITHIN FORTY-FIVE (45) DAYS AFTER SUCH REJECTION OR TERMINATION, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL

² Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

³ Or longer cure period specified in Assigned Agreement.

AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT; PROVIDED THAT CONTRACTING PARTY'S OBLIGATION TO ENTER INTO THE NEW AGREEMENT IS SUBJECT TO THE COLLATERAL AGENT, OR THE COLLATERAL AGENT'S DESIGNEE, AS APPLICABLE, SATISFYING THE REQUIREMENTS OF A PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND IS AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW [IN ADDITION, IF COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER CONTRACTING PARTY'S WRITTEN REQUEST, COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH CONTRACTING PARTY].⁴

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT SUCH PURCHASER, ASSIGNEE OR TRANSFEREE MUST (I) MEET THE DEFINITION OF PERMITTED TRANSFEREE SET FORTH IN THE ASSIGNED AGREEMENT AND (II) BE AN ENTITY THAT CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO

⁴ Drafting Note: Bracketed language for consideration by and negotiation with Lenders.

THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING AND DELIVERED VIA CERTIFIED MAIL AND EMAIL AND SHALL INCLUDE CONTACT INFORMATION FOR AN AUTHORIZED PERSON WHO IS AVAILABLE BY TELEPHONE TO VERIFY THE AUTHENTICITY OF SUCH REQUESTED CHANGES. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.

8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]

9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF

TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS RECEIVED; PROVIDED THAT ANY FACSIMILE COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:

The Collateral Agent: [_____]
[_____]
Attn: [_____]
Telephone No.: [_____]
Facsimile No.: [_____]

The Project Owner: _____

The Contracting Party: _____

10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.

11. LIABILITY. COLLATERAL AGENT AND PROJECT OWNER HEREBY ACKNOWLEDGE AND AGREE THAT CONTRACTING PARTY IS AUTHORIZED TO ACT IN ACCORDANCE WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT, AND THAT CONTRACTING PARTY SHALL BEAR NO LIABILITY TO COLLATERAL AGENT, PROJECT OWNER OR ANY OTHER PERSON UNDER THIS CONSENT OR THE ASSIGNED AGREEMENT FOR ACTING IN ACCORDANCE WITH THIS CONSENT OR WITH COLLATERAL AGENT'S INSTRUCTIONS WITH RESPECT TO THIS CONSENT AND THE ASSIGNED AGREEMENT.

12. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.

13. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Schedule I

Assigned Agreement

Schedule II

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT V

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE **(Energy Storage Service Agreement)**

This ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of _____, 202_, is provided by _____, a _____ ("Buyer").

RECITALS

A. Buyer and _____, a Delaware limited liability company (the "Project Company") are parties to that certain Energy Storage Service Agreement, dated as of _____, 202_ (the "Energy Storage Service Agreement"), in connection with the _____ storage project ("Storage Project").

B. Pursuant to that certain [describe Lender financing agreement].

C. Pursuant to Section ____ of the [Lender financing agreement], the [Lenders] have required that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions described therein.

NOW, THEREFORE, in consideration of the foregoing recitals, Buyer hereby certifies, agrees and acknowledges as follows as of the date hereof:

1. To Buyer's actual knowledge, no default or event of default with respect to Buyer nor any other party has occurred under the Energy Storage Service Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Energy Storage Service Agreement.
2. To Buyer's actual knowledge, there exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Energy Storage Service Agreement.
3. As of the date hereof, to Buyer's actual knowledge: (i) the Energy Storage Service Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which

purports to affect the legality, validity or enforceability of the Energy Storage Service Agreement, (iv) there is no event, act, circumstance or condition constituting an event of force majeure under the Energy Storage Service Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Energy Storage Service Agreement.

4. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
5. [Additional provisions to be included if necessary to clarify the Energy Storage Service Agreement.]
6. This Estoppel Certificate shall be governed by the laws of the State of California, without regard to principles of conflict of law.

[Signature page follows]

IN WITNESS WHEREOF, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer as of the date first set forth above.

By: _____

Name:

Title



Energy Storage Agreements with Corby Energy Storage LLC and Key Energy Storage LLC

MCE BOARD OF DIRECTORS | OCTOBER 19, 2023

Overview of Today's Presentation

- Open Season Overview
- Corby Energy Storage, LLC – Project Overview
- Key Energy Storage, LLC – Project Overview
- Recommendation
- Q/A

What is Open Season?

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



Open Season 2023 Overview

- **Goals**

- Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
- Add Resource Adequacy (RA) supply to the portfolio
- Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040

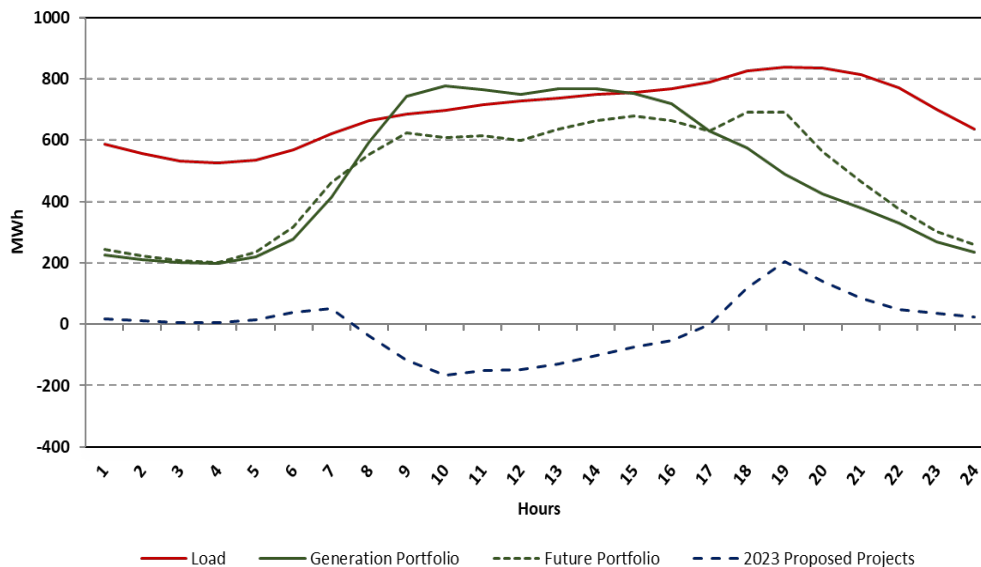
- **Product Types**

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

Why target energy storage resources?

- Ability to shift energy to fill open positions during critical hours
- Helps MCE meet its resource adequacy targets
- Valuable contribution towards meeting MTR compliance obligations

Simulated effect of adding energy storage projects to MCE's existing portfolio - 2030 Snapshot



Outstanding MTR Requirements

<u>Deadline</u>	<u>Net Qualifying Capacity</u>	<u>Technology</u>
6/2026	61	4Hr Energy Storage
6/2027	61	4Hr Energy Storage
6/2028	29	8Hr Energy Storage

The Path to MTR Compliance

Bucket	Requirements	MCE's Obligation	Online Date	Eligible Resource Types	Resources for MCE's Compliance
Generic	<ul style="list-style-type: none"> Resource Adequacy (RA) 	353 MW	Part 1 - 8/2023 Part 2 - 6/2024 Part 3 - 6/2026 Part 4 - 6/2027	<ul style="list-style-type: none"> PV+ 4 Hour Storage Stand-Alone Storage Wind Geo or Biomass Long-Term Imports 	<ul style="list-style-type: none"> Daggett - 8/2023 Humidor - 4/2024 Cormorant (Arevon) - 4/2026 Corby (NextEra) - 4/2027
Diablo Canyon Power Plant (DCPP) Replacement (5 Hour)	<ul style="list-style-type: none"> Zero emissions or RPS 5MWh / 1 MW (HE18 - HE22) 	72 MW	6/1/2025	<ul style="list-style-type: none"> PV + Storage Geo/Bio/Landfill Gas Demand Response 	<ul style="list-style-type: none"> Golden Fields - 3/2025
Long Duration Storage (8 Hour)	<ul style="list-style-type: none"> 8 Hours - full capacity discharge 	29 MW	6/1/2028 (extended from 6/1/26)	<ul style="list-style-type: none"> Stand-Alone Storage 	<ul style="list-style-type: none"> Key (NextEra) - 4/2027
Clean-Firm (Geo/Bio)	<ul style="list-style-type: none"> Firm 80 % capacity factor not weather dep or use limited Zero emissions or RPS 	29 MW	6/1/2028 (extended from 6/1/2026)	<ul style="list-style-type: none"> Geothermal Biomass/Landfill Gas 	<ul style="list-style-type: none"> Mayacma - 10/2022 Humboldt House - 11/2022 Geysers (7MW) - 6/2025

Two Contracts

1. Corby Energy Storage, LLC

- Energy Storage Agreement (ESA)
- 100 MW
- 4 Hour Duration

2. Key Energy Storage, LLC

- Energy Storage Agreement (ESA)
- 35 MW
- 8 Hour Duration

Overview:

Corby Energy Storage, LLC

- Stand-alone battery energy storage project located in Solano County
- 100 MW / 4-hour discharge capacity
- Owned and operated by NextEra Energy Resources

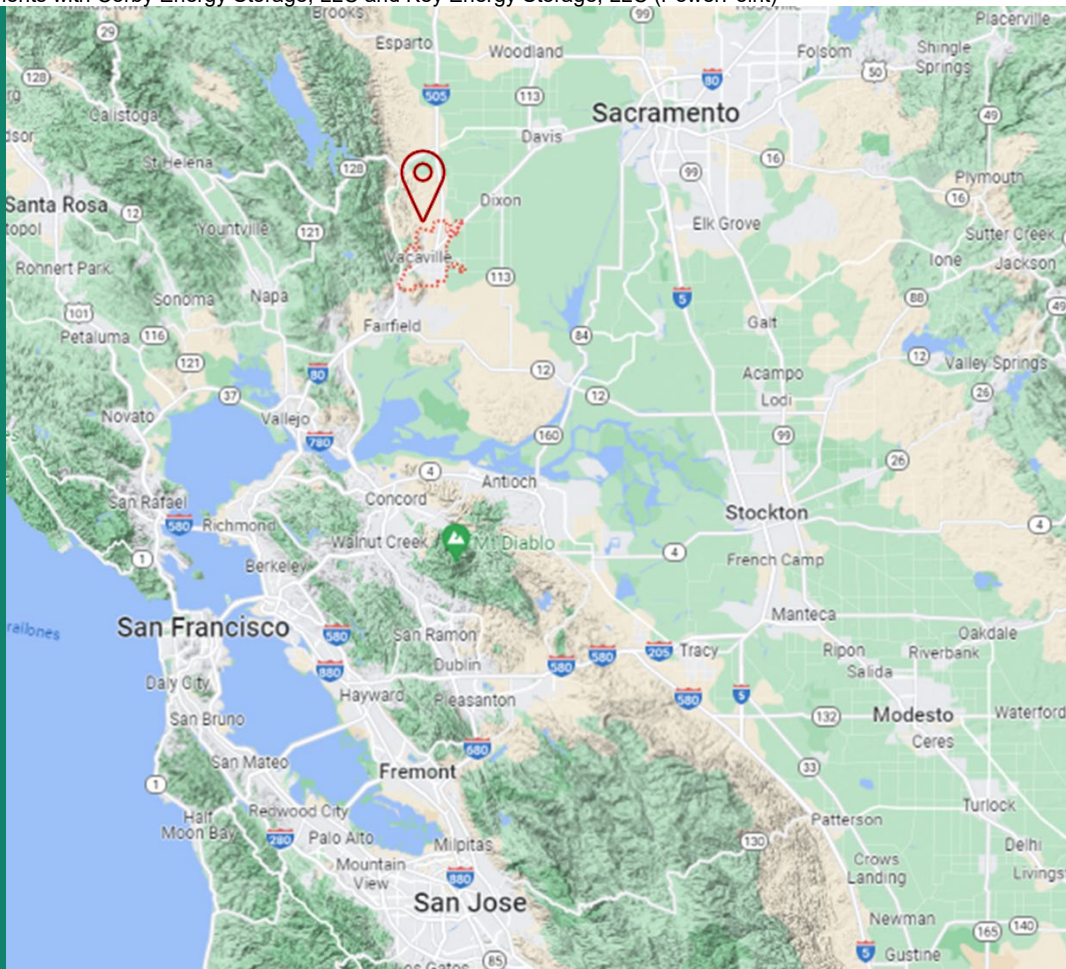


Fifth Standard Energy Storage
Fresno County, CA



Corby Energy Storage, LLC

- Full-toll contract includes energy, RA capacity and ancillary services
- On-line date: 4/1/2027
- 15-year term
- No credit/collateral obligations for MCE



Overview:

Key Energy Storage, LLC

- Stand-alone battery energy storage project located in Fresno County
- 35 MW / 8-hour discharge capacity
- Owned and operated by NextEra Energy Resources



Fifth Standard Energy Storage
Fresno County, CA

Key Energy Storage, LLC

- Full-toll contract includes energy, RA capacity and ancillary services
- On-line date: 4/1/2027
- 15-year term
- No credit/collateral obligations for MCE

Notable Terms & Conditions

- Financial incentives for performance
- Union labor requirement
- Security deposit to ensure milestones are met
- Seller would make a one-time contribution of \$100,000 per project to community benefit initiatives
- RA delivery guarantee
- Fixed price over the contract term with no annual escalation

Recommendation

Approve:

1. Energy Storage Agreement between MCE and Corby Energy Storage, LLC
2. Energy Storage Agreement between MCE and Key Energy Storage, LLC

Rationale:

- The project type, size, specifications and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order
- Projects are at a mature stage of development, and will be constructed by a sophisticated counterparty with a successful track record
- Full toll battery projects provide additional benefits including portfolio balancing and flexibility for hourly accounting
- Procuring now provides certainty in an uncertain market for resource adequacy

Thank You!

David Potovsky
Manager of Power Resources
dpotovsky@mceCleanEnergy.org





October 19, 2023

TO: MCE Board of Directors

FROM: Dawn Weisz, CEO

RE: MCE Climate Action Leadership Award (Agenda Item #10)

Dear Board Members:

Summary:

MCE created the Climate Action Leadership Award in 2020 to celebrate policymakers and advocates who have made significant contributions toward California's fight against climate change through clean energy policies that benefit Community Choice Aggregation (CCA) customers.

At the August 2023 Board meeting, your Board approved staff's recommendation to present the 2023 Climate Action Leadership Award to Assemblymember Damon Connolly, who is a founding Board Member of MCE and was instrumental in building the CCA movement in California. Assemblymember Connolly continues to champion community choice and clean energy as a newly elected Assemblymember representing Marin and Sonoma counties.

Background:

Each year, MCE's staff have recommended, and MCE's Board has selected, an individual who has made an important impact during the past year or over an extended career in service to the public. The award is open to 1) regulators, legislators, and other government decision-makers; and 2) stakeholders who have partnered with MCE to effectively advocate for policies that benefit MCE's communities and our planet.

In 2020, the inaugural Climate Action Leadership Award was presented to California Senator Mike McGuire (D-Healdsburg), and the 2021 Leadership Award was presented to California Assemblymember Cecilia Aguiar-Curry (D-Winters). Last year, the 2022 Leadership Award recipients included the four federal Senators and Members of Congress who secured MCE's first-ever community-directed spending proposals: Senator Dianne Feinstein, Senator Alex Padilla, Congressman John Garamendi, and Congressman Jared Huffman.

Assemblymember Connolly has served the North Bay in the California State Assembly since November 2022. He holds positions on key environmental and energy committees, including the Committees on Utilities and Energy, Environmental Safety and Toxic Materials, and the Budget Subcommittee on Climate Crisis, Resources, Energy, and Transportation, as well as select committees on Electric Vehicles and Charging Infrastructure and Offshore Wind Energy in California. In his first year in office, Assemblymember Connolly authored 22 bills, including Assembly Bill 998, which identifies opportunities to upgrade existing and shuttered biomass combustion plants to newer, cleaner technologies. This bill will support greenhouse gas reduction and air quality improvements in nearby communities, a key focus in Assemblymember Connolly's advocacy.

With nearly two decades in public service, Assemblymember Connolly has served as Marin County Supervisor, Vice Mayor of San Rafael, School Board President, and California Deputy Attorney General. In his role as County Supervisor, Assemblymember Connolly set Marin County on a path toward 100 percent renewable energy without compromising the County's fiscal house. In addition to being a founding MCE Board Member, Assemblymember Connolly served as the Chair of the Board from June 2011 to November 2014.

Always a champion of clean energy, in his first year in office Assemblymember Connolly has shown his commitment to community choice and support of MCE. His leadership has and will continue to ensure climate protection for the State in addition to money for California communities across a wide range of issue areas.

Fiscal Impacts:

None

Recommendation:

Present the 2023 Climate Action Leadership Award to Assemblymember Damon Connolly.



October 19, 2023

TO: MCE Board of Directors

FROM: Alexandra McGee, Director of Strategic Initiatives
Catalina Murphy, General Counsel

RE: Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy (Agenda Item #11)

ATTACHMENTS: A. Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy
B. Award Letter from the U.S. Department of Energy

Dear Board Members:

Summary:

The Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power – Community Voices & Community Choice" from the U.S. Department of Energy ("Proposed Resolution") seeks to have your Board accept the funds awarded to MCE for a community participatory budgeting process in key communities to inform clean transportation investments (the "Project"). The funds will be administered by the Energy Efficiency and Renewable Energy (EERE) Office of the U.S. Department of Energy ("DOE") and is for \$1,000,000 ("Awarded Funds") with a required cost share by MCE in the amount of \$279,006.

The Proposed Resolution would allow MCE to accept the Awarded Funds and enter into the necessary agreements with the DOE to use the funding for the Project described above, consistent with the DOE grant requirements. Staff recommends approval of the Proposed Resolution.

Background:

The objectives of this Project are to engage and collaborate with priority community stakeholders in the planning for, installation of, and deployment of electric vehicle

chargers and clean mobility solutions; and from these experiences, to develop best practices for improved future electric vehicle ("EV") infrastructure investments in disadvantaged communities. This will expand upon MCE's existing EV programs and infuse them with community input to allow for solutions that are more sensitive to local needs and opportunities.

The Project will be conducted in 3 phases:

Phase 1: Planning and Community Engagement. Phase 1 will commence with planning activities necessary for implementing in-person and online focus groups, as well as community surveys to guide the siting of EV chargers and implementation of mobility services. This phase will also include designing a webpage available to resident participants and gathering select partners into a Community Electric Transportation Council.

Phase 2: Implementation, Installation and Commissioning. Phase 2 includes meeting with site hosts to determine the viability of the installation and commissioning of the EV chargers at priority community sites. This includes at least 20 Level 1 EV chargers, 18 Level 2 EV chargers, and 8 DC Fast Chargers in locations benefiting underserved communities.

Phase 3: Deployment & Operations, Data Collection and Analysis, and Final Reporting. Phase 3 will confirm successful operations of the EV chargers and engage with possible partners including public fleets and existing carshare, e-Bike and e-Scooter services, based on the findings from Phase 1. Data collection and analysis of the EV charger operations and mobility services will be included in the reporting and lessons learned. This includes at least 4 fleet electrification plans, 12 community-driven EV Charging Deployment Reports, and the final grant report.

Fiscal Impacts:

If approved, MCE will receive \$1,000,000 from the DOE to fund a community participatory budgeting process in key communities to inform clean transportation investments. MCE would also be required to provide a cost share in the amount of \$279,006, making the total project cost \$1,279,006. MCE's cost share would be funded through MCE's FY 23/24 Local Programs Fund of the Board-approved budget.

Recommendation:

Approve Proposed Resolution No. 2023-11 Accepting Award number DE-EE0010626 "Charged by Public Power - Community Voices & Community Choice" from the U.S. Department of Energy.

RESOLUTION NO. 2023-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY ACCEPTING AWARD NUMBER DE-EE0010626 FROM THE U.S. DEPARTMENT OF ENERGY

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, the Energy Efficiency and Renewable Energy ("EERE") Office of the U.S. Department of Energy ("DOE") is responsible for processing and administering an award; and

WHEREAS, MCE has been awarded a grant in the amount for \$1,000,000 ("MCE Awarded Funds") with a required cost share by MCE in the amount of \$279,006 to perform a community participatory budgeting process in key communities to inform clean transportation investments. For an award that requires cost share, the DOE would provide \$1,000,000, and MCE would be required to contribute \$279,006 ("Match Funds") to \$1,279,006; and

WHEREAS, MCE intends to use the MCE Awarded and Match Funds in furtherance of MCE's existing clean transportation efforts to engage and collaborate with priority community stakeholders in the planning for, installation of, and deployment of electric vehicle chargers and clean mobility solutions; and from these experiences, to develop best practices for improved future electric vehicle ("EV") infrastructure investments in disadvantaged communities; and

WHEREAS, the DOE may approve funding allocations for the MCE Awarded Funds, subject to the terms and conditions of the award, the grant agreement, and any other any other requirements between DOE and MCE.

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

1. If MCE receives the MCE Awarded Funds from the DOE pursuant to the above referenced award, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all

rules and laws regarding the award, as well as the grant agreement and any other requirements between DOE and MCE.

2. The Chief Executive Officer of MCE ("CEO") is hereby authorized and directed to receive the MCE Awarded Funds, in an amount not to exceed \$1,000,000 from the DOE and provide Match Funds of \$279,006 by MCE, in accordance with all applicable rules and laws.
3. The CEO hereby agrees to use the MCE Awarded and Match Funds for eligible activities as approved by DOE and in accordance with all program requirements, and other rules and laws, as well as in a manner consistent and in compliance with the grant requirements.
4. The CEO is authorized to execute the necessary grant agreements and any subsequent or modifications thereto, as well as any other documents necessary to complete the receipt of the MCE Awarded Funds, as DOE may deem appropriate.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 19th day of October 2023, by the following vote:

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

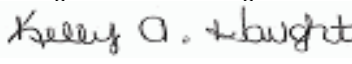
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

ASSISTANCE AGREEMENT

1. Award No. DE-EE0010626		2. Modification No.		3. Effective Date 10/01/2023		4. CFDA No. 81.086	
5. Awarded To MARIN CLEAN ENERGY Attn: Catalina Murphy 1125 TAMALPAIS AVE SAN RAFAEL CA 949013221				6. Sponsoring Office Energy Effcy & Renewable Energy EE-1 U.S. Department of Energy 1000 Independence Avenue, S.W. Washington DC 20585			7. Period of Performance 10/01/2023 through 12/31/2026
8. Type of Agreement <input type="checkbox"/> Grant <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Other		9. Authority See Page 2			10. Purchase Request or Funding Document No. 23EE003052		
11. Remittance Address MARIN CLEAN ENERGY Attn: Catalina Murphy 2485 Natomas Park Drive Sacramento CA 95833				12. Total Amount Govt. Share: \$1,000,000.00 Cost Share : \$279,006.00 Total : \$1,279,006.00		13. Funds Obligated This action: \$1,000,000.00 Total : \$1,000,000.00	
14. Principal Investigator		15. Program Manager Brett C. Aristegui Phone: 412-386-4641			16. Administrator U.S. DOE/NETL NATIONAL ENERGY TECH LAB 3610 Collins Ferry Road Morgantown WV 26505-2353		
17. Submit Payment Requests To Payment - Direct Payment from U.S. Dept of Treasury				18. Paying Office Payment - Direct Payment from U.S. Dept of Treasury			19. Submit Reports To See Attachment 2
20. Accounting and Appropriation Data 05450-2023-31-232445-41999-1004893-0000000-0000000-0000000							
21. Research Title and/or Description of Project Charged by Public Power - Community Voices & Community Choice							
For the Recipient				For the United States of America			
22. Signature of Person Authorized to Sign				25. Signature of Grants/Agreements Officer 			
23. Name and Title		24. Date Signed		26. Name of Officer Kelly A. Haught		27. Date Signed 09/28/2023	

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED

DE-EE0010626

PAGE OF

2

3

NAME OF OFFEROR OR CONTRACTOR

MARIN CLEAN ENERGY

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	<p>UEI: J6WWDNMWGMQ1</p> <p>Period of Performance:10/1/2023 - 12/31/2026</p> <p>Budget Period:10/1/2023 - 12/31/2026</p> <p>Department of Energy Contract Specialist: Ashley Dew 412-386-9423 ashley.dew@netl.doe.gov</p> <p>Recipient Business Point of Contact: Joy Massey 415-464-6651 ext. 321 jmassey@mcecleanenergy.org</p> <p>Recipient Principal Investigator: Alice Havenar Daughton 925-378-6370 ahavenar-daughton@mceCleanEnergy.org</p> <p>*****</p> <p>Public Law (P.L.) 102-486, Energy Policy Act (EPAct) of 1992, as amended by P.L. 109-58, EPAct 2005, Section 911, as amended (codified at 42 U.S.C. § 16191) and Sections 801 and 805, as amended (codified at 42 U.S.C. § 16154), and P.L. 110-140, Energy Independence and Security Act of 2007 (EISA 2007), Section 131, as amended (codified at 42 U.S.C. § 17011). Additional citations for these authorities include the following:</p> <ul style="list-style-type: none"> • Title VII, Subtitles B, C, D of EPACT 2005 (42 U.S.C. §§ 16061-16093) • Sections 131-136 of EISA 2007 (42 U.S.C. §§ 17011-17013) <p>ASAP: YES Extent Competed: COMPETED Davis-Bacon Act: NO PI: Alice H. Daughton Fund: 05450 Appr Year: 2023 Allottee: 31 Report Entity: 232445 Object Class: 41999 Program: 1004893 Project: 0000000 WFO: 0000000 Local Use: 0000000</p>				



Financial Statements

Years Ended March 31, 2023 & 2022 with Report of Independent Auditors



MARIN CLEAN ENERGY
YEARS ENDED MARCH 31, 2023 AND 2022

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Independent Auditors' Report

To the Board of Directors of
Marin Clean Energy

Opinion

We have audited the accompanying financial statements of Marin Clean Energy (MCE), as of and for the years ended March 31, 2023 and 2022, and the related notes to the financial statements, which collectively comprise the MCE's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the financial position of MCE as of March 31, 2023 and 2022, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of MCE and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Emphasis of Matter

As discussed in Note 11, MCE adopted the provisions of GASB Statement No. 87, *Leases*, effective April 1, 2022. Accordingly, the accounting changes have been retroactively applied to prior periods presented. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the MCE's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the MCE's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the MCE's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that Management's Discussion and Analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Baker Tilly US, LLP

Madison, Wisconsin
August 30, 2023

MARIN CLEAN ENERGY

MANAGEMENT'S DISCUSSION AND ANALYSIS YEARS ENDED MARCH 31, 2023 AND 2022

The Management's Discussion and Analysis provides an overview of Marin Clean Energy's (MCE) financial activities as of and for the years ended March 31, 2023, and 2022. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of MCE was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

MCE was created as a California Joint Powers Authority (JPA) on December 19, 2008. MCE was established to provide electric power and related benefits within MCE's service area, including developing a wide range of renewable energy sources and energy efficiency programs. Governed by an appointed board of directors, MCE has the rights and powers to set rates and charges for electricity and services it furnishes, incur indebtedness, and issue bonds or other obligations. MCE is responsible for the acquisition of electric power for its service area.

Financial Reporting

MCE presents its financial statements as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

**MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEARS ENDED MARCH 31, 2023 AND 2022**

(Continued)

Contents of this Report

This report is divided into the following sections:

- Management discussion and analysis.
- The Basic Financial Statements:
 - The *Statements of Net Position* include all of MCE's assets, liabilities, deferred inflows of resources and net position and provides information about the nature and amount of resources and obligations at a specific point in time.
 - The *Statements of Revenues, Expenses, and Changes in Net Position* report all of MCE's revenue and expenses for the years shown.
 - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as capital and investing activities.
 - Notes to the Basic Financial Statements, which provide additional details and information related to the basic financial statements.

MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEARS ENDED MARCH 31, 2023 AND 2022

(Continued)

FINANCIAL HIGHLIGHTS

The following table is a summary of MCE's assets, liabilities, deferred inflows of resources and net position and a discussion of significant changes for the years ended March 31:

	<u>2023</u>	<u>2022 (Restated)</u>	<u>2021 (Restated)</u>
Current assets	\$ 287,116,314	\$ 271,986,377	\$ 252,069,094
Noncurrent assets			
Capital and lease assets, net	1,818,709	2,049,223	3,837,126
Other noncurrent assets	75,742,193	15,969,822	15,360,190
Total noncurrent assets	<u>77,560,902</u>	<u>18,019,045</u>	<u>19,197,316</u>
Total assets	<u>364,677,216</u>	<u>290,005,422</u>	<u>271,266,410</u>
Current liabilities	89,968,725	70,434,083	64,794,643
Noncurrent liabilities	536,645	1,364,363	2,121,460
Total liabilities	<u>90,505,370</u>	<u>71,798,446</u>	<u>66,916,103</u>
Deferred inflows of resources	30,000,000	15,000,000	15,000,000
Net position:			
Net investment in capital assets	508,444	693,493	958,569
Unrestricted	243,663,402	202,513,483	188,391,738
Total net position	<u>\$ 244,171,846</u>	<u>\$ 203,206,976</u>	<u>\$ 189,350,307</u>

Current assets

Current assets modestly increased from \$272,000,000 at the end of 2022 to \$287,000,000 at the end of 2023. Current assets at the end of 2023 and were primarily comprised of cash and investments of \$173,00,000, accounts receivable of \$66,000,000, and accrued revenue of \$31,000,000. Accrued revenue differs from accounts receivable in that it represents electricity provided to MCE customers that has not yet been invoiced.

**MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEARS ENDED MARCH 31, 2023 AND 2022**

(Continued)

Noncurrent assets

Capital assets are reported net of depreciation. Each year, the change is mostly due to leasehold improvements at MCE's office less depreciation expense. Capital assets held by MCE include leasehold improvements, furniture, and equipment. MCE does not own assets used for electric generation or distribution.

Leased assets are reported in accordance with Governmental Accounting Standards Board No. 87 (GASB 87) that was implemented during 2023, including a restatement back to 2021. According to GASB, the Statement aims to increase the usefulness of governments' financial statements by requiring reporting of certain lease liabilities that previously were not reported.

Other noncurrent assets primarily include investments of \$48,000,000 as well as \$30,000,000 in an Operating Reserve Fund to defer revenue for later years when financial results may not be as strong or are stressed. By postponing revenue recognition to future years, MCE will be positioned to avoid sudden rate increases to address unanticipated spikes in energy costs and other unforeseen circumstances.

The increase in 2023 is a result of MCE's operating surplus which was used to purchase various investments, primarily U.S. Treasury securities.

Current liabilities

The largest components of current liabilities is the cost of electricity delivered to customers that is not yet paid by MCE and unexpended program advances from grantors. Current liabilities increased each year due to the increased demand from new customers, as well as price increases of certain energy products, and funds received from grantors.

Noncurrent liabilities

Included in this category is the long-term portion of lease payments for MCE's office premises. The reduction each year relates to amortization of the liability.

**MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEARS ENDED MARCH 31, 2023 AND 2022**

(Continued)

The following table is a summary of MCE's results of operations and a discussion of significant changes for years ended March 31:

	2023	2022 (Restated)	2021 (Restated)
Operating revenues	\$ 636,588,526	\$ 469,123,209	\$ 439,262,151
Nonoperating revenues	4,226,302	6,216,069	-
Investment income	4,007,603	584,054	1,784,590
Total income	<u>644,822,431</u>	<u>475,923,332</u>	<u>441,046,741</u>
Operating expenses	603,621,093	461,805,695	413,306,149
Nonoperating expenses	236,468	260,968	195,825
Total expenses	<u>603,857,561</u>	<u>462,066,663</u>	<u>413,501,974</u>
Change in net position	<u>\$ 40,964,870</u>	<u>\$ 13,856,669</u>	<u>\$ 27,544,767</u>

Operating revenues

Operating revenues increased each year from 2021 to 2023, primarily from territory expansion and increases in customer rates. In 2023, an increase in the number of customer accounts by 6.5% related to the enrollment of Fairfield, produced approximately \$30,000,000 in additional revenue and a 32% increase in average customer retail rates produced approximately \$145,000,000 in additional revenue. MCE also receives revenues from sources other than retail customer sales. These sources include wholesale energy sales to other suppliers, as well as grant income used to assist with various customer programs.

Nonoperating revenues

Grant income from the California Arrearage Payment Plan (CAPP) is included in nonoperating revenues. This grant first became available in 2022.

Investment income

Investment income fluctuated each year due to changes in market interest rates as well as the amount available to be invested.

Operating expenses

For all the years presented, the largest expense was the cost of electricity. Operating expenses increased each year, primarily due to increased prices for certain products in the energy markets.

MCE procures energy from a variety of sources to minimize this risk and maintain a balanced renewable power portfolio.

**MARIN CLEAN ENERGY
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEARS ENDED MARCH 31, 2023 AND 2022**

(Continued)

ECONOMIC OUTLOOK

In the normal course of business, MCE enters into various agreements, including for renewable energy agreements, the procurement of power and electrical capacity and other power purchase agreements. MCE enters into power purchase agreements to comply with state law and elevated voluntary targets for renewable and greenhouse gas (GHG) free products as described in its Integrated Resource Plans. California law established a Renewable Portfolio Standard (RPS) that requires load-serving entities ("LSEs"), such as MCE, to gradually increase the amount of renewable energy they deliver to their customers. Senate Bill ("SB") 100, signed by California's Governor in September 2018, directs LSEs to supply 60% of their retail sales with RPS-eligible resources by 2030. MCE began supplying its retail sales with 60% RPS-eligible resources in 2017, 13 years ahead of the SB 100 schedule. MCE has been supplying 90% GHG free energy since 2017 and anticipates reaching 95% in calendar year 2023 and continuing to do so into the future. In addition, pursuant to California SB 350 (signed into law in October 2015), at least 65 percent of the procurement a retail seller, such as MCE, counts toward its renewables portfolio standard requirement for each compliance period shall be from contracts of ten years or more in duration ("long-term contracts"), starting with compliance period 4 (which began January 1, 2021). As of March 31, 2021, MCE has executed RPS contracts of ten years or more in duration that are projected to meet MCE's SB 350 long-term contracting requirement through 2027, and MCE is planning to continue its long-term RPS procurement as opportunities arise.

MCE manages risks associated with these commitments by aligning purchase commitments with expected demand for electricity and by securing a diversity of technologies, geographical locations, and suppliers. Expected obligations under power purchase agreements totaled approximately \$4.2 billion as of March 31, 2023 and \$2.7 billion as of March 31, 2022.

Management intends to continue its conservative use of financial resources and expects ongoing operating surpluses.

REQUEST FOR INFORMATION

This financial report is designed to provide MCE's board members, stakeholders, customers, and creditors with a general overview of MCE's finances and to demonstrate MCE's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to the Chief Financial Officer, 1125 Tamalpais Avenue, San Rafael, CA 94901.

BASIC FINANCIAL STATEMENTS

MARIN CLEAN ENERGY

STATEMENTS OF NET POSITION

MARCH 31, 2023 AND 2022

	<u>2023</u>	<u>2022 (Restated)</u>
ASSETS		
Current assets		
Cash and cash equivalents - unrestricted	\$ 73,348,263	169,627,430
Accounts receivable, net of allowance	66,401,473	46,297,848
Accrued revenue	31,180,447	20,513,811
Other receivables	1,985,508	2,317,347
Prepaid expenses	651,310	4,814,302
Restricted cash	33,782,947	16,052,232
Investments	68,841,532	-
Deposits	10,924,834	12,363,407
Total current assets	<u>287,116,314</u>	<u>271,986,377</u>
Noncurrent assets		
Cash and cash equivalents - restricted	30,000,000	15,000,000
Investments	45,538,694	-
Lease assets, net of amortization	1,219,882	2,049,223
Capital assets, net of depreciation	598,827	765,730
Deposits	203,499	204,092
Total noncurrent assets	<u>77,560,902</u>	<u>18,019,045</u>
Total assets	<u>364,677,216</u>	<u>290,005,422</u>
LIABILITIES		
Current liabilities		
Accrued cost of electricity	45,803,423	41,701,034
Accounts payable	4,071,832	3,010,634
Other accrued liabilities	1,845,922	1,748,318
User taxes and energy surcharges due to other governments	3,112,581	2,151,268
Security deposits - energy suppliers	578,400	5,013,500
Lease liabilities	773,620	757,097
Advances from grantors - restricted	33,782,947	16,052,232
Total current liabilities	<u>89,968,725</u>	<u>70,434,083</u>
Noncurrent liabilities		
Lease liabilities	536,645	1,364,363
Total liabilities	<u>90,505,370</u>	<u>71,798,446</u>
DEFERRED INFLOWS OF RESOURCES		
Operating Reserve Fund	<u>30,000,000</u>	<u>15,000,000</u>
NET POSITION		
Net position		
Net investment in capital assets	508,444	693,493
Unrestricted	243,663,402	202,513,483
Total net position	<u>\$ 244,171,846</u>	<u>203,206,976</u>

MARIN CLEAN ENERGY

**STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

YEARS ENDED MARCH 31, 2023 AND 2022

	2023	2022 (Restated)
OPERATING REVENUES		
Electricity sales, net	\$ 633,836,160	\$ 458,935,624
Rate stabilization	(15,000,000)	-
Grant revenue	10,532,421	9,830,732
Other revenue	7,219,945	356,853
Total operating revenues	<u>636,588,526</u>	<u>469,123,209</u>
OPERATING EXPENSES		
Cost of electricity	559,107,368	421,522,767
Contract services	19,389,252	19,777,790
Staff compensation	17,193,096	14,263,357
Other operating expenses	6,935,136	5,204,378
Depreciation and amortization	996,241	1,037,403
Total operating expenses	<u>603,621,093</u>	<u>461,805,695</u>
Operating income	<u>32,967,433</u>	<u>7,317,514</u>
NONOPERATING REVENUES (EXPENSES)		
Grant revenue	4,226,302	6,216,069
Investment income	4,007,603	584,054
Finance costs	(236,468)	(260,968)
Nonoperating revenues (expenses), net	<u>7,997,437</u>	<u>6,539,155</u>
CHANGE IN NET POSITION	40,964,870	13,856,669
Net position at beginning of year	<u>203,206,976</u>	<u>189,350,307</u>
Net position at end of year	<u><u>\$ 244,171,846</u></u>	<u><u>\$ 203,206,976</u></u>

MARIN CLEAN ENERGY

STATEMENTS OF CASH FLOWS

YEARS ENDED MARCH 31, 2023 AND 2022

	2023	2022 (Restated)
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$ 615,120,232	\$ 462,539,471
Receipts from grantors	35,646,753	22,277,682
Other operating receipts	47,962,860	1,158,411
Payments to suppliers for electricity and collateral	(594,359,829)	(446,651,804)
Payments for other goods and services	(32,597,611)	(31,732,757)
Payments for staff compensation	(16,961,121)	(13,990,493)
Payments of tax and surcharges to other governments	(9,533,701)	(7,180,093)
Net cash provided (used) by operating activities	<u>45,277,583</u>	<u>(13,579,583)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Grant revenue	4,226,302	6,216,069
Finance costs paid	(182,127)	(180,910)
Net cash provided by non-capital financing activities	<u>4,044,175</u>	<u>6,035,159</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments of lease liabilities	(952,165)	(937,240)
Payment to acquire capital assets	-	(22,218)
Net cash used by capital and related financing activities	<u>(952,165)</u>	<u>(959,458)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Investment income received	2,475,425	582,529
Proceeds from investment sales	16,100,000	-
Purchase of investments	(130,493,470)	-
Net cash provided (used) by investing activities	<u>(111,918,045)</u>	<u>582,529</u>
Net change in cash and cash equivalents	(63,548,452)	(7,921,353)
Cash and cash equivalents at beginning of year	200,679,662	208,601,015
Cash and cash equivalents at end of year	<u>137,131,210</u>	<u>200,679,662</u>
Reconciliation to the Statement of Net Position		
Current assets		
Cash and cash equivalents (unrestricted)	73,348,263	169,627,430
Restricted cash	33,782,947	16,052,232
Noncurrent assets		
Cash and cash equivalents (unrestricted)	30,000,000	15,000,000
Cash and cash equivalents	<u>\$ 137,131,210</u>	<u>\$ 200,679,662</u>

MARIN CLEAN ENERGY**STATEMENTS OF CASH FLOWS
(CONTINUED)****YEARS ENDED MARCH 31, 2023 AND 2022****RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

	2023	2022 (Restated)
Operating income	\$ 32,967,433	\$ 7,317,514
Adjustments to reconcile operating income to net cash provided (used) by operating activities		
Depreciation and amortization expense	996,241	1,037,403
Provision for uncollectible accounts	18,612,539	1,259,349
(Increase) decrease in:		
Accounts receivable	(38,716,164)	(13,182,724)
Other receivables	1,656,337	239,002
Accrued revenue	(10,666,636)	(4,381,061)
Prepaid expenses	4,162,992	(3,763,177)
Deposits	1,660,093	(7,852,402)
Increase (decrease) in:		
Accrued cost of electricity	4,102,389	(1,708,386)
Accounts payable	1,061,198	105,228
Other accrued liabilities	184,233	518,818
Security deposits from energy suppliers	(4,435,100)	381,000
User taxes due to other governments	961,313	572,997
Operating Reserve Fund	15,000,000	-
Advances from grantor - restricted	17,730,715	5,876,856
Net cash provided (used) by operating activities	<u>\$ 45,277,583</u>	<u>\$ (13,579,583)</u>

The accompanying notes are an integral part of these financial statements

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

Marin Clean Energy (MCE) is a California joint powers authority created on December 19, 2008. As of March 31, 2023, parties to its Joint Powers Agreement consist of the following local governments:

	Cities and Towns		
Contra Costa	Belvedere	Martinez	Ross
Marin	Benicia	Mill Valley	San Anselmo
Napa	Concord	Moraga	San Pablo
Solano	Corte Madera	Napa	San Rafael
	Danville	Novato	San Ramon
	El Cerrito	Oakley	Sausalito
	Fairfax	Pinole	Tiburon
	Fairfield	Pittsburg	Vallejo
	Lafayette	Pleasant Hill	Walnut Creek
	Larkspur	Richmond	

MCE is separate from and derives no financial support from its members. MCE is governed by a Board of Directors whose membership is composed of elected officials representing one or more of the parties.

MCE's mission is to confront the climate crisis by eliminating fossil fuel greenhouse gas emissions, producing renewable energy, and creating equitable community. MCE provides electric service to retail customers as a Community Choice Aggregation Program (CCA) under the California Public Utilities Code Section 366.2.

Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company. MCE administers energy efficiency programs that support the development, coordination, and implementation of energy efficiency projects in and around MCE's service area. The funding for energy efficiency programs is provided from ratepayers and regulated by the California Public Utilities Commission.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

BASIS OF ACCOUNTING

MCE's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

MCE's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted, and unrestricted.

When both restricted and unrestricted resources are available for use, it is MCE's policy to use restricted resources first, then unrestricted resources as they are needed.

CASH AND CASH EQUIVALENTS

For purposes of the Statements of Cash Flows, MCE defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments with an original maturity of three months or less. The Statement of Net Position presents restricted cash balances separately. Restricted cash reported on the Statements of Net Position includes funding advanced from grantors.

INVESTMENTS

Investments are stated at fair value based on prices listed on a national exchange for debt securities. Certificates of deposits are stated at cost. MCE intends to hold its securities to maturity. Investments with a maturity of less than one year are shown as current assets in the Statement of Net Position. Investments with a maturity of one year or more are shown as noncurrent assets in the Statement of Net Position.

MCE's Investment Policy permits the investment of funds in depository accounts, Local Agency Investment Fund (LAIF) program operated by the California State Treasury, United States Treasury obligations, federal agency securities, commercial paper, certificates of deposits, money market funds, corporate bonds and collateralized mortgage obligations.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

PREPAID EXPENSES AND DEPOSITS

Contracts to purchase energy may require MCE to provide the supplier with advanced payments or security deposits. Deposits are generally held for the term of the contract and are classified as current or noncurrent assets depending on the length of time the deposits will be outstanding. Also included are prepaid expenses and deposits for regulatory and other operating purposes.

LEASE ASSETS AND LEASE LIABILITIES

MCE recognizes an asset and liability when it enters certain leasing arrangements. The leased assets are amortized over the term of the leases. The lease liabilities are established at the present value of payments expected to be paid to the lessors during the terms of the lease. MCE's only leased assets and liabilities relate to its office premises.

CAPITAL ASSETS AND DEPRECIATION

MCE's policy is to capitalize furniture and equipment valued over \$5,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, seven years for furniture, and ten years for leasehold improvements.

SECURITY DEPOSITS FROM ENERGY SUPPLIERS

Various energy contracts entered into by MCE require the supplier to provide MCE with a security deposit. These deposits are generally held for the term of the contract or until the completion of certain benchmarks. Deposits are classified as current or noncurrent depending on the length of the time the deposits will be held.

ADVANCES FROM GRANTORS

MCE received grant funding from various grantors. The amount in this category represents funds received by MCE, but not yet expended to carry out specific goals.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING RESERVE FUND

In March 2020, MCE created an Operating Reserve Fund to allow MCE to defer revenue in years when financial results are strong for use in future years when financial results may decline. In accordance with GASB Statement No. 62, the amount deposited into the fund is shown as a reduction of operating revenues and reported on the statements of net position as a deferred inflow of resources. Transfers to this fund were \$15,000,000 and \$0 in 2023 and 2022, respectively.

NET POSITION

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, lease assets, net of accumulated depreciation and amortization, and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets.

Restricted: This component of net position consists of restraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation. There was no restricted component on March 31, 2023 or 2022.

Unrestricted: This component of net position consists of net position that does not meet the definitions of “investment in capital assets” or “restricted.”

GASB STATEMENT NO. 87 IMPLEMENTATION

MCE adopted GASB Statement No. 87, *Leases* effective April 1, 2022 for all material leases. The impact of the implementation did not affect net position, prior year balances were restated for the new standard. See Note 11 for further details.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING AND NON-OPERATING REVENUE

Operating revenues include energy sales to retail customers, grant revenue earned from the delivery of program activities, and liquidated damages from suppliers that fail to meet delivery commitments. Operating revenues also include contributions to or distributions from the Operating Reserve Fund.

Investment income and grants that are not earned from the delivery of program activities are considered “non-operating revenues.”

REVENUE RECOGNITION

MCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

OPERATING AND NON-OPERATING EXPENSES

Operating expenses include the cost of sales and services, administrative expenses, depreciation of capital assets, and amortization of right-to-use assets. Expenses not meeting this definition are reported as non-operating expenses.

ELECTRICAL POWER PURCHASED

During the normal course of business MCE purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from MCE’s participation in the California Independent System Operator’s centralized market. The cost of electricity and capacity is recognized as “Cost of Electricity” in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California’s Renewable Portfolio Standards (RPS) and self-imposed benchmarks, MCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System. MCE obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. An expense is recognized at the point that the cost of the Certificate is due and payable to the supplier. MCE purchases capacity commitments from qualifying generators to comply with the California Energy Commission’s Resource Adequacy Program.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

ELECTRICAL POWER PURCHASED (CONTINUED)

The goals of the Resource Adequacy Program are to provide sufficient resources to the California Independent System Operator to ensure the safe and reliable operation of the energy grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. MCE is in compliance with external mandates and self-imposed benchmarks.

STAFFING COSTS

MCE pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. MCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. MCE provides compensated time off, and the related liability is recorded as other accrued liabilities in these financial statements.

INCOME TAXES

MCE is a joint powers authority under the provision of the California Government Code and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements. These reclassifications did not result in any change in previously reported net position or change in net position.

MARIN CLEAN ENERGY**NOTES TO THE BASIC FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2023 AND 2022****2. CASH AND CASH EQUIVALENTS**

MCE maintains its cash in both interest-bearing and non-interest-bearing demand and term deposit accounts at River City Bank of Sacramento, California. MCE's deposits with River City Bank are subject to California Government Code Section 16521 which requires that River City Bank provide collateral of 110% for public funds in excess of the Federal Deposit Insurance Corporation limit of \$250,000. MCE monitors its risk exposure to River City Bank on an ongoing basis.

3. ACCOUNTS RECEIVABLE

Accounts receivable were as follows as of March 31:

	2023	2022
Accounts receivable from customers	\$ 93,990,987	\$ 55,274,823
Allowance for uncollectible accounts	(27,589,514)	(8,976,975)
Net accounts receivable	<u>\$ 66,401,473</u>	<u>\$ 46,297,848</u>

The majority of account collections occur within the first few months following customer invoicing. MCE estimates that a portion of the billed accounts will not be collected. MCE continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the receivable's age, MCE continues to have success collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

4. INVESTMENTS

During the year ended March 31, 2023, MCE purchased investments with original maturities of three months or more. MCE did not own any investments as of March 31, 2022. As of March 31, the fair value of investments was as follows:

	<u>2023</u>	<u>2022</u>
Current Investments:		
U.S. Treasury Securities	\$ 2,840,387	\$ -
Collateralized Mortgage Obligations	-	-
Commercial Paper	489,557	-
Corporate Bonds	-	-
Certificates of Deposit	65,511,588	-
Total current investments	<u>\$ 68,841,532</u>	<u>\$ -</u>
	<u>2023</u>	<u>2022</u>
Noncurrent Investments:		
U.S. Treasury Securities	\$ 30,239,426	\$ -
Collateralized Mortgage Obligations	2,627,860	-
Commercial Paper	-	-
Corporate Bonds	12,671,408	-
Certificates of Deposit	-	-
Total noncurrent investments	<u>\$ 45,538,694</u>	<u>\$ -</u>

FAIR VALUE MEASUREMENT

GASB Statement No. 72, *Fair Value Measurement and Application*, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets, Level 2 inputs are significant other observable inputs, and Level 3 inputs are significant unobservable inputs.

In instances where inputs used to measure fair value fall into more than one level in the fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. MCE's assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability.

As of March 31, 2023, all of MCE's investments are based on Level 1 inputs. Quoted prices in active markets were used for determining fair value measurement.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

4. INVESTMENTS (CONTINUED)

CREDIT RISK

Credit risk is the risk an issuer or other counterparty to an investment will not fulfill its obligations. As of March 31, 2023 and 2022, MCE's investments were rated as follows:

	Standard & Poors	
	2023	2022
Commercial Paper	A-1	-
Certificates of Deposit	NR to A-1	-
Corporate Bonds	A- to AAA	-

MCE's investment policy addresses this risk. MCE limits investments to those allowed by Section 53601 of the California Government code that addresses the risk allowable for each investment.

CUSTODIAL CREDIT RISK

Cash and cash equivalents

Custodial credit risk is the risk that in the event of a financial institution failure, MCE's deposits may not be returned to MCE.

As of March 31, 2023 and 2022, none of MCE's bank balances are known to be individually exposed to credit risk.

Investments

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, MCE would not be able to recover the value of the investment or collateral securities that are in the possession of an outside party. All of MCE's investments are exposed to credit risk.

MCE's investment policy addresses this risk. All investments owned by MCE shall be held in safekeeping by a third-party custodian, acting as an agent for MCE under the terms of a custody agreement.

MARIN CLEAN ENERGY**NOTES TO THE BASIC FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2023 AND 2022****4. INVESTMENTS (CONTINUED)****INTEREST RATE RISK**

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Duration is a measure of the price sensitivity of a fixed income portfolio to changes in interest rates. It is calculated as the weighted average time to receive a bond's coupon and principal payments. The longer the duration of a portfolio, the greater its price sensitivity to changes in interest rates. MCE manages its exposure to declines in fair values by limiting the weighted average maturity of its investments.

Following is a summary of investment maturities as of March 31, 2023:

Investment Type	Fair Value	Investment Maturities	
		Less Than 1 Year	1-5 Years
U.S. Treasury Securities	\$ 33,079,813	\$ 2,840,387	\$ 30,239,426
Collateralized Mortgage Obligations	2,627,860	-	2,627,860
Commercial Paper	489,557	489,557	-
Corporate Bonds	12,671,408	-	12,671,408
Certificates of Deposit	65,511,588	65,511,588	-
	<u>\$ 114,380,226</u>	<u>\$ 68,841,532</u>	<u>\$ 45,538,694</u>

MARIN CLEAN ENERGY**NOTES TO THE BASIC FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2023 AND 2022****5. CAPITAL ASSETS AND LEASE ASSETS**

Capital asset activity for the years ended March 31, 2023 and 2022, was as follows:

	<u>Furniture & Equipment</u>	<u>Leasehold Improvements</u>	<u>Accumulated Depreciation</u>	<u>Total</u>
Balances at March 31, 2021	\$ 912,958	\$ 1,064,385	\$ (1,018,774)	\$ 958,569
Additions	7,584	7,643	(208,066)	(192,839)
Balances at March 31, 2022	920,542	1,072,028	(1,226,840)	765,730
Additions	-	-	(166,903)	(166,903)
Dispositions	(56,168)	-	56,168	-
Balances at March 31, 2023	<u>\$ 864,374</u>	<u>\$ 1,072,028</u>	<u>\$ (1,337,575)</u>	<u>\$ 598,827</u>

Lease asset activity for the years ended March 31, 2023 and 2022 was as follows:

	<u>Lease Assets</u>	<u>Accumulated Amortization</u>	<u>Total</u>
Balances at March 31, 2021	\$ 2,878,560	\$ -	\$ 2,878,560
Additions	-	(829,337)	(829,337)
Balances at March 31, 2022	2,878,560	(829,337)	2,049,223
Additions	-	(829,341)	(829,341)
Balances at March 31, 2023	<u>\$ 2,878,560</u>	<u>\$ (1,658,678)</u>	<u>\$ 1,219,882</u>

6. DEBT**LINE OF CREDIT AND LETTERS OF CREDIT**

In November 2019, MCE entered into a revolving credit agreement with JPMorgan Chase Bank. The available credit line under this agreement is \$40 million and enhances MCE's overall liquidity for potential working capital needs, collateral requirements, and enhances MCE's investment credit grade rating. This agreement was terminated in May 2023. In May 2023 MCE entered into a revolving credit agreement with Royal Bank of Canada for a credit line of \$60 million that extends to May 2026.

MCE had no standby Letters of Credit or amounts outstanding under its lines of credit agreement as of March 31, 2023, and 2022. Any unused balance is subject to a 0.445% fee per annum. Fees related to opening and renewal of the line of credit and posting any letters of credit are reported as interest and related expenses.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

7. GRANTS

MCE administers various grants from the California Public Utilities Commission (CPUC), California Energy Commission and Marin Community Foundation. Grant revenues are recognized when a corresponding eligible expense is incurred.

MCE also administers a grant from the California Arrearage Payment Program (CAPP) that offers financial assistance for California energy utility customers to help reduce past due energy account balances that increased during the COVID-19 pandemic. In 2022, this program was funded through the federal American Rescue Plan Act (ARPA) with Coronavirus State and Local Fiscal Recovery Funds. In 2023, the program was funded by the State of California.

The following is a summary grant revenue for the years ended March 31:

	2023	2022
CAPP	\$ 4,226,302	\$ 6,216,069
EE	8,194,907	7,623,941
DAC	1,957,959	1,866,322
Other	379,555	340,469
Total grant revenue	<u>\$ 14,758,723</u>	<u>\$ 16,046,801</u>

Legend

CAPP	California Arrearage Payment Plan
EE	Energy Efficiency - Public Purpose Program (multiple programs)
DAC	Disadvantaged Community - Green Access

8. DEFINED CONTRIBUTION RETIREMENT PLAN

The Marin Clean Energy Plan (Plan) is a defined contribution retirement plan established by MCE to provide benefits at retirement to its employees. The Plan is administered by Nationwide Retirement Solutions. As of March 31, 2023, there were 81 plan members. MCE is required to contribute 10% of annual covered payroll to the Plan and contributed \$1,270,000 and \$1,007,000 during the years ended March 31, 2023 and 2022, respectively. The Plan includes vesting provisions intended to encourage employee retention. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

9. RISK MANAGEMENT

MCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, MCE purchased insurance policies from commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. There were no significant reductions in coverage compared to the prior year. From time to time, MCE may be party to various pending claims and legal proceedings. Although the outcome of such matters cannot be forecasted with certainty, it is the opinion of management and MCE's legal counsel that the likelihood is remote that any such claims or proceedings will have a material adverse effect on MCE's financial position or results of operations.

MCE maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market. Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties' financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, MCE enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counterparties.

10. PURCHASE COMMITMENTS

POWER AND ELECTRIC CAPACITY

In the ordinary course of business, MCE enters into various power purchase agreements to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind and hydro-electric facilities.

MCE enters into power purchase agreements to comply with state law and voluntary targets for renewable and greenhouse gas free products and to ensure stable and competitive electric rates for its customers.

MARIN CLEAN ENERGY**NOTES TO THE BASIC FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2023 AND 2022****10. PURCHASE COMMITMENTS (continued)**

The following table represents the expected, undiscounted, contractual obligations outstanding as of March 31, 2023:

Year ended March 31,	
2024	\$ 450,000,000
2025	360,000,000
2026	320,000,000
2027	260,000,000
2028	270,000,000
2029-47	2,550,000,000
Total	<u>\$ 4,210,000,000</u>

11. LEASE

In June 2017, GASB issued Statement No. 87, *Leases*. As amended, the effective date of the Statement was for fiscal years beginning after June 15, 2021. MCE implemented the Statement in these financial statements, including a restatement back to 2021. According to GASB, the Statement aims to increase the usefulness of governments' financial statements by requiring reporting of certain lease assets and lease liabilities that previously were not reported. As a result of implementing the Statement, net position at March 31, 2022 has been reduced by approximately \$72,000. Also, the following balances were restated:

	As Originally Reported (4/1/2022)	Adjustment for GASB No. 87	As Restated 4/1/2022
Lease assets	\$ -	\$ 2,049,223	\$ 2,049,223
Lease liabilities - current	-	757,097	757,097
Lease liabilities - noncurrent		1,364,363	1,364,363

On March 9, 2015, MCE entered into a ten-year non-cancelable lease for its San Rafael, California office premise. The rental agreement includes an option to renew the lease for five additional years. On December 12, 2017, MCE entered into a 68-month non-cancelable lease for its Concord, California office location. Rental payments for MCE's office space were \$886,000 and \$850,000 for the years ended March 31, 2023 and 2022, respectively.

MARIN CLEAN ENERGY**NOTES TO THE BASIC FINANCIAL STATEMENTS****YEARS ENDED MARCH 31, 2023 AND 2022****11. LEASE (continued)**

As of March 31, 2023, future minimum lease payments under this lease were projected as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
Years ending March 31,			
2024	\$ 773,620	\$ 28,624	\$ 802,244
2025	536,645	9,157	545,802
Total	<u>\$ 1,310,265</u>	<u>\$ 37,781</u>	<u>\$ 1,348,046</u>

12. JOINT VENTURE

MCE participates in a joint powers agreement (JPA) through the California Community Choice Financing Authority (CCCFA). CCCFA was formed as a conduit issuer to assist its members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of the members by, among other things, issuing or incurring bonds and entering into related contracts with its members. Any debt or liability incurred by CCCFA on behalf of a member to prepay for renewable energy is not a debt or liability of that member. Furthermore, the assets of CCCFA in the form of prepaid energy or reserves held by the respective bond trustees for any prepayment transaction undertaken on behalf of a member does not constitute an asset or reserve of that member.

In November 2021, CCCFA issued bonds in the amount of \$602,655,000 excluding original issue premium, the proceeds of which to be used to finance energy purchases that will be delivered to MCE. No debt, liability, or obligation of CCCFA is a debt, liability, or obligation of MCE. MCE will purchase energy from CCCFA in the same manner as they purchase energy from other suppliers. MCE purchased approximately \$26,500,000 from CCCFA during fiscal year 2023. The outstanding purchase commitments related to these financing facilities are included in Note 10.

Each member of CCCFA is responsible for paying an equal portion of CCCFA's general and administrative operating costs as determined by its board. During the years ended March 31, 2023, and 2022, MCE contributed approximately \$18,000 and \$40,000, respectively, to CCCFA to assist in its operating activities.

The financial statements of CCCFA are available online at <http://www.cccfa.org/key-documents.html>.

MARIN CLEAN ENERGY

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED MARCH 31, 2023 AND 2022

13. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for future fiscal years ending after March 31, 2023:

GASB has approved, GASB No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, GASB 96, *Subscription-Based Information Technology Arrangements*, GASB No. 99, *Omnibus 2022*, GASB No. 100, *Accounting Changes and Error Corrections – An Amendment of GASB Statement No. 62*, and GASB No. 101, *Compensated Absences*. Management is evaluating the effect of implementation of these statements.

14. SUBSEQUENT EVENT

In May 2023 MCE entered into a revolving credit agreement with Royal Bank of Canada for a credit line of \$60 million that extends to May 2026.



October 19, 2023

TO: MCE Board of Directors

FROM: Michael Callahan, Associate General Counsel

RE: Policy Update of Regulatory and Legislative Items

ATTACHMENT: Regulatory Packet with August and September Filings

Dear Board Members:

Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC or Commission), the California Independent System Operator (CAISO), and the California Energy Commission impacting Community Choice Aggregation (CCA) and MCE.

I. Legislative Advocacy

a. State Legislative Advocacy

The Legislature finished the first year of its 2023-2024 session on Thursday, September 14. Bills introduced this year that did not pass out of the Legislature can be heard early next year. If a bill does not pass out of its house of origin by January 31, 2024, that bill is considered dead and will not move forward next year. Bills that were passed by the Legislature this year are awaiting signature on Governor Newsom's desk, who can either sign or veto them no later than October 14, 2023.

This year, MCE engaged in 14 bills, and the two that passed the Legislature were both signed by the Governor. The following table summarizes the bills that MCE took a position on this year, and AB 1373 is described in detail below.

Bill Number and Author	Subject	MCE Position	Status
SB 306 (Caballero)	Equitable Building Decarb Program	Support	SIGNED
AB 1373 (Garcia)	Central Procurement, RA, IRP	Neutral	SIGNED
SB 57 (Gonzalez)	Prohibit utility shutoffs during extreme weather events	Support	2-year bill per Author's request
SB 233 (Skinner)	Bidirectional charging in EVs	Support	2-year bill per Author's request
SB 488 (Alvarado-Gil)	Bioenergy at CCAs	Support	2-year bill; Reconsideration granted after failing Senate Energy
SB 507 (Gonzalez)	Equitable charging station distribution data	Support	2-year bill; held in Senate Appropriations
SB 511 (Blakespear)	GHG emissions inventories for cities and counties	Support	2-year bill; held in Assembly Appropriations
SB 527 (Min)	Neighborhood Decarbonization Program	Support	2-year bill; held in Senate Appropriations
SB 529 (Gonzalez)	EV car sharing program for affordable housing	Support	2-year bill; held in Senate Appropriations
AB 538 (Holden)	Regionalization	Support	2-year bill per Author's request
AB 593 (Haney)	Carbon Neutral Buildings by 2045	Support	2-year bill; held in Senate Appropriations
AB 625 (Aguiar-Curry)	Biomass	Support	2-year bill; held in Assembly Appropriations
AB 998 (Connolly)	Biomass and noncombustion technology	Support	2-year bill; held in Senate Appropriations
AB 1538 (Muratsuchi)	Clean Energy Reliability Program	Support	2-year bill; held in Assembly Appropriations

Assembly Bill 1373 (Garcia)

AB 1373 was voted out of the Legislature on September 14th and was signed by the Governor on October 7th. This bill, in particular its central procurement function (described below), has been a priority for the Governor and has been branded as part of the California Climate Action agenda. While MCE originally had an Oppose Unless Amended position on the bill, we shifted to Neutral in June to acknowledge the author's significant work with CalCCA to address concerns about impacts on CCA procurement authority, affordability, and market constraints. In its final form, the bill:

- Allows the CPUC to direct the Department of Water Resources to procure resources to meet statewide needs that are unmet through the Integrated Resources Planning (IRP) process. This centralized procurement is limited to projects that meet a discrete set of criteria, including unusually long development lead times and significant infrastructure requirements, which are intended to limit this procurement to projects like offshore wind and select new geothermal resources. Projects from which DWR procures will be held to a full suite of high-road labor commitments, and be subject to several procedural mechanisms to help control costs. Projects procured through this process cannot rely on fossil fuels and can only use combustion in very limited circumstances. Costs and benefits associated with centrally procured power will be allocated to load serving entities through future regulatory proceedings.
- Require load serving entities, including CCAs, to pay into the state's Strategic Reliability Reserve Fund if they fall short on their resource adequacy obligations during a month when the Strategic Reliability Reserve is called on to meet shortfalls in grid capacity. If the LSE is also required to pay a penalty by the CPUC, the amount of the payment to the Strategic Reliability Reserve will be reduced in order to limit affordability impacts for customers.
- Supports workforce development and environmental monitoring for offshore wind.
- Accelerates transmission buildout and upgrades by streamlining state-level permitting requirements.

Regionalization

As noted earlier in the summer, AB 538 (Holden) was held in the Assembly and became a two-year bill. In July, a group of regulatory leaders from California, Oregon, Washington, Arizona, and New Mexico announced a multi-state working group to advance west-wide regional collaboration outside of a legislative forum. The process will begin by addressing governance for the CAISO's existing Energy Imbalance Market (EIM) and forthcoming Enhanced Day Ahead Market (EDAM), but can also serve as the forum

to explore creation of a full regional transmission operator (RTO). MCE supports this shift in venue as a promising means to make timely progress on this important issue, and has begun to engage with California's regulators in support of this effort. There may be additional legislative activity associated with regionalization.

b. Federal Legislative Advocacy

MCE signed on to a coalition letter organized by environmental, public health and electrification advocates to Senate Appropriations Chair Murray, in support of the Inflation Reduction Act and making a strong statement against funding cuts or implementation barriers. House Republicans have been unsuccessful in directly attacking the IRA but they are having some success at paring back funding for IRA programs and the agencies that administer them. This demonstration of support also increases California CCAs' visibility at the national level.

II. California Public Utilities Commission

a. Diablo Canyon Power Plant Extension

On August 9, 2023, CalCCA requested evidentiary hearings and the opportunity for legal briefing in the Commission's proceeding to extend operation of the Diablo Canyon Power Plant (DCPP) pursuant to SB 846 (SB 846 was passed in 2022 and authorized DCPP's continued operations beyond its scheduled 2025 retirement date to support mid-term reliability needs). CalCCA's request for evidentiary hearings highlights a number of material disputes of fact between the CCAs and Pacific Gas and Electric Company (PG&E) related to DCPP's extension costs and sharing of the resource's benefits.

On September 15, 2023 CalCCA filed its legal brief arguing that PG&E must allocate DCPP's GHG-free and Resource Adequacy (RA) attributes to all CPUC-jurisdictional load serving entities and that the benefits of such allocations vastly outweigh any incremental implementation costs PG&E might incur. Such allocations would also be consistent with the Commission's mandate to equitably allocate the costs and benefits of extended operations of the DCPP. Moreover, allocation of attributes would help relieve pricing and supply pressures in the RA and energy markets, which is expected to continue through mid-decade.

b. PG&E's Application to Create Pacific Generation, LLC

On September 18, 2023 and October 5, 2023, CalCCA filed legal opening and reply briefs opposing PG&E's efforts to transfer generation assets to a new legal entity and subsidiary of PG&E, Pacific Generation, LLC (PacGen). The transfer of generation assets to PacGen is primarily a means to raise capital and bolster PG&E's common stock. Under its proposal, PG&E would transfer substantially all its non-nuclear generation assets to PacGen - a transfer that represents approximately 7% of PG&E's current rate base and 3,600 MW of generation capacity. PacGen would operate as a CPUC-regulated utility, but

PG&E would continue to operate, maintain, and schedule the resources, in effect allowing PG&E to continue to oversee day-to-day operations of the resources and use the resources for PG&E's integrated resource planning purposes. PG&E would also maintain a majority interest in PacGen.

CalCCA's brief opposed CPUC approval of the transfer on the grounds that it is not in the public interest and would result in harm to ratepayers, while largely working to benefit shareholders. In the alternative, if the CPUC chooses to approve the transaction, CalCCA urged adoption of critical guardrails to better protect ratepayers and prevent against detrimental market impacts.

c. Demand Response

On August 11, 2023, the Joint CCAs filed a Reply Brief in the utilities' Demand Response (DR) Application proceeding, supporting parties' proposal to initiate a working group (WG) to discuss dual participation issues in demand management programs. The Joint CCAs highlighted that the Commission must direct the utilities and the CCAs to exchange program participation data in DR programs on a regular basis to enable dual enrollment prevention. The Joint CCAs also advocated for the Commission to establish a scope for the dual participation WG which must include the development of a data exchange process, as well as a customer disenrollment process if dual participation is identified. Finally, the Joint CCAs proposed a timeline for the dual participation WG to ensure that dual enrollment can be prevented during the 2024 summer season.

d. Self-Generation Incentive Program

On August 1, 2023, the Joint CCAs filed Opening Comments in Response to the Assigned Commissioner's Ruling (ACR) on the Self-Generation Incentive Program (SGIP) Heat Pump Water Heater (HPWH) program. Joint CCAs responded to the ACR's question on how to define "qualifying" demand response programs within SGIP's HPWH program. A previous SGIP Decision requires participants in the HPWH program to enroll in a qualifying demand response program which is defined as a CAISO-market integrated program. Joint CCAs supported redefining qualifying demand response programs to include CCA administered programs like MCE's Peak FLEXmarket program.

On August 11, 2023, the Joint CCAs filed Reply Comments in Response to the ACR highlighting parties' support for an updated definition of qualifying demand response programs that includes CCA administered programs. Joint CCAs specifically endorsed a modified version of the definition of qualifying demand response programs written by HPWH program administrator Energy Solutions. This definition accommodates CAISO-market integrated programs as well as load-modifying demand response programs, including event-based and daily load-shifting programs, and would apply irrespective of the program administrator. Joint CCAs requested the Commission adopt the modified definition of qualifying demand response programs and explained how doing so would support achieving SGIP HPWH's program goals.

e. PG&E's 2024 ERRA Forecast Application

MCE is currently engaging in PG&E's 2024 Energy Resource Recover Account (ERRA) Forecast Proceeding with CalCCA. This proceeding will determine PG&E's generation rates and Power Cost Indifference Adjustment (PCIA) rates for PG&E and MCE customers for 2024.

On August 1, 2023, a CPUC Administrative Law Judge (ALJ) issued a ruling requesting parties comment on the level of fixed costs that are included in PG&E's generation rates, and whether the proceeding should address any issues with how those fixed costs are treated. On August 16, 2023 and August 23, 2023, CalCCA submitted comments in response to the ALJ Ruling, urging the Commission to not address fixed generation cost issues within the ERRA forecast proceeding. CalCCA argued that a second phase of the proceeding that included all Investor Owned Utilities (IOUs) would be the more appropriate venue to address any change in treatment of generation cost recovery, and standardize any changes across all IOUs.

On September 6, 2023 CalCCA submitted opening testimony in the proceeding aimed at ensuring that PG&E is appropriately forecasting and equitably allocating costs and applicable credits to both PG&E and CCA customers.

PG&E is expected to update its 2024 ERRA Forecast on October 15, 2023 which will provide MCE with more accurate estimates of 2024 PCIA and PG&E generation rates.

f. PG&E's 2022 ERRA Compliance Application

On September 22, 2023, CalCCA filed Opening Testimony in PG&E's 2022 ERRA Compliance proceeding. This proceeding is meant to review and ensure that PG&E prudently managed and accounted for its generation resources and contracts according to Commission direction and relevant law. CalCCA's testimony highlighted that in 2022, PG&E had significant amounts of excess Resource Adequacy (RA) capacity that it was able to use for its reliability requirements, in part because it did not make sufficiently reasonable attempts to sell the excess RA capacity once it was known to be available. As the market is currently constrained, and load serving entities (LSEs) face challenges in meeting their RA compliance requirements, the choice of PG&E to not make additional attempts to sell its excess RA capacity is concerning. CalCCA recommended that the Commission review and potentially adopt new policies that would ensure all available RA capacity is made available to the market. CalCCA also recommended the Commission should consider applying a monetary disallowance or other penalty to PG&E in this proceeding to account for the fact that they did not make reasonable efforts to sell its excess RA capacity.

g. Demand Flexibility

On September 25, 2023, CalCCA filed Opening Comments on an ALJ Ruling and CPUC Staff proposal to expand existing dynamic rate pilots to support near-term summer reliability. Specifically, the proposal would expand a current hourly, subscription-style rate pilot, which includes incentives for agricultural load automation technology, administered by Valley Clean Energy and PG&E to other customer classes throughout PG&E's service area. CalCCAs Opening Comments requested the CPUC provide additional clarity on the pilots including how funding will be allocated and how implementation details such as customer enrollment, marketing, education, and outreach will work. CalCCA also highlighted that any determination to participate in CPUC rate pilots by CCAs must be made by individual CCAs and their governing Boards.

III. California Independent System Operator

a. Extended Day-Ahead Market Enhancements Initiative

CAISO's day-ahead market is used to forecast electricity demand and commit resources on a day-ahead basis to better balance supply and demand in real time. On August 14, 2023, MCE worked with CalCCA to develop and file comments on the CAISO's Extended Day-Ahead Market Enhancements (EDAM) ISO Balancing Authority Area Participation Rules initiative, which addresses CAISO-specific rules related to the larger EDAM initiative. The purpose of this larger EDAM initiative is to develop rules and frameworks to extend and enhance participation in the CAISO's current day-ahead energy market to other entities throughout the western United States. EDAM is expected to improve market efficiencies and increase California's access to a larger pool of resources across a larger time footprint to support renewables integration and grid reliability. CalCCA's comments focused on CAISO-specific EDAM participation rules to ensure in-state resource sufficiency.

Also, on August 22, 2023, the CAISO sought authorization from the Federal Energy Regulatory Commission to adopt tariff revisions necessary to implement EDAM. The tariff describes the CAISO's implementation provisions and procedures to streamline the expansion of the current day-ahead market to include other participants throughout the west. The CAISO is requesting the EDAM tariff changes be effective in 2024, and EDAM is expected to launch in 2025.

b. Interconnection Process Enhancements Initiative

On August 15, 2023, MCE worked with CalCCA to develop and file comments on Track 2 of the CAISO's Interconnection Process Enhancements (IPE) initiative. This IPE initiative seeks to improve and expedite interconnection of new resources to the grid to support reliability and renewables integration. CalCCA responded to several proposals in the docket for ways to improve and speed up the CAISO's interconnection process. CalCCA refrained from supporting a specific proposal at this time, but communicated several

concepts critical to any adopted proposal, including (1) increased data transparency; (2) a point system to identify viable projects for the CAISO to prioritize for interconnection study; (3) a means of removing resources from the interconnection queue that have stagnated and are not meeting project milestones; and (4) leveraging enhancements to interim deliverability options. CAISO is also looking at whether to limit interconnection requests to projects located in areas where there is sufficient existing transmission capacity or planned capacity and whether to require projects to have an executed Power Purchase Agreement in place as a prerequisite for interconnection study.

The CAISO issued a revised proposal in September to address stakeholder feedback. Further iterations are expected through the end of the year, and the CAISO expects to take a final proposal to the CAISO Board of Governors in mid-Q1 2024.

IV. California Energy Commission

a. Contractor Training Grant Program - Inflation Reduction Act

On September 25, 2023, MCE submitted comments to the California Energy Commission's ("CEC") Request for Information on the Contractor Training Grant program. The Contractor Training Grant program is authorized in the Inflation Reduction Act ("IRA") and administered by the Department of Energy. The CEC may apply for these funds. The CEC, on behalf of California, may submit an application for up to an estimated \$10 million dollars of funds for contractor training for residential energy rebate programs, specifically IRA's residential energy efficiency and electrification programs. MCE submitted information on its existing residential energy contractor training program, the Green Workforce Pathways program, and how the program aligns with IRA Contractor Training Grant program goals. MCE's comments also identified gaps in existing workforce development programs and offered Community Benefits Plan strategies and best practices for the program. Relatedly, MCE is also a member of the Bay Area High-Road to Building Decarbonization Training Partnership funded by the California Workforce Development Board and formally endorsed its comments submitted to the same docket.

Fiscal Impacts: The fiscal impacts of the bills that passed will vary. SB 306 may provide MCE access to additional funding for customer programs. AB 1373 may create procurement costs for which MCE may need to compensate DWR as well as potential additional financial exposure for not complying with resource adequacy compliance requirements. The remaining bills have become 2-years bills and may not be passed or signed into law and may have varied fiscal impacts. SB 57 may contribute to MCE's accounts receivables, but also importantly would disallow utility shutoffs during extreme weather events. SB 488 and AB 625 would enhance MCE's ability to access funding to reduce the cost of bioenergy projects. SB 529 may provide MCE funding for electric vehicle sharing projects at affordable housing facilities. SB 538 may reduce the need for generation and transmission projects which would reduce the costs for MCE to provide service to its communities. AB 1538 may provide incentives to MCE to develop additional

clean energy resources in excess of compliance requirements. The remaining bills would not have a direct fiscal impact. MCE's letter of support for the Inflation Reduction Act may increase the amount of funding available to MCE for customer programs. CalCCA's advocacy on Diablo Canyon Power Plant may reduce the need and costs for MCE to serve its member communities. PG&E's Application to create Pacific Generation, LLC will not create direct fiscal impacts for MCE, but may leave PG&E customers exposed to more financial risk due to PG&E having less assets to meet unexpected financial liabilities. The EDAM initiative may reduce procurement costs for MCE over time. The remaining issues have uncertain or no direct fiscal impacts to MCE.

Recommendation: There are no recommended actions currently.