



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | FAIRFIELD | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY  
PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

## Technical Committee Meeting Friday, October 6, 2023 10:00 A.M.

Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901  
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

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

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/89373348901?pwd=bDlpYkg0bzJQWkRvS205UHNwejlOdz09>

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

### Agenda Page 1 of 2

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 6.2.23 Meeting Minutes
  - C.2 Amendments to Power Purchase Agreements with CES Electron Farm One, LLC
  - C.3 Third Amended and Restated Scheduling Services Agreement with ZGlobal, Inc.

## Agenda Page 2 of 2

6. MCE Solar Billing Plan Tariff (Discussion/Action)
7. Update on MCE's Green Hydrogen Activities (Discussion)
8. Committee Matters & Staff Matters (Discussion)
9. Adjourn

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

*This Committee may be attended by Board Members who do not serve on this Committee. In the event that a quorum of the entire Board is present, this Committee shall act as a Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item.*

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.

**DRAFT**

**MCE TECHNICAL COMMITTEE MEETING MINUTES**  
**Friday, June 2, 2023**  
**10:00 A.M.**

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<b>Present:</b>	Gina Dawson, City of Lafayette Alexis Fineman, Town of San Anselmo Kevin Haroff, City of Larkspur Charles Palmares, City of Vallejo Scott Perkins, City of San Ramon Katie Rice, County of Marin
<b>Absent:</b>	John Gioia, Contra Costa County Eduardo Martinez, City of Richmond Devin Murphy, City of Pinole
<b>Staff &amp; Others:</b>	Darlene Jackson, Lead Board Clerk Alice Havenar-Daughton, VP of Customer Programs Vicken Kasarjian, Chief Operating Officer Tanya Lomas, Internal Operations Assistant Alexandra McGee, Director of Strategic Initiatives Ashley Muth, Internal Operations Coordinator Garth Salisbury, Chief Financial Officer and Treasurer Daniel Settlemyer, Internal Operations Coordinator Jamie Tuckey, Chief of Staff Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Acting Chair Rice called the regular Technical Committee meeting to order at 10:15 a.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were no announcements.

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

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

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

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

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

**DRAFT**

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

**C.1 Approval of 2.2.23 Meeting Minutes**

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

Action: It was M/S/C (Perkins/Dawson) to **approve Consent Calendar C.1**. Motion carried by unanimous roll call vote. (Absent: Directors Gioia, Martinez, and Murphy).

**6. National Energy Infrastructure Fund Offer for Virtual Power Plan Pilot Participants (Discussion/Action)**

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

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

Action: It was M/S/C (Perkins/Haroff) to **authorize staff to execute an amendment and/or other necessary documents to the Loan Origination and Servicing Agreement to facilitate offering NEIF financing to pilot VPP participants to support lower-income customer access to battery storage resources**. Motion carried by unanimous roll call vote. (Absent: Directors Gioia, Martinez, and Murphy).

**7. Peak FLEXmarket Update (Discussion)**

Alice Havenar-Daughton, VP of Customer Programs, presented this item and addressed questions from Committee members.

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

Action: No action required.

**8. Committee Matters & Staff Matters (Discussion)**

There were no comments.

**9. Adjournment**

Acting Chair Rice adjourned the meeting at 11:39 a.m. to the next scheduled Technical Committee Meeting on July 7, 2023.



DRAFT

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Katie Rice, Acting Chair

Attest:

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Dawn Weisz, Secretary



October 6, 2023

TO: MCE Technical Committee

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Amendments to Power Purchase Agreements with CES Electron Farm One, LLC (Agenda Item #05 C.2)

ATTACHMENTS:

- A. Second Amendment to Disadvantaged Communities Green Tariff PPA (4.4 MW)
- B. Second Amendment to Disadvantaged Communities Green Tariff PPA (.24 MW)
- C. First Amendment to Disadvantaged Communities Green Tariff PPA (4.4 MW)
- D. First Amendment to Disadvantaged Communities Green Tariff PPA (.24 MW)
- E. Disadvantaged Communities Green Tariff Power Purchase Agreement (4.4 MW)
- F. Disadvantaged Communities Green Tariff Power Purchase Agreement (.24 MW)

Dear Technical Committee Members:

**Background:**

In June 2018, the California Public Utilities Commission (CPUC) issued Decision (D.)18-06-027, creating new programs to promote the installation of renewable generation among residential customers in disadvantaged communities (DACs). This includes the DAC Green Tariff (DAC-GT) program.

MCE requested approval to administer the DAC-GT program with its Implementation Advice Letter to the CPUC on May 7, 2020 and received approval on April 15, 2021. MCE uses the customer facing program name Green Access for DAC-GT.

The Green Access program is designed to provide a 100% renewable energy service option with a 20% electricity bill discount to eligible customers living within a DAC

designated as in the top quartile (25%) by CalEnviroScreen. The Green Access program allows MCE to build up to 4.64 MW of new solar within PG&E's service territory to serve customers that meet income eligibility requirements.

#### **Summary of Procurement Activity:**

MCE issued a solicitation in August 2021 for new build solar to serve the Green Access program. The solicitation concluded in November 2021 and resulted in several offers. The top ranked offers were the Conflitti solar projects, which consist of: 1) a 4.4 MW solar facility and 2) an adjacent .24 MW solar facility, both with CES Electron Farm One, LLC. The combined total capacity of these two projects filled MCE's Green Access program capacity and power purchase agreements (PPAs) were signed for both facilities in March 2022. A First Amendment was signed in June 2022 that inserted CPUC required language regarding compliance with California's Renewables Portfolio Standard program.

Initially, the Conflitti project was offered as a 4.4 MW solar facility. However, during the PPA negotiations, to fill the Green Access program capacity, MCE requested that the developer build an additional .24 MW facility next to the 4.4 MW facility originally offered in the Green Access solicitation. The developer offered the same price as the 4.4 MW facility before they had completed the interconnection studies and permitting requirements, which can significantly impact the project's development cost. Once the interconnection studies and permitting had been completed for the .24 MW facility, the cost was significantly above what was originally budgeted and took longer to obtain. Consequently, the .24 MW project was no longer financially viable, and without a price adjustment and extension, the developer would cancel the project. In order move the project forward, MCE negotiated this PPA Amendment, which grants a price increase along with an extension to complete construction for both facilities. In exchange, the developer will provide increased Development and Performance Security for the projects and be required to pursue the Low-Income Investment Tax Credit (ITC), if possible. If the Low-Income ITC is obtained, the credit will offset the increase in PPA prices. The proposed amended price would still have been the lowest cost offer in the Green Access solicitation.

#### **Fiscal Impacts:**

The amended Conflitti PPA price will be accounted for in future energy budget line items. MCE receives cost recovery from the state for above market costs associated with the DAC-GT dedicated resource (Conflitti). This is calculated as the difference between the DAC-GT resource cost and MCE's average light green cost.

#### **Recommendation:**

Approve the proposed Second Amendments to the Power Purchase Agreements with CES Electron Farm One, LLC.

## SECOND AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT

This **SECOND AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT** (this “Amendment”) effective as of \_\_\_\_\_, 2023 (“Effective Date”), is made between CES Electron Farm One, LLC (“Seller”) and Marin Clean Energy, a California joint powers authority (“MCE” or “Buyer”). Seller and Buyer are referred to individually as a “Party” or collectively as the “Parties”.

### RECITALS

**WHEREAS**, the Parties entered into that certain Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement, dated March 20, 2022, as amended on June 17, 2022 (the “Agreement”); and

**WHEREAS**, the Parties desire to amend the Agreement on the terms and conditions contained herein.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants and agreements herein contained, the Parties agree as follows:

#### 1. Amendments to the Agreement.

- (a) Cover Sheet, the Expected Commercial Operation Date is hereby amended by deleting “12/31/2023” and replacing it with “3/30/2024”.
- (b) Cover Sheet, the Contract Price is hereby amended by deleting “[REDACTED]” and replacing it with “[REDACTED]”.
- (c) Cover Sheet, the Development Security and Performance Security amounts are hereby amended by deleting “[REDACTED]” and replacing it with “[REDACTED]” in both instances.
- (d) Exhibit C, subsection (a) is hereby deleted in its entirety and replaced with the following:

“(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy and Deemed Delivered Energy, if any, up to one hundred and five percent (105%) of the Expected Energy for each Contract Year.”
- (e) Exhibit C, subsection (c) is hereby amended by adding the following sentence at the end thereof:

“Notwithstanding the foregoing, Seller shall apply for and use commercially reasonable efforts to obtain the low-income communities bonus adder tax credit for the ITC (the “Low-Income ITC Bonus”) for the Facility. If Seller (or any Affiliate of Seller) obtains the Low-Income ITC Bonus for the Facility, the Contract Price shall be automatically reduced by [REDACTED] without further action or amendment required by either Party.”

## 2. General.

a. CPUC Approval. Within ninety (90) days after the Effective Date of this Amendment, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Amendment or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Amendment on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval. "CPUC Approval" shall have the same meaning as set forth in the Agreement.

b. Effect of the April 10, 2023 Letter Regarding Force Majeure Event. The Parties agree that this Amendment supersedes that certain Response to Notice of Force Majeure Event letter dated April 10, 2023, and for greater clarity, Buyer acknowledges that the provision in such letter that no further extension shall be granted under the Development Cure Period for any reason, including Force Majeure Event, absent the agreement of the Parties, is no longer applicable to the Agreement.

c. Agreement Otherwise Not Affected. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.

d. Entire Agreement. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.

e. Binding Effect. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.

f. Governing Law. THIS AMENDMENT 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 AMENDMENT.

g. Counterparts. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed signature page of this Amendment as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.

h. Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

*[Signatures appear on the following page.]*

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

**CES Electron Farm One, LLC**

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Marin Clean Energy, a California joint powers authority**

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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*[Signatures appear on the following page.]*



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**CES Electron Farm One, LLC**

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Marin Clean Energy, a California joint powers authority**

Sign: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FIRST AMENDMENT TO  
DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER  
PURCHASE AGREEMENT**

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**RECITALS**

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**WHEREAS**, the California Public Utilities Commission (“CPUC”) has recently affirmed its understanding that certain standard contract terms must be included by all retail sellers, including CCAs such as MCE, without modification in every contract used for compliance with California’s Renewables Portfolio Standard program; and

**WHEREAS**, the Parties desire to amend the Agreement on the terms and conditions contained herein to conform to the non-modifiable standard contract terms.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants and agreements herein contained, the Parties agree as follows:

**1. Amendments to the Agreement.**

(a) The Parties hereby agree that the following provisions are added to the Agreement:

“Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERK”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].”

“Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or

misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].”

“Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].”

“Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].”

(b) The provisions set forth in Section 1(a) above shall be deemed to be controlling in the event of a conflict with any similar prior language in the Agreement.

## **2. General.**

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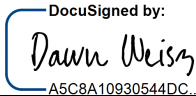
*[Signatures appear on the following page.]*

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

CES Electron Farm One, LLC

Sign:  25729F62C1D04DF...  
Title: Managing Member  
Date: 6/9/2022

**Marin Clean Energy, a California joint  
powers authority**

Sign:  A5C8A10930544DC...  
Title: CEO  
Date: 6/8/2022

**FIRST AMENDMENT TO  
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**CES Electron Farm One, LLC**

DocuSigned by:  
  
25729F62C1D04DF...  
Sign: \_\_\_\_\_  
Print: **Evan Riley** \_\_\_\_\_  
Title: **Managing Member** \_\_\_\_\_

**Marin Clean Energy, a California joint powers authority**

DocuSigned by:  
  
A5C9A10930544DC...  
Sign: \_\_\_\_\_  
Print: **Dawn Weisz** \_\_\_\_\_  
Title: **CEO** \_\_\_\_\_

## PROPOSED EXECUTION VERSION

**DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)****RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET****Seller:** CES Electron Farm One, LLC**Buyer:** Marin Clean Energy, a California joint powers authority**Description of Facility:** A 4.4 MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 4.0 (or the latest version) tool (such community, a "**DAC**"), within PG&E's distribution service territory.**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	5/29/2019
<b>Documentation of Conditional Use Permit if required:</b> <b>[X] CEQA, [ ] Cat Ex, [ ] Neg Dec, [X] Mitigated Neg Dec, [ ] EIR</b>	10/31/2022
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	3/3/2020
<b>Executed Interconnection Agreement</b>	3/30/2022
<b>Financial Close</b>	3/31/2023
<b>Expected Construction Start Date</b>	8/1/2023
<b>Full Capacity Deliverability Status Obtained</b>	1/11/2022
<b>Initial Synchronization</b>	8/1/2023
<b>Network Upgrades completed</b>	N/A
<b>Expected Commercial Operation Date</b>	12/31/2023

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.



**Expected Energy:**

Contract Year	Expected Energy (MWh)
1-20	12,254 MWh in Contract Year 1, and subject to annual degradation of 0.50%.

**Guaranteed Capacity:** 4.4 MW

**Contract Price:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status and Expected FCDS Date:
- ☒ Ancillary Services

**Scheduling Coordinator:** Buyer/Buyer Third Party

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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## RENEWABLE POWER PURCHASE AGREEMENT

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

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

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

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

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

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

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

**“Buyer Bid Curtailment”** means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

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

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

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

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

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

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

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

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

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

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

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

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

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

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

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

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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



**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

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

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

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.10.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.10.

**“Confidential Information”** has the meaning set forth in Section 18.118.1.

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

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

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

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

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

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

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

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

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

**“CPUC Approval”** means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

**“Curtailement Cap”** means the yearly quantity per Contract Year, in MWh, equal to [REDACTED].

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

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

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but

not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

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

**"DAC"** has the meaning set forth on the Cover Sheet.

**"DAC-GT"** means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

**"Day"** or **"day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

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

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

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

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

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Day-Ahead Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

**"Delay Damages"** means Construction Delay Damages and COD Delay Damages.

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

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

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

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

**“Early Termination Date”** has the meaning set forth in Section 11.2.

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

**“Effective FCDS Date”** means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

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

**“Energy”** means electrical energy (measured in MWh) generated by the Facility.

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

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

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

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

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

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

**“Expected FCDS Date”** means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

**“Facility”** means the electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

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

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

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

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

**“Force Majeure Event”** has the meaning set forth in Section 10.110.1.

**“Forced Facility Outage”** means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

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

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

**“Full Capacity Deliverability Status Finding”** means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

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

**“Gains”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made

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

**“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 hereto.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Capacity”** means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

**“Guaranteed Energy Production”** means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

**“Guaranteed RA Amount”** means the amount of MW equal to the Net Qualifying Capacity (NQC) of the Facility.

**“Guarantor”** means, with respect to Seller, any Person that (a) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (b) has a tangible net worth of at least [REDACTED], (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

**“Guaranty”** means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

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

**“Indemnified Party”** has the meaning set forth in Section 16.116.1.

**“Indemnifying Party”** has the meaning set forth in Section 16.116.1.

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

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

**“Interconnection Agreement”** means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator pursuant to which the Facility will be interconnected with the Transmission System and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities, as applicable, 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.

**“ITC”** means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

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

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a Qualified Issuer 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 Capacity Area Resources”** has the meaning set forth in the CAISO Tariff.



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

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Performance Measurement Period”** shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

**“Permitted Transferee”** means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

**“Planned Outage”** has the meaning set forth in Section 4.5(a).

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

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

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

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

**“Prudent Industry Practice”** means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

**“Qualified Issuer”** means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

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

**“RA Deficiency Amount”** has the meaning set forth in Section 3.7(d).

**“RA Guarantee Date”** means the date that is sixty (60) days after the Commercial Operation Date.

**“RA Shortfall Amount”** means, for purposes of calculating an RA Deficiency Amount under Section 3.7(d), the extent, expressed in kW, to which during any RA Shortfall Month, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the NQC the Facility would have otherwise qualified for due to (a) the Facility not having achieved Full

Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO's reduction in the Net Qualifying Capacity of the Facility due to the Facility's actual Forced Facility Outage rate (i.e., past performance)

**"RA Shortfall Month"** means the applicable calendar month following the RA Guarantee Date during which there is an RA Shortfall Amount.

**"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.

**"Remedial Action Plan"** has the meaning in Section 2.5.

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

**"Renewable Energy Incentives"** means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**"Resource Adequacy"** means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

**"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, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Station Use**” means the Energy (including Energy produced by the Facility) that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility.

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

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

**“Tax Credits”** means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

**“Terminated Transaction”** has the meaning set forth in Section 11.2.

**“Termination Payment”** has the meaning set forth in Section 11.111.3.

**“Test Energy”** means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

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

**“Transmission System”** means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

**“Ultimate Parent”** means [REDACTED]

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

**“Workforce Requirements”** means, collectively, the workforce and prevailing wage requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b).

**“WREGIS”** means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(e).

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

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

(g) the terms “include” and “including” or similar words shall be deemed to be followed by the words “without limitation” and any list of examples following such terms 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 Industry Practice shall have such meaning in this

Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) “or” is not necessarily exclusive; and

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the “**Contract Term**”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product (other than Test Energy) are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

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

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

(d) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;



(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(h) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

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

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

(k) Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff;

(l) Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable;

(m) If applicable, Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(n) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(o) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

**2.3 CPUC Approval.** Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

**2.4 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.5 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.6 Workforce Requirements.** Seller agrees to comply with the Workforce Requirements and to provide Buyer copies of documentation establishing ongoing compliance

with the Workforce Requirements as may be reasonably requested by Buyer from time to time.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable prices set forth in Exhibit C, all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

#### **3.5 Future Environmental Attributes**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional

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

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

3.6 **Test Energy.** Prior to the Commercial Operation Date, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues received by Buyer for such Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

(b) Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes, if any, existing during the Delivery Term.

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

(d) Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [REDACTED]; provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. RA Deficiency Amounts will be netted against amounts owing to Seller pursuant to Section 8.6.

(e) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that Capacity Attributes belong exclusively to Buyer.

(f) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy; provided that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(g) Subject to Section 3.11 and at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

**3.8 CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

**3.9 California Renewables Portfolio Standard.**

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially

reasonable efforts” as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

### 3.10 Change in Law.

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

(b) Compliance Expenditure Cap. If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in clauses

(a), (b) and (c) below, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [REDACTED] (“**Compliance Expenditure Cap**”):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost 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 out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the 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.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

#### 4.2 Title and Risk of Loss.

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 ("Average Expected Energy"), or as reasonably requested by Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the Available Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("Monthly Delivery Forecast"), or as reasonably requested by Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Industry Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Capacity and (ii) hourly expected Facility Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller



fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Facility Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Facility Outages and Seller shall keep Buyer 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.

(e) Forecasting Penalties. Subject to 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 its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for such amounts (the "**Forecasting Penalty**") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.

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

#### 4.4 **Dispatch Down/Curtailment**

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

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

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such

maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

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

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

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

(e) **Health and Safety**. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.16.2.

4.6 **Scheduling Coordinator Responsibilities**. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in **Exhibit D**.

4.7 **WREGIS**. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated,

any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller's obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

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

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

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and

Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed 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, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization (collectively, the "**Dedicated Interconnection 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 the Dedicated Interconnection Capacity.

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

## 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 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.** The Parties shall cooperate to minimize tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury 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 to Buyer.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit M. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and 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.

7.2 **Meter Verification.** 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. Seller may elect to install and maintain, at its own expense, backup metering devices.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice

shall reflect the CAISO T+9 settlement information and shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within five (5) Business Days after the CAISO T+9 settlement information becomes available.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

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 there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s 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 non-erring Party received Notice thereof. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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 or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by

the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 undisputed 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 Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount 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 Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of any unpaid Construction Delay Damages within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. 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 (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, 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 Development Security.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (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 or Guaranty that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

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

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

## **ARTICLE 9 NOTICES**

**9.1 Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested



changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this

Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) 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.

**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 with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

**10.3 Notice for Force Majeure.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

### 11.1 Events of Default. An “Event of Default” shall mean,

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(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) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.114.2 or 14.3, as appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] following the Guaranteed Commercial Operation Date;

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date within [REDACTED] days of the Guaranteed Construction Start Date

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Industry Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days;

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

(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 under any Guaranty;

(C) the Guarantor becomes Bankrupt;

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

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

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

(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 meet the definition of Qualified Issuer;

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

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

(D) 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;

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

(F) 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)(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 any Terminated Transaction and the Event of Default related thereto.

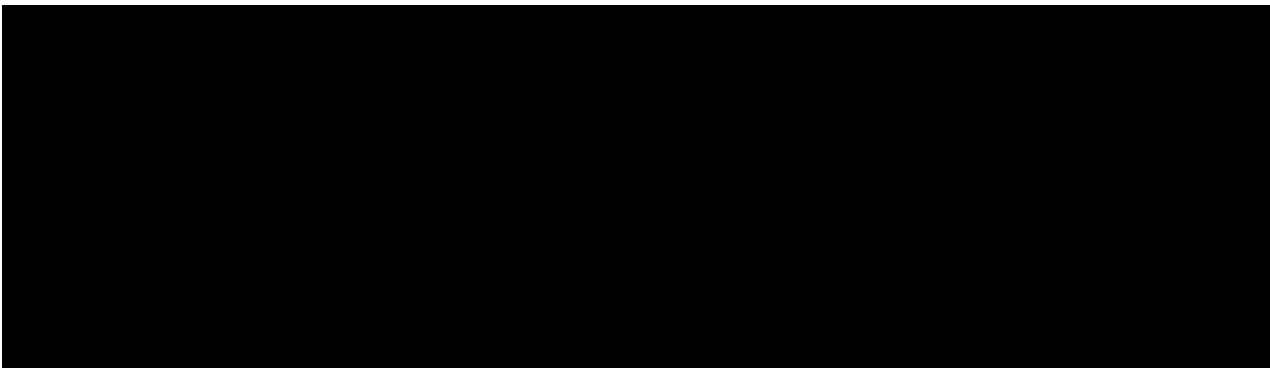
**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting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

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

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

**11.6 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this

Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.



**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES

CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

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

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

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



positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

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

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

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

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

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to use commercially reasonable efforts to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to enter into a project labor agreement of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall use commercially reasonable efforts to ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local Hire Requirement**"). Seller's construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to satisfy the Local Hire Requirement.

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

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming

activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15<sup>th</sup> anniversary of Commercial Operation.

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

- (A) 36-inch minimum height above ground of the lowest edge of the solar panels;
- (B) Burying conduits and wiring with homeruns tight to bottom of panels;
- (C) Designing inter-row access/spacing to enable vegetation management; and
- (D) Utilizing ‘BeeWhere’ registration if beehives are placed onsite.

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

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

## ARTICLE 14 ASSIGNMENT

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

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

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

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

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

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

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure

period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the

event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

(i) If the financing transaction is or includes a tax equity transaction, Buyer shall in good faith work with Seller and Lender to agree upon a Buyer estoppel certificate containing customary terms and conditions reasonably acceptable to Buyer, Seller and Lender.

(j) Buyer and Seller acknowledge that the Facility may be financed or refinanced as a portfolio along with other projects or assets owned by Seller and its Affiliates.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel)

in addition to court costs and any and all other costs recoverable in said action.

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.116.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

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

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). 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) **Umbrella/Excess Liability Insurance.** Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(j) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully

in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, 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.

## ARTICLE 19 MISCELLANEOUS

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

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

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

“public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

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

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

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

19.11 **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, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “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.

19.13 **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.

**CES ELECTRON FARM ONE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Conflitti

**Site includes all or some of the following APNs:**

**County:** Fresno County, California

**Type of Generating Facility:** Solar photovoltaic

**Guaranteed Capacity:** 4.4 MW

**Maximum Output:** 4.4 MW

**Delivery Point:** Facility Pnode

**Interconnection Point:** Panoche 1102 distribution line, Panoche Substation Bank 3. 36.628, - 120.568

**Facility Pnode:**

**Participating Transmission Owner:** Pacific Gas and Electric Company (PG&E) (or any successor entity)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) 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. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment, upon exercise of Buyer’s 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 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.



- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
  - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the 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, Seller shall pay COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
  - a. a Force Majeure Event occurs;
  - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller;
  - c. [REDACTED]
  - d. [REDACTED]

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed [REDACTED] days, for any reason, including a Force Majeure Event, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the Agreement, or (iv) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

## EXHIBIT C

### COMPENSATION

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

(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of [REDACTED]

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("Negative LMP Costs").

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

(e) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

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

(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, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined under the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be 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 any undisputed 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 third party 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.

## **EXHIBIT E**

### **FORM OF PROGRESS REPORT**

Each Progress Report must include the following items:

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

**EXHIBIT F-1****FORM OF AVERAGE EXPECTED ENERGY REPORT**

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
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AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2****FORM OF MONTHLY AVAILABLE CAPACITY REPORT**[Available Capacity, MW per hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.



## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes, as reasonably determined by Buyer.

D = Contract Price, in \$/MWh

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

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner and CAISO.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. A performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

5. \_\_\_\_\_ The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.

6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].

7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

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

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

**CES ELECTRON FARM ONE, LLC**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, (b) email to *[bank email address]* or (c) facsimile to *[bank fax number]*. 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 Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, 1125 Tamalpais Avenue San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

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[*Insert officer name*]

[*Insert officer title*]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

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

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

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

[Specify account information]

Marin Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and CES Electron Farm One, LLC, a California limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_], 20\_\_\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the



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

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

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

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including 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 PPA, but that are expressly waived under any provision of this Guaranty).

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, 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, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
Attn:   
Fax:

If delivered to Guarantor, to it at   
Attn:   
Fax:

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

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

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

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

BUYER:

[\_\_\_\_\_]

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

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

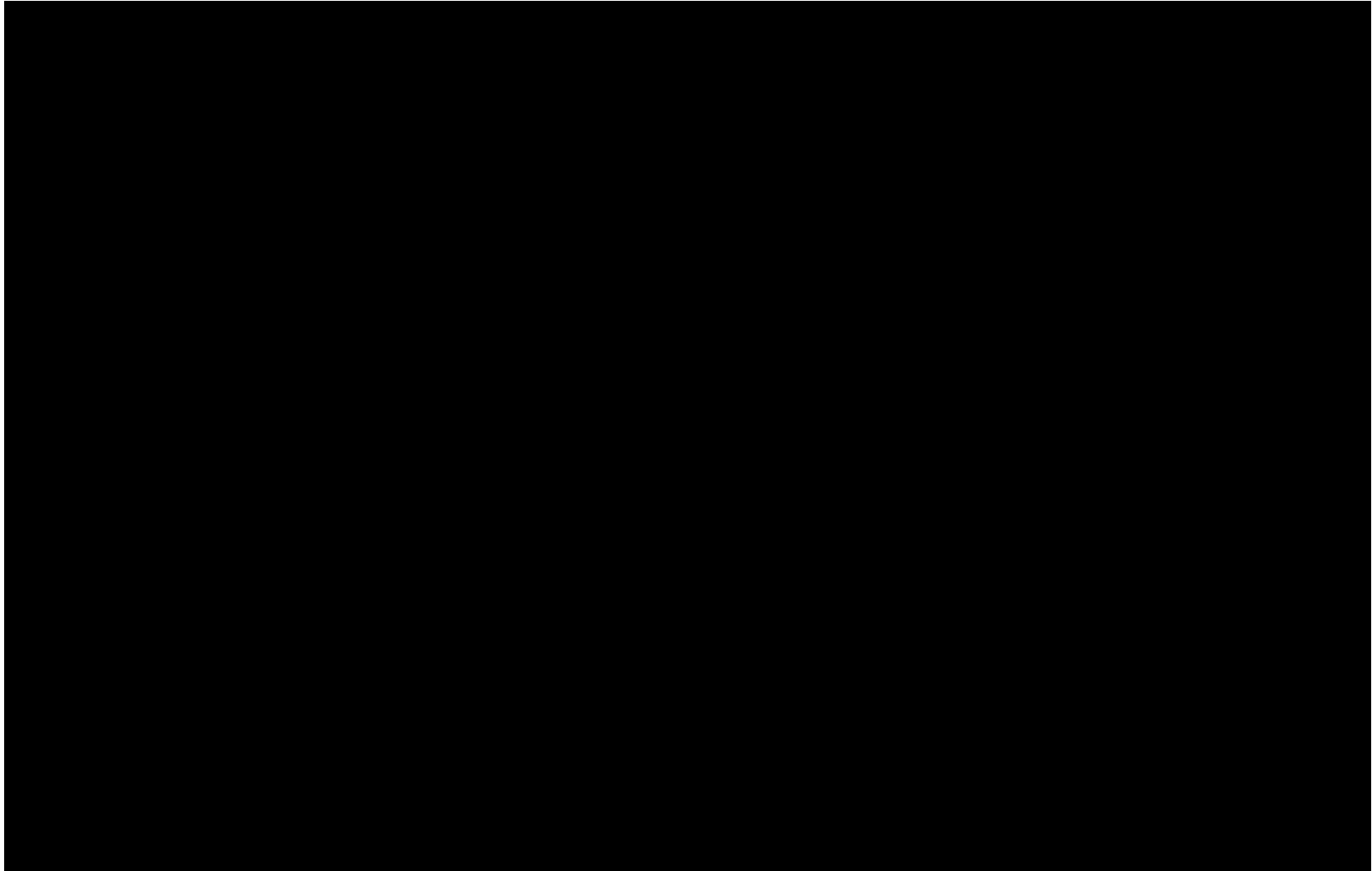
Title: \_\_\_\_\_

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

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

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

**EXHIBIT M**  
**METERING DIAGRAM**



**EXHIBIT N****NOTICES**

<b>CES ELECTRON FARM ONE, LLC</b> ("Seller")	<b>MARIN CLEAN ENERGY, a California</b> <b>joint powers authority</b> ("Buyer")
<b>All Notices:</b>  Street: 1808 Wedemeyer St, Suite 221 City: San Francisco, CA, 94122 Attn: Asset Management Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>All Notices:</b>  Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: 84-4804147 (Parent)	<b>Reference Numbers:</b> Duns: 829602338 Federal Tax ID Number: 26-4300997
<b>Invoices:</b> Attn: Accounts Payable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Invoices:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Scheduling:</b> Attn: Scheduling Phone: 248-808-2015 Email: <a href="mailto:chris.woodington@whitepinerenew.com">chris.woodington@whitepinerenew.com</a>	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 Email: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a>
<b>Confirmations:</b> Attn: CEO Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Payments:</b> Attn: Accounts Receivable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Payments:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> 
<b>With additional Notices of an Event of Default to:</b> Attn: Jordan Dansby Phone: 703-618-0851 Email: <a href="mailto:jordan@cleanenergycounsel.com">jordan@cleanenergycounsel.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Emergency Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Emergency Contact:</b> Attn: Phone: Email:

## EXHIBIT O

### SELLER COMMITMENTS

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☒ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☒ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 4.0 (or the latest version) Tool;
- ☒ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☒ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☒ Projects that commit to including components and materials manufactured and/or assembled in the United States; and
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of a partnership with a local non-profit for a jobs training program for the first 5 years for training related to solar installation and / or operations and maintenance.
- ☐ Other: [*describe open space preservation, habitat improvement, or food programs*].



## EXHIBIT P

## POLLINATOR SCORECARD



## Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



### 1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points  
☐ 46-60 % +10 points  
☐ 61+ % +15 points

Total points

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

### 2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points  
☐ 51-75% +10 points  
☐ 76-100% +15 points

Total points

### 3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points  
☐ 12-15 species +10 points  
☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

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

- ☐ Spring (March-May) +5 points  
☐ Summer (June-August) +5 points  
☐ Fall (September-November) +5 points  
☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

### 5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points  
☐ Native trees/shrubs +2 points  
☐ Clean, perennial water sources +2 points  
☐ Created nesting feature(s) (i.e., native bee houses) +2 points

Total points

### 6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points  
☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

### 7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points  
☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points  
☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

### 8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points  
☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points  
☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

### 9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85  
 Meets Pollinator Standards 70-84

Project Name:  
 Vegetation Consultant:  
 Project Location:  
 Total acres (array and open area):  
 Projected Seeding Date:

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

**POLLINATOR  
PARTNERSHIP**



**EXHIBIT Q**  
**OPERATING RESTRICTIONS**

## EXHIBIT R

### DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

## MCE Supplier Diversity Questionnaire

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

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

**\* Required**

1. Email address \*

---

2. Business Name \*

---

3. Where is your business located/headquartered? \*

---

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

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

*Mark only one oval.*

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

10/9/2020

MCE Supplier Diversity Questionnaire

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

Please choose all that apply. \*

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

Check all that apply.

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

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

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

Check all that apply.

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

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

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

*Mark only one oval.*

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

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

*Check all that apply.*

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

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYQdqeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

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

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

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10/9/2020

MCE Supplier Diversity Questionnaire

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

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

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

Subcontractors

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

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

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable



10/9/2020

MCE Supplier Diversity Questionnaire

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

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

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

#### Labor Agreements

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

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

*Check all that apply.*

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

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

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

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10/9/2020

MCE Supplier Diversity Questionnaire

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

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

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

*Mark only one oval.*

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

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

*Mark only one oval.*

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

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

Equity, Diversity,  
Inclusion, and Justice

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

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

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

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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.

10/9/2020

MCE Supplier Diversity Questionnaire

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11/11

## PROPOSED EXECUTION VERSION

**DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)****RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET****Seller:** CES Electron Farm One, LLC**Buyer:** Marin Clean Energy, a California joint powers authority**Description of Facility:** A 0.24 MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 4.0 (or the latest version) tool (such community, a "**DAC**"), within PG&E's distribution service territory.**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	5/29/2019
<b>Documentation of Conditional Use Permit if required:</b> <b>[ X ] CEQA, [ ] Cat Ex, [ ] Neg Dec, [X] Mitigated Neg Dec, [ ] EIR</b>	10/31/2022
<b>Executed Interconnection Agreement</b>	12/15/2022
<b>Financial Close</b>	3/31/2022
<b>Expected Construction Start Date</b>	8/1/2023
<b>Initial Synchronization</b>	8/1/2023
<b>Network Upgrades completed</b>	N/A
<b>Expected Commercial Operation Date</b>	12/31/2023

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.**Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1 - 20	668 MWh in Contract Year 1, and subject to annual degradation of 0.50%

**Guaranteed Capacity:** 0.24 MW

**Contract Price:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Capacity Attributes

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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**Exhibits:**

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## RENEWABLE POWER PURCHASE AGREEMENT

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

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

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

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

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

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

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

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

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

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

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

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

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

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy.

Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

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

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

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.10.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.10.

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

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

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

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

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

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

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

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

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

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

**“CPUC Approval”** means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

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

(a) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) 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;

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

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

**"DAC"** has the meaning set forth on the Cover Sheet.

**"DAC-GT"** means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

**"Day"** or **"day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

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

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Facility was available to produce and would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be determined in a commercially reasonable manner by Buyer by reference to the Average Expected Energy amounts set forth Exhibit F, less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

**"Delay Damages"** means Construction Delay Damages and COD Delay Damages.

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



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

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

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

**“Early Termination Date”** has the meaning set forth in Section 11.2.

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

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

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

**“Energy”** means electrical energy (measured in MWh) generated by the Facility.

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

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

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

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

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

**“Facility”** means the electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

**“Facility Energy”** means the Energy during any applicable measurement period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

**“Facility Meter”** means the revenue-grade meter that meets the requirements of the Participating Transmission Owner that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will

be subject to adjustment in accordance with applicable meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

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

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

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

“**Forced Facility Outage**” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

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

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

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

“**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 hereto.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Capacity”** means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

**“Guaranteed Energy Production”** means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

**“Guarantor”** means, with respect to Seller, any Person that (a) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (b) has a tangible net worth of at least [REDACTED] (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes

and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

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

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

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

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

“**Interconnection Agreement**” means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator, as applicable, pursuant to which the Facility will be interconnected with the Transmission System and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities, as applicable, 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.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

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

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a Qualified Issuer 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.

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

**“Performance Measurement Period”** shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

**“Permitted Transferee”** means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

**“Planned Outage”** has the meaning set forth in Section 4.5(a).

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

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

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

**“Prudent Industry Practice”** means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

**“Qualified Issuer”** means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

**“Remedial Action Plan”** has the meaning in Section 2.5.

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

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

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

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

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

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

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

**“Station Use”** means the Energy (including produced by the Facility) that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility.

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

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

**“Tax Credits”** means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

**“Terminated Transaction”** has the meaning set forth in Section 11.2.

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

**“Transmission System”** means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point.



**“Ultimate Parent”** means [REDACTED]

**“WREGIS”** means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(e).

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

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

(g) the terms “include” and “including” or similar words shall be deemed to be followed by the words “without limitation” and any list of examples following such terms 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 Industry Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) “or” is not necessarily exclusive; and

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

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the “**Contract Term**”); **provided, however,** that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product (other than Test Energy) are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

**2.2 Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

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

(c) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(d) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(e) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(f) Seller has demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(g) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

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

(j) Twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers;

(k) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(l) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

**2.3 CPUC Approval.** Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

**2.4 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.5 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.6 Workforce Requirements.** Seller agrees to provide Buyer copies of documentation establishing ongoing compliance with the workforce and prevailing wage

requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b) as may be reasonably requested by Buyer from time to time.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable prices set forth in Exhibit C, all of the Product produced by or associated with the Facility. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Reserved.**

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

3.5 **Future Environmental Attributes**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental

Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

### 3.6 **Reserved.**

3.7 **Capacity Attributes.** Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes, if any, existing during the Delivery Term.

3.8 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

### 3.9 **California Renewables Portfolio Standard.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

(b) **Transfer of Renewable Energy Credits.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

### 3.10 Change in Law.

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

(b) Subject to Seller establishing to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with the Compliance Actions, the maximum amount of out-of-pocket expenses Seller shall be obligated to bear during the Delivery Term with respect to the Compliance Actions shall be capped at [REDACTED] (“Compliance Expenditure Cap”).

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the 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.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges.

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

### **4.2 Title and Risk of Loss.**

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 Forecasting. Seller shall provide the Available Capacity forecasts described below and shall transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

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



Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F (“**Average Expected Energy**”), or as reasonably requested by Buyer.

(b) Reserved.

#### 4.4 **Dispatch Down/Curtailment**

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Buyer Curtailment Order, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

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

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with prompt Notice and expected duration (if known) of any Forced Facility Outage that has continued, or is expected to continue, for more than ninety-six (96) hours.

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

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

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

#### 4.6 **Reserved.**

4.7 **WREGIS.** Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller's obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

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

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

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure throughout the Delivery Term that the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity (the "**Dedicated Interconnection Capacity**").

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

## 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 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.** The Parties shall cooperate to minimize tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury 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 to Buyer.

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit M. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) the meter data directly relating to the Facility and all inspection, testing and calibration data and reports.

7.2 **Meter Verification.** 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. Seller may elect to install and maintain, at its own expense, backup metering devices.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within fifteen (15) Business Days after the end of the applicable delivery month.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

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 there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s 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 non-erring Party received Notice thereof. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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 or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 undisputed 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 Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount 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 Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of any unpaid Construction Delay Damages within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. 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 (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, 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 Development Security.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially

in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (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 or Guaranty that meets the requirements set forth in the definition of Performance Security.

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

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

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an



act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) 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.

**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 with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

**10.3 Notice for Force Majeure.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief

from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An “**Event of Default**” shall mean,

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(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) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] following the Guaranteed Commercial Operation Date;

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

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

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, except to the extent due to a Force Majeure Event;

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

(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 under any Guaranty;

(C) the Guarantor becomes Bankrupt;

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

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

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

(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 meet the definition of Qualified Issuer;

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

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

(D) 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;

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

(F) 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)(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 any Terminated Transaction and the Event of Default related thereto.

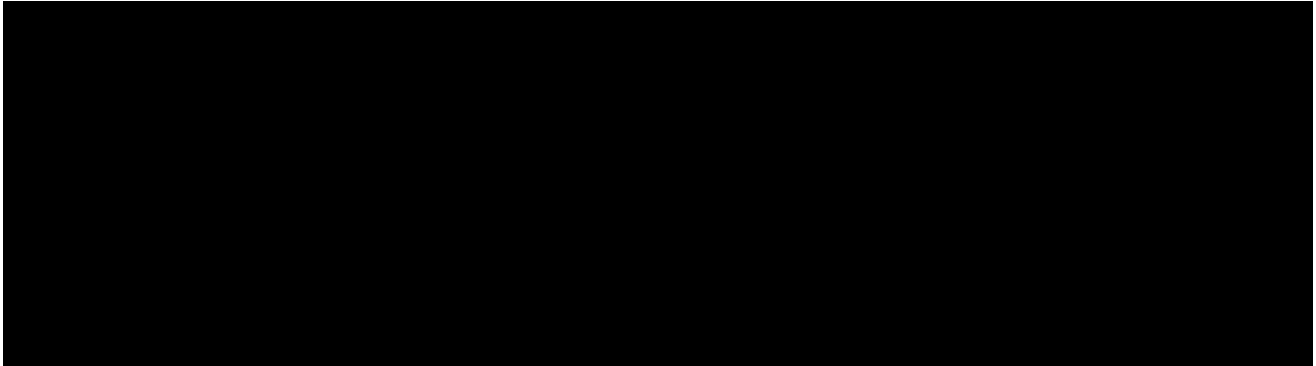
**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting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

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

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

**11.6 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this

Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.



**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES

CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

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

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

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

positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

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

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



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

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

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to use commercially reasonable efforts to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to enter into a project labor agreement of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall use commercially reasonable efforts to ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local Hire Requirement**"). Seller's construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to satisfy the Local Hire Requirement.

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

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming

activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15<sup>th</sup> anniversary of Commercial Operation.

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

- (A) 36-inch minimum height above ground of the lowest edge of the solar panels;
- (B) Burying conduits and wiring with homeruns tight to bottom of panels;
- (C) Designing inter-row access/spacing to enable vegetation management; and
- (D) Utilizing ‘BeeWhere’ registration if beehives are placed onsite.

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

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Seller represents and warrants that it will not knowingly, and will use reasonable efforts to ensure that it does not inadvertently, 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**”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland

Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

## ARTICLE 14 ASSIGNMENT

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

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

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

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

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

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

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must

itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

(i) If the financing transaction is or includes a tax equity transaction, Buyer shall in good faith work with Seller and Lender to agree upon a Buyer estoppel certificate containing customary terms and conditions reasonably acceptable to Buyer, Seller and Lender.

(j) Buyer and Seller acknowledge that the Facility may be financed or refinanced as a portfolio along with other projects or assets owned by Seller and its Affiliates.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because

of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

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

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). 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) **Umbrella/Excess Liability Insurance.** Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(j) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully



in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, 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.

## ARTICLE 19 MISCELLANEOUS

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

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

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

“public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

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

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

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

19.11 **Change in Electric Market Design.** If a change in Law 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, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “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.

19.13 **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.

**CES ELECTRON FARM ONE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Conflitti

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

**County:** Fresno County, California

**Type of Generating Facility:** Solar photovoltaic

**Guaranteed Capacity:** 0.24 MW

**Maximum Output:** 0.24 MW

**Delivery Point:** Interconnection Point

**Interconnection Point:** Panoche 1102 distribution line, Panoche Substation Bank 3. 36.628, - 120.568

**Participating Transmission Owner:** Pacific Gas and Electric Company (PG&E) (or any successor entity)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) 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. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment, upon exercise of Buyer’s 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 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.

- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
  - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the 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, Seller shall pay COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
  4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
    - a. a Force Majeure Event occurs; or
    - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller.
    - c. [REDACTED]
    - d. [REDACTED]



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed [REDACTED] days, for any reason, including a Force Majeure Event, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the Agreement, or (iv) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each kW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed 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) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy and Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to [REDACTED]

(c) Excess Settlement Interval Deliveries. If during any applicable measurement period, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of such measurement period, expressed in hours ("Excess MWh"), then the price applicable to all such excess MWh in such measurement period shall be Zero Dollars (\$0).

(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. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

**EXHIBIT D**

**RESERVED**

## **EXHIBIT E**

### **FORM OF PROGRESS REPORT**

Each Progress Report must include the following items:

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

## EXHIBIT F

### FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for NP-15, plus (b) the market value of Replacement Green Attributes, both as reasonably determined by Buyer.

D = Contract Price, in \$/MWh

**“Replacement Green Attributes”** means Portfolio Content Category 1 Renewable Energy Credits of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between CES Electron Farm One, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. A performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).
5. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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



## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

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

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

**CES ELECTRON FARM ONE, LLC**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

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

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to *[bank email address]* or (c) facsimile to *[bank fax number]*. 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 Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, 1125 Tamalpais Avenue San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

---

[*Insert officer name*]

[*Insert officer title*]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

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

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

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

[Specify account information]

Marin Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and CES Electron Farm One, LLC, a California limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_\_] 20\_\_\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

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

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

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

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including 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 PPA, but that are expressly waived under any provision of this Guaranty).

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, 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, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
 Attn:   
 Fax:

If delivered to Guarantor, to it at   
 Attn:   
 Fax:

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force



and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

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

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

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

BUYER:

[\_\_\_\_\_]

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

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

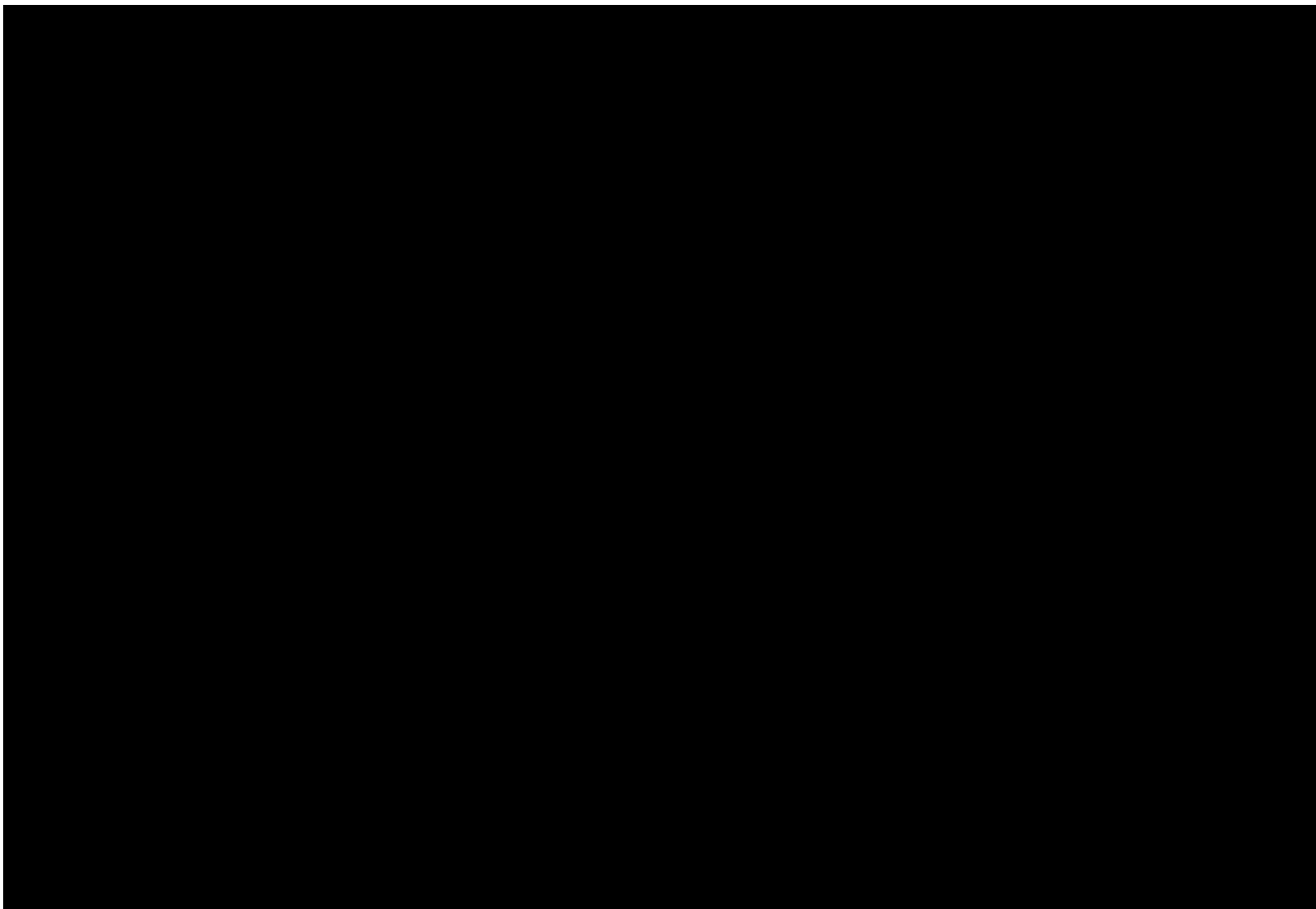
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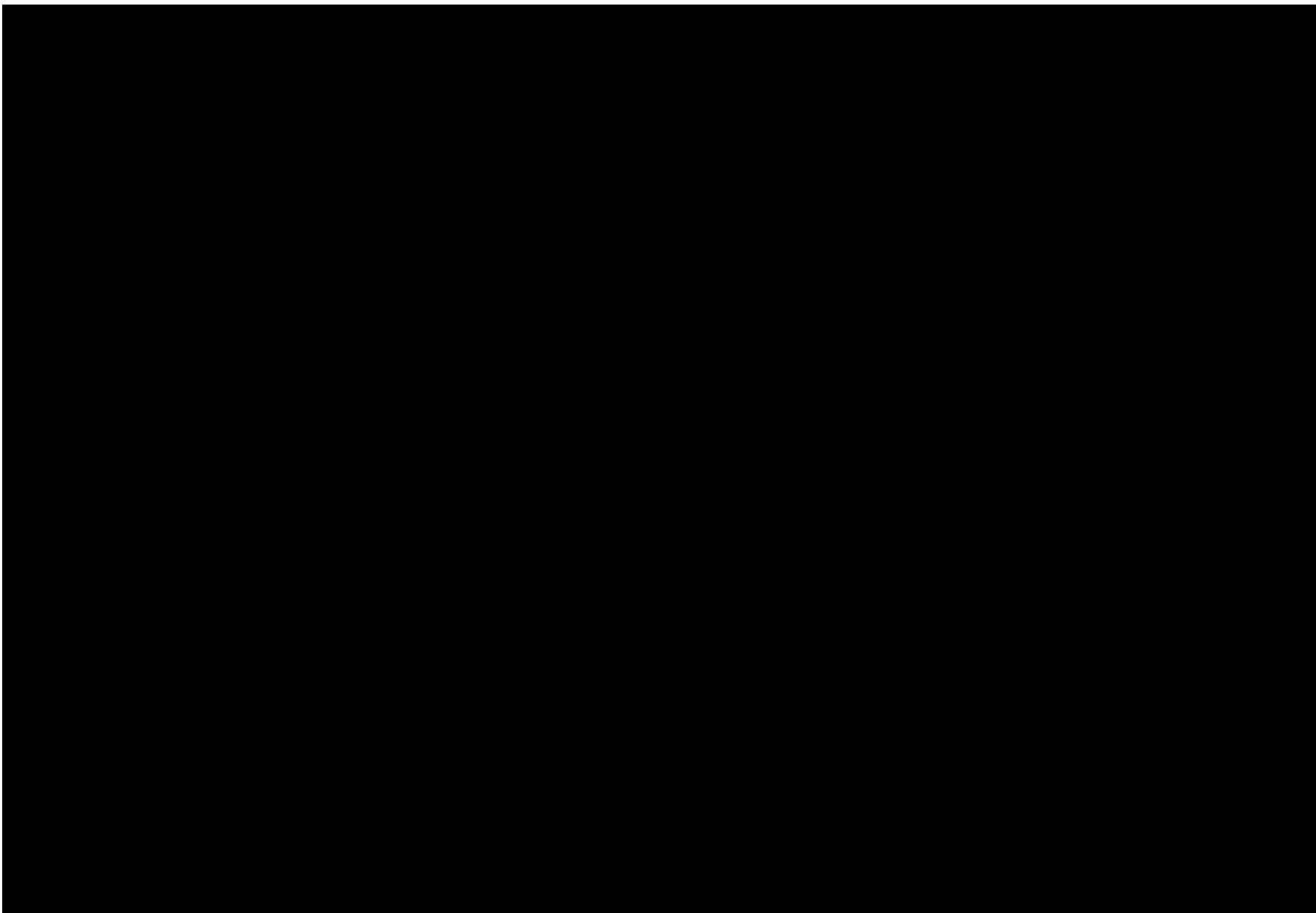
By: \_\_\_\_\_

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


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

**EXHIBIT M**  
**METERING DIAGRAM**





**EXHIBIT N****NOTICES**

<b>CES ELECTRON FARM ONE, LLC</b> (“Seller”)	<b>MARIN CLEAN ENERGY, a California</b> <b>joint powers authority</b> (“Buyer”)
<b>All Notices:</b>  Street: 1808 Wedemeyer St, Suite 221 City: San Francisco, CA, 94122 Attn: Asset Management Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>All Notices:</b>  Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: <a href="mailto:Procurement@mcccleanenergy.org">Procurement@mcccleanenergy.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: 84-4804147 (Parent)	<b>Reference Numbers:</b> Duns: 829602338 Federal Tax ID Number: 26-4300997
<b>Invoices:</b> Attn: Accounts Payable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Invoices:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: <a href="mailto:Settlements@mcccleanenergy.org">Settlements@mcccleanenergy.org</a>
<b>Scheduling:</b> Attn: Scheduling Phone: 248-808-2015 Email: <a href="mailto:chris.woodington@whitepinerenew.com">chris.woodington@whitepinerenew.com</a>	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 E-mail: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a>
<b>Confirmations:</b> Attn: CEO Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: <a href="mailto:Procurement@mcccleanenergy.org">Procurement@mcccleanenergy.org</a>
<b>Payments:</b> Attn: Accounts Receivable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Payments:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: <a href="mailto:Settlements@mcccleanenergy.org">Settlements@mcccleanenergy.org</a>
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> 
<b>With additional Notices of an Event of Default to:</b> Attn: Jordan Dansby Phone: 703-618-0851 Email: <a href="mailto:jordan@cleanenergycounsel.com">jordan@cleanenergycounsel.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Emergency Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Emergency Contact:</b> Attn: Phone: E-mail:

## EXHIBIT O

### SELLER COMMITMENTS

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☒ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☒ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 4.0 (or the latest version) Tool;
- ☒ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☒ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☒ Projects that commit to including components and materials manufactured and/or assembled in the United States; and
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of a partnership with a local non-profit for a jobs training program for the first 5 years for training related to solar installation and / or operations and maintenance.
- ☐ Other: *[describe open space preservation, habitat improvement, or food programs]*.

## EXHIBIT P

## POLLINATOR SCORECARD



## Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



### 1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points  
☐ 46-60 % +10 points  
☐ 61+ % +15 points

Total points

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

### 2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points  
☐ 51-75% +10 points  
☐ 76-100% +15 points

Total points

### 3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points  
☐ 12-15 species +10 points  
☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

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

- ☐ Spring (March-May) +5 points  
☐ Summer (June-August) +5 points  
☐ Fall (September-November) +5 points  
☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

### 5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points  
☐ Native trees/shrubs +2 points  
☐ Clean, perennial water sources +2 points  
☐ Created nesting feature(s) (i.e., native bee houses) +2 points

Total points

### 6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points  
☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

### 7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points  
☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points  
☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

### 8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points  
☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points  
☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

### 9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85  
 Meets Pollinator Standards 70-84

Project Name:  
 Vegetation Consultant:  
 Project Location:  
 Total acres (array and open area):  
 Projected Seeding Date:

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

**POLLINATOR  
PARTNERSHIP**



**EXHIBIT Q**  
**OPERATING RESTRICTIONS**



## EXHIBIT R

### DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

## MCE Supplier Diversity Questionnaire

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

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

**\* Required**

1. Email address \*

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2. Business Name \*

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3. Where is your business located/headquartered? \*

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

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

*Mark only one oval.*

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

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MCE Supplier Diversity Questionnaire

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

Please choose all that apply. \*

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

Check all that apply.

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

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

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

Check all that apply.

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

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

Mark only one oval.

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

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MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

*Mark only one oval.*

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

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MCE Supplier Diversity Questionnaire

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

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

*Check all that apply.*

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

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MCE Supplier Diversity Questionnaire

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

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

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## MCE Supplier Diversity Questionnaire

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

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

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

## Subcontractors

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

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

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

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MCE Supplier Diversity Questionnaire

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

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

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

#### Labor Agreements

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

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MCE Supplier Diversity Questionnaire

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

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

*Check all that apply.*

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

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

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

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MCE Supplier Diversity Questionnaire

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

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

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

*Mark only one oval.*

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

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

*Mark only one oval.*

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

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MCE Supplier Diversity Questionnaire

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

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

Equity, Diversity,  
Inclusion, and Justice

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

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

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

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

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MCE Supplier Diversity Questionnaire

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October 6, 2023

TO: MCE Technical Committee

FROM: Maddie Kandukuri, Power Analytics Principal Manager  
Vidhi Chawla, Interim Vice President of Power Resources

RE: Third Amended and Restated Scheduling Services Agreement  
with ZGlobal, Inc (Agenda Item #05 C.3)

ATTACHMENT: Third Amended and Restated Scheduling Services Agreement  
with ZGlobal, Inc.

Dear Technical Committee Members:

**Summary:**

On June 16, 2016, MCE Board approved the initial Scheduling Services Agreement with ZGlobal, Inc., for Scheduling Coordinator (SC) services. ZGlobal has been providing the following scheduling services to MCE:

1. **Generation SC Services:** This includes scheduling for power generation resources on a day-ahead, hour-ahead, real-time basis as required and providing monthly reporting and access to California Independent System Operator (CAISO) settlements statements, database hosting, shadow settlement and invoice validation.
2. **Load SC Services:** This includes scheduling of MCE forecast load on a day-ahead, hour-ahead and real-time basis as required.
3. **Load Forecasting Services:** This includes putting together MCE's load forecast on a day-ahead, hour-ahead and real-time basis as required.
4. **Portfolio Management Services:** This includes recommending strategies for short term portfolio optimization and risk mitigation, within parameters of MCE's Energy Risk Management Policy; managing Congestion Revenue Rights (CRR) bids and CRR portfolio to mitigate congestion costs.
5. **Large Hydro/ACS Import Management Services:** This includes scheduling imports of Large Hydroelectric Energy and Asset Controlling Supplier (ACS) Energy ("Product").

The proposed Third Amended and Restated Agreement with ZGlobal (Proposed Agreement) restates the SC services listed above and amends the agreement to include mutually agreed upon pricing for the existing and additional services that will be provided for MCE, listed below:

- ZGlobal will calibrate third-party load forecast applications and make the results available for analysis and day-ahead scheduling. Additionally, they will analyze and report on the accuracy of third-party day-ahead load forecasts compared to estimated and final settled load amounts and CAISO market prices.
- ZGlobal will integrate new resource types, such as Co-Located, Hybrid, Standalone Energy Resources, and Demand Response Resources, expected to come online in the upcoming years.
- ZGlobal will perform additional portfolio management analysis to effectively bid, schedule resources in CAISO markets, and execute transactions to mitigate MCE's net open position risk.

The Proposed Agreement would ensure the existing services are continued and incorporate the abovementioned additional services consistent with CAISO Tariff rules and business practices. Additionally, the proposed agreement changes the notice period required for termination for both parties.

**Fiscal Impacts:**

Costs arising from the Proposed Agreement are included in the Fiscal Year (FY) 2023/24 Operating Fund Budget. Costs arising from the Proposed Agreement that would occur beyond FY 2024/25 would be included in subsequent MCE budgets.

**Recommendation:**

Approve the proposed Third Amended and Restated Scheduling Services Agreement with ZGlobal, Inc.

# **THIRD AMENDED AND RESTATED SCHEDULING SERVICES AGREEMENT**

## **BY AND BETWEEN**

### **MARIN CLEAN ENERGY AND ZGLOBAL INC.**

**THIS THIRD AMENDED AND RESTATED MASTER PROFESSIONAL SERVICES AGREEMENT** ("Agreement") is made and entered into **October 6, 2023** (the "Effective Date") by and between MARIN CLEAN ENERGY ("MCE") and ZGLOBAL INC. ("ZGlobal"). Except as otherwise defined herein, capitalized terms herein shall have the meanings given to them in **Exhibit A** hereto.

#### **RECITALS:**

**WHEREAS**, MCE and ZGlobal are parties to that certain First Amended and Restated Scheduling Services Agreement dated July 25, 2018 (the "First Amended Agreement"); and

**WHEREAS**, MCE and ZGlobal are parties to that certain Second Amended and Restated Scheduling Services Agreement dated November 10, 2020 (the "Second Amended Agreement") that restated the First Amended Agreement in its entirety and replaced it with the Second Amended Agreement; and

**WHEREAS**, MCE and ZGlobal wish to amend and restate the Second Amended Agreement in its entirety and replace it with this Agreement; and

**WHEREAS**, ZGlobal warrants that it is qualified and competent to render the Services set forth herein; and

**NOW, THEREFORE**, for and in consideration of the mutual benefits, obligations, covenants and consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, MCE and ZGlobal agree to amend and restate the Second Amended Agreement as follows:

#### **AGREEMENT:**

##### **1. SCOPE OF SERVICES:**

ZGlobal, as agent for MCE pursuant to this Agreement, shall provide MCE the following categories of Services as set forth on the corresponding exhibit identified below for the loads and generation assets set forth in Exhibit B attached hereto ("MCE Assets"):

##### ***Services Description***

###### **Generation Scheduling Services**

Scheduling and Outage Coordination (Exhibit C)

Financial Settlement Services (Exhibit D)

###### **Load Scheduling Services**

Scheduling and Outage Coordination (Exhibit C)

###### **Load Forecasting Services**

Forecasting Services (Exhibit E)

###### **Portfolio Management Services**

Portfolio Management Services (Exhibit F)

###### **Information Resources**

Information Resources (Exhibit G)

###### **Large Hydro/ACS Import Management Services**

Large Hydro/ACS Import Management Services (Exhibit H)

Each Exhibit referenced above is attached hereto and incorporated herein by reference, and collectively comprise the "Services" to be performed by ZGlobal under this Agreement. In the event of a conflict between the Terms of this Agreement and the terms in any of the Exhibits to this Agreement, the terms in this Agreement will govern.

MCE hereby designates ZGlobal as its agent and representative in connection with and to the extent reasonably required to perform the Services. MCE agrees to promptly:

- a) Notify CAISO and any other relevant entities of this arrangement; and
- b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

## **2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

## **3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing Services under this Agreement shall be as set forth in **Exhibit I** and by this reference incorporated herein. ZGlobal shall provide MCE with its Federal Tax I.D. number prior to submitting an invoice. ZGlobal is responsible for billing MCE in a timely and accurate manner. ZGlobal shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 30 days. Any payment that is not received by ZGlobal on or before the date required shall accrue interest at a rate of 3% per annum. MCE shall have the right to set off against such payment any amounts due and owing by ZGlobal to MCE. Interest shall not accrue on a payment that is not made because of a bona fide dispute between MCE and ZGlobal over the amount of payment or compliance with the Agreement.

## **4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum for each Service listed in **Exhibit I**.

## **5. TERM OF AGREEMENT:**

This Agreement shall become effective on **November 1, 2023**, and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until **October 31, 2026** (the "Term").

## **6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Certificate(s) of Insurance must be current as of the Effective Date and shall remain in force through the Term of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on ZGlobal's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from ZGlobal's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify ZGlobal of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to ZGlobal for any Services provided during any time that insurance was not in effect and until such time as ZGlobal provides adequate evidence that ZGlobal has obtained the required coverage.

### **6.1 GENERAL LIABILITY**

ZGlobal shall maintain a commercial general liability insurance policy in an amount of no less than two million dollars (\$2,000,000) with a four million dollar (\$4,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

### **6.2 AUTO LIABILITY**

Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by ZGlobal in order to perform said Services, ZGlobal shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

### **6.3 WORKERS' COMPENSATION**

ZGlobal acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If ZGlobal has employees, a copy of the

certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

#### **6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☐ )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, ZGlobal must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. ZGlobal shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that ZGlobal has segregated amounts in a special insurance reserve fund or ZGlobal's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

**6.5 PRIVACY AND CYBERSECURITY LIABILITY.** Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

ZGlobal shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. ZGlobal shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

#### **7. NONDISCRIMINATORY EMPLOYMENT:**

ZGlobal and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. ZGlobal and/or any permitted subcontractor understands and agrees that ZGlobal and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

#### **8. SUBCONTRACTING:**

ZGlobal shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If ZGlobal hires a subcontractor under this Agreement, ZGlobal shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of ZGlobal under this Agreement and shall require subcontractor to name ZGlobal as additional insured under this Agreement. It shall be ZGlobal's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve ZGlobal of any of its duties or obligations under this Agreement. ZGlobal shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. ZGlobal's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to ZGlobal. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

#### **9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to ZGlobal and may not be transferred or assigned without the express prior written consent of MCE.

#### **10. RETENTION OF RECORDS AND AUDIT PROVISION:**

ZGlobal and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, records and correspondence pertaining to this Agreement and the Services provided hereunder. Such records shall include, but not be limited to, documents supporting all income, invoices and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on ZGlobal's premises or, at MCE's option, ZGlobal shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. ZGlobal shall refund any monies erroneously charged. ZGlobal shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, records, databases, lists, data files, documents, forecasts, and other writings prepared by and for ZGlobal, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to ZGlobal for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to ZGlobal or to any other party. ZGlobal agrees not to use MCE Data in a manner that will allow ZGlobal or other ZGlobal



clients to benefit from this data. ZGlobal shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. ZGlobal may keep file reference copies of all documents prepared for MCE.

## **12. TERMINATION:**

12.1 If either Party fails to comply with the terms of this Agreement and such breach is not cured within ten (10) calendar days of written notice thereof by the other Party, violates any ordinance, regulation or other law which applies to its performance herein, makes an assignment or any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, or otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then either Party may terminate this Agreement by giving five (5) business days' written notice to the other party. If ZGlobal fails to maintain the Performance Assurance in accordance with Section 18, or ZGlobal's representations or warranties set forth herein are no longer true or correct, and such representation or warranty is not corrected within ten (10) calendar days after written notice is given to ZGlobal, then MCE may terminate this Agreement by giving five (5) business days' written notice to ZGlobal.

12.2 ZGlobal shall be excused for failure to perform Services and MCE shall be excused for failure to make payments owed pursuant to this Agreement if such Services or payments are prevented by acts of God, strikes, labor disputes or other forces over which the responsible party has no control.

12.3 MCE may terminate this Agreement for any reason by giving three hundred sixty five (365) calendar days' written notice to ZGlobal. ZGlobal may terminate this Agreement for any reason by giving three hundred sixty five (365) calendar days' written notice to MCE. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Invoices: Notices. For the avoidance of doubt, MCE may request the cancellation of a Service on ten (10) calendar days' prior written notice to ZGlobal without terminating the Agreement.

12.4 In the event of termination not the fault of ZGlobal, ZGlobal shall be paid for Services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. ZGlobal shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, ZGlobal shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.

12.5 This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC") or CAISO. The CPUC and CAISO may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive. MCE may also terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

12.6 Without limiting the foregoing, if either party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such party for which the parties cannot mutually agree upon an acceptable price modification, then such party shall at such time have the right to terminate this Agreement upon written notice to the other party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.

12.7 Upon MCE's termination of this Agreement for any reason, ZGlobal shall, and shall cause each of its employees, contractors, agents, contractors and members (each a "ZGlobal Party" and, collectively, the "ZGlobal Parties") to, bring the Services to an orderly conclusion as directed by MCE, including providing MCE assistance with onboarding a new vendor, and to terminate the designation of ZGlobal as agent for MCE. MCE, at its option, may take possession of any portion of the Services paid for by MCE. Additionally, as part of the transfer of a Service or Services under this Section 12.7, ZGlobal agrees to assign to MCE, to the extent ZGlobal is permitted by its agreements, at MCE's request, any underlying agreements with third-party software or service providers necessary for continued performance of the Service or Services, including the Information Resources.

## **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of the Parties.

## **14. ASSIGNMENT OF PERSONNEL:**

ZGlobal may substitute personnel performing the Services with substantially equal or better qualifications and experience and shall notify MCE of such change.

## **15. GOVERNING LAW AND VENUE:**

This Agreement shall be governed by the internal laws of the State of California, without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Marin County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Northern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

#### **16. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between ZGlobal's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to legal counsel of MCE and an officer of ZGlobal for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and ZGlobal cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and ZGlobal shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, ZGlobal shall have the right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

#### **17. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION:**

**17.1 LICENSING.** At all times during the performance of the Services, ZGlobal represents, warrants and covenants that it has and shall, and shall cause each ZGlobal Party to obtain and maintain, at its sole cost and expense, all required Permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. ZGlobal shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**17.2 ZGLOBAL REPRESENTATIONS AND WARRANTIES.** ZGlobal represents and warrants that (a) it is limited liability company duly organized, validly existing and in good standing under the laws of the State of California, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and were the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**17.3 MCE REPRESENTATIONS AND WARRANTIES.** MCE represents and warrants that (a) it is a joint powers authority duly organized and validly existing under the laws of the State of California, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (d) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (e) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

**17.4 SAFETY.** During the Term of this Agreement, ZGlobal continuously represents, warrants and covenants that it shall, and shall cause each ZGlobal Party to:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to ZGlobal from time to time;

- (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements, all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to ZGlobal from time to time.

**17.5 ANNUAL UPDATES.** Upon the request of MCE on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and MCE shall confirm in writing to MCE that its representations and warranties set forth above remain true and correct.

**17.6 INDEMNIFICATION.** ZGlobal agrees to indemnify, defend, and hold MCE, its employees, officers, and agents harmless from any and all losses, claims, damages and liabilities including, but not limited to, third-party claims, litigation costs, attorney's fees, other professional fees and fines or penalties imposed by a governmental authority arising from any and all claims and losses to any persons or property who may be injured or damaged by reason of ZGlobal's negligence, recklessness, fraud, breach, violation of applicable law or willful misconduct in the performance of this Agreement.

## **18. PERFORMANCE ASSURANCE:**

**18.1 PERFORMANCE ASSURANCE.** As a condition of MCE's obligations hereunder, ZGlobal shall provide to MCE no later than the Effective Date and thereafter maintain throughout the Term cash or an irrevocable, stand-by letter of credit (the "Performance Assurance") in the amount of One Million Dollars (\$1,000,000). The Performance Assurance shall be held by MCE as security for ZGlobal's performance hereunder and will be returned to ZGlobal at the end of the Term upon the satisfaction of ZGlobal's obligations under this Agreement (net of any amounts applied to ZGlobal's obligations. If ZGlobal establishes the Performance Assurance by means of a letter of credit, the letter of credit must be provided in a form and from a bank reasonably acceptable to MCE, effective from the date of issuance until a date that is six (6) months following the last day of the Term. All costs and expenses relating to the procurement and maintenance of the Performance Assurance shall be borne solely by ZGlobal.

**18.2 SECURITY INTEREST IN PERFORMANCE ASSURANCE.** To secure its obligations under this Agreement, and until released as provided herein, ZGlobal hereby grants to MCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Assurance 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 MCE, and ZGlobal agrees to take all action as MCE reasonably requires in order to perfect MCE'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.

**18.3 REMEDIES UPON A ZGLOBAL EVENT OF DEFAULT.** Upon or any time after the occurrence of, and during the continuation of, a default by ZGlobal which ZGlobal has not cured within thirty (30) days of delivery of notice of such default by MCE, or such time as ZGlobal owes compensation, damages, liquidated damages, costs, expenses or any other amounts under this Agreement, which, in each such case, ZGlobal has failed to pay to MCE within a thirty (30) day period, MCE may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to the Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding letter of credit issued for its benefit; and
- (c) Liquidate all Performance Assurance then held by or for the benefit of MCE free from any claim or right of any nature whatsoever of ZGlobal, including any equity or right of purchase or redemption by ZGlobal.

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

## **19. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE 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 the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

## **20. COMPLIANCE WITH APPLICABLE LAWS:**

ZGlobal shall comply with any and all applicable federal, state and local laws, regulations and resolutions (including, but not limited to all CPUC orders, the CAISO Tariff, any applicable FERC orders, the County of Marin Nuclear Free Zone, Living Wage Ordinance,

and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting Services covered by this Agreement.

## **21. INVOICES; NOTICES:**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
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MCE Address:	1125 Tamalpais Avenue
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	San Rafael, CA 94901
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Email Address:	contracts@mcecleanenergy.org
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Telephone No.:	(415) 464-6027
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Notices shall be given to ZGlobal at the following address:

ZGlobal:	Ziad Alaywan
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Address:	604 Sutter Street, Suite 250
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	Folsom, CA 95630
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Email Address:	ziad@zglobal.biz
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Telephone No.:	916-985-9461
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## **22. DATA COLLECTION AND OWNERSHIP REQUIREMENTS:**

**22.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, energy transactional and settlement data, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to ZGlobal as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, congestion rights revenue summary data and positions, and other similar information disclosed to or otherwise made available to ZGlobal. MCE Data shall also include all data and materials provided or made available to ZGlobal by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors. For avoidance of doubt, any data provided to MCE by a third party, including but not limited to forecasting data, which is disclosed to ZGlobal or to which MCE has provided ZGlobal with access shall constitute MCE Data. ZGlobal agrees not to use MCE Data in a manner that will allow ZGlobal or other ZGlobal clients to benefit from this data.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the parties dated **February 18, 2022**.

**22.2. DEFINITION OF "PERSONAL INFORMATION".** "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons,

machines or networks. ZGlobal shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**22.3. MCE DATA SECURITY MEASURES.** Prior to ZGlobal receiving any MCE Data, ZGlobal shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **February 18, 2022**. MCE's Security Measures and Confidentiality provisions require ZGlobal to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

**22.4. ZGLOBAL DATA SECURITY MEASURES.** Additionally, ZGlobal shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**22.5. RETURN OF MCE DATA.** Promptly after this Agreement terminates or expires (i) ZGlobal will securely destroy all MCE Data in its possession with respect to each terminated and certify the secure destruction in writing to MCE, and (ii) each party will return (or if requested by the disclosing party, destroy) all other Confidential Information and property of the other (if any) with respect to each terminated, provided that ZGlobal's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

#### **22.6. OWNERSHIP AND USE RIGHTS.**

- c) **MCE Data.** Unless otherwise expressly agreed to by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.
- d) **Intellectual Property.** Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by ZGlobal or any ZGlobal Party under this Agreement ("Intellectual Property"), including inventions, patent rights, trade secrets, mask works and copyrights, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, models, notes, reports, summaries, analyses, manuals, visual materials, lists, data files, customer communications and correspondence, customer bills and invoices, training materials, recordings, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of their respective customers. For the avoidance of doubt, ZGlobal's methodologies and know-how used to prepare Intellectual Property as defined herein, shall be owned by ZGlobal.
- e) **Intellectual Property will be owned by MCE upon its creation.** ZGlobal agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- f) **ZGlobal's Pre-Existing Materials.** If, and to the extent ZGlobal retains any preexisting ownership rights ("ZGlobal's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, ZGlobal hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of ZGlobal or any ZGlobal Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, ZGlobal shall retain all of its rights, title and interest in ZGlobal's Pre-Existing Materials. Any and all claims to ZGlobal's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE. For avoidance of doubt and notwithstanding the foregoing, forecasting reports prepared by ZGlobal that are based upon or include any MCE Data shall be the sole property of MCE and shall be treated as MCE Data.
- g) **Information Access.** ZGlobal shall provide MCE and MCE's designated representatives and consultants with access to the software, databases, data, and information portal(s) identified in Exhibit G (collectively, the "Information Resources").

#### **23. FINANCIAL STATEMENTS:**

ZGlobal shall deliver financial statements as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally accepted

accounting principles. MCE shall keep such information confidential if requested by ZGlobal, except as provided by law and provision to the CPUC may be required from time to time under confidentiality procedures, where applicable.

#### **24. QUALITY ASSURANCE PROCEDURES:**

ZGlobal shall comply with the following requirements (the "Quality Assurance Procedures"): (i) CAISO Tariff and Business Practice Manuals; (ii) procedures that ensure customer satisfaction; (iii) pertinent laws and regulations; and (iv) any additional written direction from MCE.

#### **25. SEVERABILITY:**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

#### **26. COMPLETE AGREEMENT:**

This Agreement along with any attached Exhibits and the Marin Clean Energy Non-Disclosure Agreement between the parties dated **February 18, 2022** constitute the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

#### **27. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**28. RELATIONSHIP OF THE PARTIES:** ZGlobal shall act as MCE's agent while performing the Services hereunder. Except when and to the extent that ZGlobal is performing the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any relationship of employment, association, joint venture, franchise or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement. Subject to Section 22 above, nothing in this Agreement shall preclude ZGlobal from performing services similar to the Services for other clients.

**29. Time:** Time is of the essence in this Agreement and each and all of its provisions.

**30. Preparation of Agreement:** This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

**31. Survival:** Notwithstanding any provision herein to the contrary, Sections 10, 11, 15, 16, 17.5, 18, 19, 21 and 22 shall survive the termination or expiration of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

#### **APPROVED BY**

**Marin Clean Energy:**

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

CEO

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

Date: \_\_\_\_\_

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

Chairperson

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

Date: \_\_\_\_\_

**ZGLOBAL:**

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

CEO

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

Date: \_\_\_\_\_

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**MODIFICATIONS TO STANDARD SHORT FORM**

☒ **Standard Content Has Been Modified**

**List sections affected:** \_\_\_\_ Section 1, 3, 4, 5, 6, 11, 12, 14, 15, new section 18 added, standard section 21 omitted, section 22, standard sections 23 and 24, section 26, standard 26-28 omitted new sections 28-31 added.

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**Approved by MCE Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below. All capitalized terms not otherwise defined herein shall have the meanings given to them in the CAISO Tariff.

“ACS Energy” means wholesale electricity provided by an entity that owns or operates electricity generating facilities or serves as an exclusive marketer for certain generating facilities even though it does not own them, and is assigned a supplier-specific identification number and specified source emission factor by the California Air Resources Board for the wholesale electricity procured from its system and imported into California.

“Agreement” means this Second Amended and Restated Scheduling Services Agreement, including all exhibits attached to this Agreement, as amended, modified, or supplemented from time to time.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, rulings, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the MCE Assets, the Services or the terms of this Agreement. For purposes of this Agreement, Applicable Laws shall include the CAISO Tariff and all CAISO business practice manuals.

“Balancing Authority” or “Balancing Authorities” means the entity or entities responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Business Day” means any Day other than a Saturday, a Sunday, the day after Thanksgiving, or a Day on which commercial banks in California are authorized or required to close.

“California Carbon Allowance” means a certificate or permit that represents the legal right to emit one tonne (metric ton) of carbon dioxide or equivalent greenhouse gas. Such certificates or permits are issued to companies and organizations by the California Air Resources Board.

“California Independent System Operator” and “CAISO” mean the California Independent System Operator.

“CAISO Tariff” means the CAISO FERC approved Tariff, as amended from time to time.

“Co-Located Resource” means a resource that shares a point-of-interconnection with at least one other resource and is identified by the CAISO with its own independent resource identifier in the CAISO’s full network model.

“CRR” means Congestion Revenue Rights which refers to financial instruments, made available through the CRR allocation, CRR auction and Secondary Registration System, that enable CRR holders to manage variability in congestion costs based on locational marginal pricing as described in the CAISO Tariff.

“MCE Assets” has the meaning set forth in Exhibit B.

“MCE Assets Operating Parameters” means the various operating parameters set forth in Exhibit B.

“MCE Designated Bank Account” means the bank account that MCE has established to transfer funds from and to the CAISO for settlement of CAISO obligations as a result of activity from MCE’s Scheduling Coordinator ID.

“Day” means a calendar day beginning at 12:00 midnight, Pacific Time.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Energy” means electricity measured in MWh.

“Energy Storage Resource” means a facility that absorbs and stores electricity produced at one time for discharge at a later time.



“Estimated Aggregate Liability” means the sum of MCE’s known and reasonably estimated potential liabilities for a specified period arising from charges described in the CAISO Tariff.

“Financial Settlement Services” has the meaning set forth in Exhibit D.

“Forecasting Services” has the meaning set forth in Exhibit E.

“Force Majeure” means, in respect of a non-performing Party, an event beyond the reasonable control of the non-performing Party that the non-performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the non-performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

“Forced Outage” an Outage for which sufficient notice cannot be given to allow the Outage to be factored into CAISO’s day-ahead market or real time market bidding processes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent service providers in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made or that reasonably should have been known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, environmental protection, economy and expedition and shall include, at a minimum, those professionally responsible practices, methods and acts that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws.

“Governmental Authority” means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the MCE Assets, the Services or this Agreement.

“Hybrid Resource” means an aggregate resource consisting of a variable energy resource and an Energy Storage resource that share a point-of-interconnection and is identified by the CAISO with its own independent resource identifier in the CAISO’s full network model.

“IST” means a trade between Scheduling Coordinators of Energy, Ancillary Services, or Integrated Forward Market Load Uplift Obligation in accordance with the CAISO Tariff.

“Large Hydroelectric” means a hydroelectric facility of megawatt capacity that exceeds the capacity allowed for inclusion as an Eligible Renewable Resource that can be used by California Load Serving Entities to count toward satisfying Renewable Portfolio Standard obligations.

“Month” means a calendar month.

“Parties” means ZGlobal and MCE.

“Party” means either ZGlobal or MCE.

“Performance Assurance” has the meaning set forth in Section 18.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Outage” means disconnection, separation or reduction in capacity, planned or forced, of one or more elements of an electric system.

“Participating Generator Agreement” means an agreement between CAISO and the owner of a generator that participates in the CAISO markets, a pro forma version of which is set forth in Appendix B.2 to the CAISO Tariff.

“Portfolio Management Services” has the meaning set forth in Exhibit F.

“Scheduling Coordinator” or “SC” means any entity certified by the CAISO for the purposes of undertaking the functions identified in the CAISO Tariff for Scheduling Coordinators.

“Scheduling Coordinator Agent” means ZGlobal performing Scheduling Coordinator services described in this agreement on behalf of MCE under MCE’s capacity as a CAISO certified, Scheduling Coordinator. MCE activity as Scheduling Coordinator shall be associated with “SCID MCEE” and/or other SCIDs as determined by the CAISO and MCE.

“Scheduling Coordinator Services” has the meaning set forth in Exhibit C.

“Security Interest” has the meaning in Section 18.2.

“Service” means any of the Services expressly identified in Section 1 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit I.

“Transmission Owner/Operator” means an entity owning or operating transmission facilities or having firm contractual rights to use such transmission facilities.

“WECC” means the Western Electricity Coordinating Council and its successors.

**EXHIBIT B**  
**MCE Assets**

**MCE Assets.**

MCE's list of assets subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions) (collectively, the "MCE Assets") shall be updated from time to time upon the mutual, written consent of the Parties. MCE shall provide updated assets to ZGlobal as agreements are executed.

- Load
  - Load scheduled at PG&E DLAP = Approximately 1,200 MW annual peak
- Supply
  - MCEE\_TRCYPGAE\_I\_F\_CVP1
  - CORCAN\_1\_SOLAR2
  - BAHIA\_2\_LKHSR1
  - GOOSLK\_1\_SOLAR1
  - KRNCNY\_6\_UNIT
  - LTBERA\_1\_LB1SR1
  - LTBEAR\_1\_LB3SR3
  - LTBEAR\_1\_LB4SR4
  - LTBEAR\_1\_LB4SR5
  - PEABDY\_2\_LNDFIL
  - BGSKYN\_2\_AS2SR1
  - GARNET\_1\_UNITS
  - MSTANG\_2\_SOLAR4
  - NOVATO\_6\_LNDFL
  - RICHMN\_1\_SOLAR
  - RICHMN\_1\_CHVSR2
  - HERDLN\_6\_BYHSR1
  - SISPRG\_2\_DS3BT2
  - SISPRG\_2\_DS3SR2
- Distributed Resource Management for the Richmond Virtual Power Plant
  - Up to 2056 kWh of energy storage and 1500kW of flexible load resources

**Operating Parameters.**

The various operating parameters for the MCE Assets are set forth in the agreements below, as may be supplemented from time to time by MCE upon prior written notice to ZGlobal ("MCE Assets Operating Parameters").

- Power Purchase Agreements
- Meter Service Agreements
- Participating Generator Agreements
- Transmission Service Agreements
- Qualified Reporting Entity Agreements

**[End of Exhibit B]**

## **EXHIBIT C**

### **Scheduling and Outage Coordination Services**

This Exhibit C details the scheduling and outage coordinator services ("Scheduling Coordinator Services") to be performed or provided by ZGlobal under this Agreement.

#### **1. Categories of Scheduling Coordinator Services**

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At MCE's written request, ZGlobal shall perform the Scheduling Coordinator Services for the following categories:

- CAISO
  - 7-day per week day-ahead pre-scheduling Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services
  - Submittal of meter data to the CAISO as required by MCE's Scheduling Coordinator Metered Entity obligations
- WECC (non-CAISO)
  - Business Day day-ahead Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

#### **2. Description of Scheduling Coordinating Services**

MCE has entered into power purchase agreements as buyer to take delivery of energy and capacity from MCE Assets. To enable the scheduling and settlement of energy and capacity from the MCE Assets, ZGlobal shall act as agent to MCE and provide Scheduling Coordination Services for the MCE Assets in accordance with the applicable CAISO tariffs and the terms of the Agreement, on behalf of MCE. Scheduling Coordinator Services may include scheduling and/or bidding of MCE's generation, load, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners/Operators, purchasing/selling entities and others as necessary.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and MCE shall provide information and support as described in the following paragraphs.

#### **3. MCE's Responsibilities**

Designation of ZGlobal as Providing Scheduling Coordinator Services on Behalf of MCE. ZGlobal shall provide Scheduling Coordinator Services for MCE, which includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal's access to systems on behalf of MCE such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO's SIBR and CMRI systems, meter data and meteorological data.

Information to be Provided by MCE to ZGlobal. MCE shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule MCE's resources, load and transactions ("Portfolio") into the applicable market/Balancing Authority Area. This includes data such as MCE's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities. Prior to the Commencement Date, ZGlobal will identify the information required from MCE under this paragraph.

Information required for day-ahead pre-scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council's (WECC's) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on

schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday. The CAISO pre-schedules one day prior to flow day every day. Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

**Fees and Costs Imposed as a Result of Scheduling and/or Bidding.** MCE shall be entitled to and responsible for all costs and revenues charged or paid to MCE's SCID MCEE and/or MCE from Balancing Authorities, Transmission Owners/Operators, and the CAISO, or other third parties as a result of ZGlobal scheduling and/or bidding MCE's Portfolio. This includes items such as the CAISO's Grid Management Charge ("GMC"), ancillary services and energy imbalance, among others. The intent is that MCE designated bank account acts as a conduit for dollar flows between MCE SCID and the CAISO, Balancing Authorities, Transmission Owners/Operators, and other third parties. When ZGlobal acts as MCE's Scheduling Coordinator Agent for Scheduling Coordinator ID MCEE or other Scheduling Coordinator ID as determined by MCE, MCE shall be responsible for remitting payments for all costs and fees in accordance with the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. MCE understands and agrees that failure to timely remit any such costs and fees could result in MCE's security being drawn upon by the CAISO under the CAISO Tariff.

For Scheduling Coordinator ID MCE1, MCE shall be responsible for remitting payments for all applicable costs and fees to ZGlobal no less than (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract.

**MCE Security.** To ensure ZGlobal's performance of the Services, and to secure MCE's payment obligations hereunder, MCE agrees to post the following forms of security:

**CAISO Registration Security.** MCE shall post and maintain the Estimated Aggregate Liability as required by the CAISO for SCID MCEE at no cost or expense to ZGlobal.

**Estimated Aggregate Liability Security.** MCE shall maintain the Estimated Aggregate Liability as required by the CAISO for SCID MCEE at no cost or expense to ZGlobal.

#### **4. ZGlobal's Responsibilities**

**Professional Services.** ZGlobal shall perform the Scheduling Coordinator Services in a professional manner consistent with the requirements of this Agreement, the CAISO Tariff and Business Practice Manuals, Applicable Laws, MCE's Energy Risk Management Policy, MCE's Load and Generation Risk Management Guidelines, which have been provided to ZGlobal and as may be updated from time to time in MCE's sole discretion, and other written directions provided by MCE to ZGlobal from time to time.

**Reporting of Non-compliance:** If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to MCE of potential or actual incidence of non-compliance with the Services described in the preceding paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**Scheduling.** ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO's and/or Balancing Authorities' timelines as prescribed by their tariffs and MCE's CAISO Participating Generator Agreements (if required).

**Variable Energy Resources.** ZGlobal shall receive or retrieve the latest generation forecast from the CAISO or as otherwise directed by MCE and submit such forecast as schedules or bids to the CAISO and/or Balancing Authority Area Day-Ahead markets. Upon receiving Day-Ahead market awards from the CAISO, ZGlobal shall rebid the latest generation forecast into the CAISO's Real-Time market or convert results into self-schedules and rebid or self-schedule residual amounts in the CAISO and/or Balancing Authority Area Real-Time markets as directed by MCE.

Hybrid or Co-Located Resources. ZGlobal shall submit bids or self-schedules for Hybrid and Co-Located Resources consistent with results from the latest applicable Variable Energy Resource generation forecast and corresponding results from resource optimization or as otherwise directed by MCE.

Stand-Alone Energy Storage Resources. ZGlobal shall submit bids or self-schedules for Energy Storage Resources consistent with results from the latest applicable results from resource optimization or as otherwise directed by MCE.

Demand Response Resources. ZGlobal shall submit bids or self-schedules for Demand Response Resources consistent with results from the latest applicable results from MCE's Demand Response coordinators or as otherwise directed by MCE.

Final Schedules. ZGlobal shall provide MCE with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to MCE as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

OASIS and Other Pertinent Applications. If MCE uses applications such as OASIS, OATI and ICE, and ZGlobal's access to such applications is necessary for its performance of the Services under this Agreement, upon ZGlobal's written request MCE shall provide reasonable access to such applications to the extent required by ZGlobal to perform the Services under this Agreement. The CAISO addresses market participant access to data and CAISO application security through its User Access Administrator ("UAA") Process. ZGlobal will facilitate MCE's UAA Process as required and MCE will authorize a primary and optionally, a secondary User Access Administrator that is responsible for managing access to CAISO applications and data by submitting access, removal and revocation requests to the CAISO. The User Access Administrator(s) is (are) responsible for:

1. Submitting application access requests to the CAISO
2. Warranting that users requesting access to CAISO systems are required for market participants' business practices
3. Warranting that users requesting access to CAISO systems are authorized to for the applications being requested
4. Warranting that that data on the application request form is accurate and valid
5. Notifying the CAISO of any changes of User Access Administrators
6. Notifying the CAISO when user access to CAISO applications is no longer required
7. Notifying the CAISO if a user's certification to access the CAISO application(s) has been compromised.

Outage Reporting and Notification. ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices and updates regarding MCE's generation facilities as required by applicable procedures, requirements and standards. This includes information such as outage requests, Forced Outages, CAISO Forced Outage reports, among other requirements.

NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

Billing and Payment for CAISO Charges. Billing and payment for CAISO charges and credits shall be made through a MCE designated bank account. In no case shall ZGlobal instruct the CAISO to direct funds related to MCE's SCID into or out of another bank account without the prior written consent of MCE.

## **5. Miscellaneous Services as MCE's Scheduling Coordinator Agent**

MCE's Integrated Resources Plan ("IRP"). Upon MCE's request, ZGlobal will review MCE's IRP and comment on sections as needed that pertain to scheduling coordinator practices and other information that pertains to ZGlobal's services to MCE. ZGlobal will assist MCE in answering CPUC questions on the IRP that relate to MCE's Assets or services that ZGlobal provides.

Ad Hoc Requests. Upon request, ZGlobal will assist MCE in ad hoc review of certain settlements or PPA transactions that may not be covered in other Exhibits listed herein.

Payment for Miscellaneous Services. Fees associated with these Miscellaneous services shall be captured within the fees for Scheduling Coordinator Services.

**[End of Exhibit C]**

**EXHIBIT D**  
**Financial Settlement Services**

This Exhibit D details financial settlement services (“Financial Settlement Services”) to be performed or provided by ZGlobal under this Agreement.

**1. Categories of Financial Settlement Services**

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to MCE (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement/ invoice verification, validation and reporting
- Bilateral transactions/ invoice verification by counterparty, validation and reporting

**2. Description of Services**

ZGlobal will provide Financial Settlement Services on behalf of MCE to allow for settlement of MCE's transactions with the appropriate Balancing Authorities, Transmission Owners/Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to MCE pursuant to Exhibit C of this Agreement.

CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with MCE's scheduled and metered volumes. ZGlobal will verify that the CAISO's charges/revenues are accurate. ZGlobal will also provide MCE with a summary description of the CAISO charge types and how they are applied to MCE's schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar (as defined below), MCE will receive or remit payments for all CAISO Invoices and Payment Advices related to SCID MCEE. Pursuant to Exhibit C, all CAISO costs and revenues related to MCEs' transactions shall be the responsibility of MCE.

When ZGlobal acts as Scheduling Coordinator MCE shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO payment calendar available on its website (“Payment Calendar”) pursuant to Exhibit C. In the case of net payments due to ZGlobal for the MCE transactions, ZGlobal will remit funds to MCE no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to MCE for remittance.

CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO's publication of settlement statements to provide MCE with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to MCE under this Agreement (the “Shadow Settlement”). The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary. ZGlobal shall publish regular exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices and on an annual basis. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and MCE, but at a frequency no less than once per month in addition to an annual report summarizing monthly content.”

OATT Statement Verification. At the direction of MCE, ZGlobal will review the settlement statements to ensure that they are consistent with MCE's scheduled and metered volumes.

PPA Verification. At the direction of MCE, ZGlobal will review the settlement statements to ensure that they are consistent with MCE's scheduled and metered volumes.



Bilateral Transactions Verification by Counterparty. ZGlobal shall review settlement statements that they are consistent with MCE's scheduled and metered volumes and coordinate with third parties as necessary to resolve discrepancies.

Dispute Submittal. ZGlobal shall act as MCE's representative with regard to disputes associated with MCE's facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO's dispute process and providing MCE with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist MCE by providing information and data as necessary to resolve such disputes.

### **3. MCE's Responsibilities**

Information to be Provided by MCE to ZGlobal. MCE shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle MCE's Portfolio into the applicable market/Balancing Authority Area. This includes data such as MCE's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality Meter Data (as that term is defined in the CAISO Tariff), access to relevant meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

Payments. Fees for ZGlobal's services are set forth on Exhibit I.

### **ZGlobal's Responsibilities**

Professional Services. ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, and other written directions provided by MCE to ZGlobal from time to time.

Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to MCE of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**[End of Exhibit D]**

## **EXHIBIT E**

### **Forecasting Services**

This Exhibit E details forecasting services ("Forecasting Services") to be performed or provided by ZGlobal under this Agreement.

#### **1. Categories of Forecasting Services**

Forecasting Services functions vary depending upon resource type, number of resources and location of resources. At MCE's written request, ZGlobal shall perform the Forecasting Services for the following categories:

- Total Load
  - Weekly energy demand (MWh/day)
  - Day-Ahead preschedule demand by hour (MWh/hour)

#### **2. Description of Services**

ZGlobal proposes to provide Forecasting Services on behalf of MCE to allow for scheduling of MCE's demand with the CAISO and other appropriate Balancing Authorities and others as necessary. Such Forecasting Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to MCE pursuant to Exhibit C of this Agreement.

Day-Ahead Forecasting. ZGlobal will use a computerized algorithm to convert input data to a 24-hour energy forecast of MCE's demand. The forecast will be used for Day-Ahead prescheduling purposes and will be produced at a time sufficient to meet relevant markets' and counterparties' processing timelines. The input data will include, but not be limited to, relevant meteorological data, historical data, and time of day and year. ZGlobal will provide a rolling 30 day forward forecast comparing forecast load to forecast supply (fixed price contracts, ISTs, financial hedges) quantifying hourly open positions and resulting hourly value at risk.

Intra-Day (Hour-Ahead) Forecasting. ZGlobal will utilize relevant meteorological historical data, and time of day and year to determine an hourly energy forecast for the upcoming hours of the day necessary for Hour-Ahead scheduling purposes.

Longer Term (Monthly, Quarterly, Annual) Load and Energy Production Forecast. ZGlobal will utilize relevant historical data, expected change in customer base and external factors such as economic growth to determine an hourly forecast for the period (up to one year) as directed by MCE. ZGlobal will provide a rolling 90-day hourly forecast of forecast load and forecast supply (fixed price contracts, ISTs, financial hedges) and quantify hourly open positions and resulting hourly value at risk.

Coordination with MCE. At MCE's direction, ZGlobal shall recalibrate its load forecast with MCE's individual customer and rate class load amounts with the objective of determining the impact of rate classes load on overall load when conditions change materially and historical overall usage patterns are significantly affected by events such as wildfires, pandemic, earthquakes and extended outages.

Execute Third Party Load Forecasts. At MCE's direction, ZGlobal shall execute or ensure that third party load forecast applications are executed and results recorded and made available for analysis and Day-Ahead scheduling. In doing so, ZGlobal shall:

1. Abide by all use restrictions applicable to each of the software tools including any restrictions as provided by MCE from time to time.
2. Abide by all confidential information restrictions that are designated as such from the software tools.
3. Provide MCE with all finished and unfinished reports, plans, studies, documents and other writings prepared by and for ZGlobal in the course of the period in which MCE is utilizing third party forecasts which shall become the sole property of MCE. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to ZGlobal or to any other party. ZGlobal shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request.

4. Provide MCE with forecasting results from each software on a daily basis including using results for daily CAISO schedules.
5. Use commercially reasonable efforts to download an updated version of the software once available.

Analysis of Load Forecast Accuracy. ZGlobal shall measure the accuracy of its Day-Ahead load forecasts against estimated and final settled load amounts and CAISO market prices. At MCE's direction, ZGlobal shall analyze and report accuracy of third-party Day-Ahead load forecasts against estimated and final settled load amounts and CAISO market prices.

### **3. MCE's Responsibilities**

Information to be Provided by MCE to ZGlobal. MCE shall provide ZGlobal with all relevant information to allow ZGlobal to effectively forecast MCE's demand to allow for scheduling into the CAISO and as applicable, other market/Balancing Authority Areas. This includes data such as historical energy demand, meteorological data, expected changes in customer base, and changes in rate class, geographic or other systemic load consumption. Information shall be provided by MCE to ZGlobal in time sufficient to perform Forecasting Services, as determined and specified in writing by ZGlobal. Information shall be provided by MCE in electronic format to ZGlobal's Oracle database or other automation-ready format to be specified by ZGlobal, without errors. If ZGlobal is required to subscribe to additional data services, described below in Paragraph 4, MCE shall also remain current on pass-through costs of paid data services. As a forecast necessarily requires input data, any failure by MCE to provide data will result in the inability of ZGlobal to provide a forecast.

### **4. ZGlobal's Responsibilities**

Professional Services. ZGlobal shall perform the Forecasting Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, and other written directions provided by MCE to ZGlobal from time to time.

ZGlobal shall provide MCE's forecast in a timely manner, and in accordance with appropriate trading timeframes. ZGlobal will subscribe to paid data services, if ZGlobal deems necessary for use as input data as noted in above Section 2, and will invoice MCE for the cost of such service(s), including any costs shared among multiple other clients, if applicable. ZGlobal will endeavor to produce forecasts as accurate as possible. As demand forecasting is an inexact art, ZGlobal makes no warranty of accuracy of its forecasts. MCE indemnifies and holds harmless ZGlobal for any direct damages due to inaccuracy of forecasts or failure to produce forecasts.

Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to MCE of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**[End of Exhibit E]**

## **EXHIBIT F**

### **Portfolio Management Services**

This Exhibit F details specific services (“Portfolio Management Services”) to be performed or provided by ZGlobal under this Agreement.

#### **1. Categories of Portfolio Management Services**

Portfolio Management Services functions vary depending upon the level of responsibility the MCE desires ZGlobal to undertake (real-time, day-ahead, forward). At MCE’s option, MCE shall expressly direct ZGlobal in writing to perform Portfolio Management Services for the following categories:

- Assess and manage MCE’s net open position by performing analysis to develop strategies for:
  - Short term Energy positions (Operating Month through Real Time)
  - Transmission positions (including CAISO markets)
  - Financial positions
  - Energy Storage
- Utilize applications and data for assessment of MCE’s portfolio. Examples of applications and data are shown below:
  - Production forecast for renewable energy resources
  - Production meter data for renewable energy resources
  - Imbalance energy costs for specific resources
  - Other costs that affect resource revenue
- Execute financial transactions:
  - Forward (including the CAISO’s Congestion Revenue Rights (CRRs))
    - Day-Ahead
    - Hour-Ahead
- Assist MCE with developing in-house expertise as directed by MCE. This includes training, information, data and analysis.

#### **Description of Services**

ZGlobal proposes to provide Portfolio Management Services on behalf of MCE to allow for managing MCE’s net open position.

#### **MCE’s Responsibilities**

Authorization for ZGlobal to Transact on Behalf of MCE. To the extent reasonably required by ZGlobal to perform the Portfolio Management Services requested by MCE, MCE will provide authorization for ZGlobal to transact on MCE’s behalf consistent with parameters established by MCE and agreed upon by ZGlobal in writing prior to engaging in such transactions. As a condition of performance of the Portfolio Management Services, ZGlobal will identify and MCE shall have performed all tasks necessary to allow ZGlobal to provide Portfolio Management Services for MCE. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of MCE.

Information to Be Provided by MCE to ZGlobal. ZGlobal shall identify and MCE shall provide ZGlobal with all relevant information to allow ZGlobal to determine MCE’s net open position, effectively bid, schedule and execute transactions in order to close MCE’s net open position. This includes data such as MCE’s load information, transactions with counterparties, facilities and contractual economic data, capabilities and limitations, planned and Forced Outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information.

Parameters required for Day-Ahead and Hour-Ahead Portfolio Management Services shall be agreed to between ZGlobal and MCE at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than 48 hours prior to day that electricity is to be scheduled onto the electrical grid.

Parameters required for forward Portfolio Management Services shall be agreed to between ZGlobal and MCE at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than one calendar week prior to day that electricity is to be scheduled onto the electrical grid.

Fees and Costs Imposed as a Result of Portfolio Management Services. For transactions that ZGlobal transacts on behalf of MCE, MCE shall be responsible for all costs and revenues MCE incurs as a result of such transactions. Costs and revenues may emanate from Balancing Authorities, Transmission Owners/Operators, the CAISO or third parties. This includes items such as the CAISO's Grid Management Charge (GMC), ancillary services, among others. The intent is that ZGlobal acts as a conduit for dollar flow between MCE and the CAISO, Balancing Authorities, Transmission Owners/Operators and third parties.

### **ZGlobal's Responsibilities**

Transactions. At MCE's written direction, ZGlobal shall execute transactions on behalf of MCE designed to implement MCE's portfolio management strategy.

Strategy Review. MCE and ZGlobal shall meet on a regular basis to review MCE's portfolio management strategy, but no less than twice per year.

Transaction Data. All transaction data shall be recorded and stored by ZGlobal and provided to MCE as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

Reports. ZGlobal shall publish regular Portfolio Management Services reports. Reports shall include exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and MCE, but at a frequency no less than once per month. ZGlobal shall provide standardized monthly reports including, but not limited to, the following, upon MCE's request: net short and long positions, day ahead energy charges, imbalance charges, portfolio changes, and potential areas for improvement and CRR effectiveness reports. Upon MCE's request, ZGlobal shall also provide ad hoc settlement and contract analysis and settlement charge code and billing determinant data.

Professional Services. ZGlobal shall perform Portfolio Management Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, MCE's Congestion Revenue Rights Risk Management Guidelines, which have been provided to ZGlobal and as may be updated from time to time at MCE's sole discretion, and other written directions provided by MCE to ZGlobal from time to time.

Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to MCE of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**[End of Exhibit F]**

## **EXHIBIT G**

### **Information Resources**

This Exhibit G describes the software, databases, data, and information portal(s) developed or acquired by ZGlobal on MCE's behalf that ZGlobal shall provide MCE and MCE's designated representatives and consultants access to in connection with the Services:

**Access to Transactional and Settlement Data** – Direct access to the data store for all of MCE's energy transactional and settlement data hosted and maintained by PowerSettlements via a software services agreement with ZGlobal shall be provided as part of the Generation Scheduling Services.

MCE shall be provided with login credentials to access its data in PowerSettlements. The data will be updated daily consistent with CAISO posting of data. All reports developed by ZGlobal for MCE along with the supporting data will be available to MCE via direct access.

Access to PowerSettlements shall be available through ZGlobal's PowerSettlements services agreement provided this Agreement between ZGlobal and MCE is effective. Access to PowerSettlements shall be terminated upon termination of this Agreement between ZGlobal and MCE. Notwithstanding, MCE shall retain rights to its data, and is subject to confidentiality and non-disclosure.

#### **CAISO Shadow Settlements**

CAISO shadow settlements that are used to validate CAISO daily and monthly settlement statements, invoices and payment notices will be made available to MCE via a mutually agreed method through customized reports and bill determinant files. Shadow settlement data and files are to be calculated or prepared using the relevant CAISO shadow settlement system utilized by ZGlobal during the Term of this Agreement between ZGlobal and MCE including but not limited to: PowerSettlements Settlecore, other customized tools developed by ZGlobal. CAISO shadow settlements shall be provided as part of Generation Scheduling Services and Load Scheduling Services, as applicable.

#### **CRR Analysis**

Results of CRR analysis performed for MCE including any inputs (e.g. - prices, constraints and outages) used to prepare such results will be made available to MCE via a mutually agreed method through customized reports and data files. CRR analyses are to be performed utilizing various database services and tools acquired by ZGlobal to perform such analysis, including but not limited to ZGlobal proprietary Oracle databases, CAISO OASIS, Plexos Integrated Energy Model and/or other similar data sources and applications. Direct access by MCE staff to one or more of ZGlobal's database sources or software tools shall be governed by any relevant software license or use agreements ZGlobal has with the relevant third party during the Term of this Agreement between ZGlobal and MCE. In some cases, this may require MCE to have its own agreement and fee structure with said third party and ZGlobal will promptly notify MCE if a separate agreement is required. Systems related to CRR Analysis shall be provided as part of the Portfolio Management Services.

**[End of Exhibit G]**

**EXHIBIT H**

**Large Hydro/ACS Import Management Services**

This Exhibit H details the Large Hydro/ACS Import Management Services to be performed or provided by ZGlobal at MCE's written request under this Agreement.

**1. Categories of Large Hydro/ACS Import Management Services**

At MCE's written request, ZGlobal shall act as MCE's agent to schedule imports of Large Hydroelectric Energy and Asset Controlling Supplier (ACS) Energy ("Product") up to the lesser of 5 e-tags or 1,200,000 MWh for any calendar year, beginning in January 1, 2020 unless terminated or extended as allowed under Section 12 of this Agreement and perform or provide all requisite information to complete compliance reporting to the California Air Resources Board ("CARB") associated with Products on MCE's behalf. This includes:

Scheduling Coordinator Services for the purpose of importing Products into the California Independent System Operator (CAISO) balancing area at mutually agreed upon Scheduling Points.

Providing Settlement Services (CAISO and third party as necessary) related to Products.

E-tagging Products from source to sink whereby MCE is the Purchasing Selling Entity ("PSE") sink and first deliverer of Product into California.

Assisting MCE with establishing itself as a PSE sink for purposes of tagging Product.

Obtaining data such as energy volumes generated and scheduled, CARB IDs, emission factors, allocated generation, specific resources, power purchase agreement/confirm for Products and other information necessary to complete CARB compliance reporting for Products. ZGlobal shall complete all required compliance reporting for Products on MCE's behalf, including any reporting that occurs after the completion of energy flow for a calendar year, and including managing the CARB-related audits on MCE's behalf.

If necessary, perform prerequisite functions needed for MCE to acquire California Carbon Allowances to account for any cap-and-trade compliance obligation for Products.

MCE and ZGlobal agree that ZGlobal will not take title or financial responsibility for Products under the services of this Exhibit H.

**[End of Exhibit H]**

**EXHIBIT I**  
**Services Fees**

This Exhibit I describes the services fees ("Services Fees") to be remitted to ZGlobal from MCE for all Services performed pursuant to this Agreement.

The Service fees listed below commenced in 2018 and have escalated, as applicable, each year and will continue to escalate for the remaining term of this Agreement.

**Service Fees**

Set-up and Scheduling Coordinator Transition Fees = \$0

Scheduling Coordinator Services Fee = \$14,000 per month for 12 months (\$9,875 per month for Generation Scheduling, \$4,125 per month for Load Scheduling), then escalated by 2.0% each year thereafter.

Financial Settlement Services Fee = \$0

Forecasting Services Fee = \$5,900 per month for 12 months, then escalated by 2.0% each year thereafter.

Portfolio Management Services Fee = \$8,400 per month for 12 months, then escalated by 2.0% each year thereafter. Incremental cost of \$1,500 per month per new stand-alone energy storage facilities or solar/wind combined with energy storage.

Demand Response Services Fee = time and materials limited to the amount allowed by the California Energy Commission and billed by MCE or its Demand Response coordinator

Carbon-Free Import Management Services Fee = \$5,600 per month up to the lesser of 5 E-Tags or 1,200,000 MWh per calendar year. Incremental cost = \$530 per month for each additional E-Tag that exceeds the lesser of 5 E-Tags or 1,200,000 MWh in a calendar year.

If requested by MCE and agreed to by ZGlobal, ZGlobal shall provide additional services related to Forecasting Services and Portfolio Management Services, not accounted for herein, on a time and material basis at a rate of \$200/hour not to exceed a cap agreed to by MCE and ZGlobal. Such work shall be described in a formal scope of work document that includes an estimate of hours needed to complete the work and deliverables and is approved by ZGlobal and MCE's Department Head for Power Resources.

Examples of such services include:

- Forecasting Services
  - Implementation of new forecast models
  - Recalibration of existing forecast models specific to load shape and load magnitude relative to historical data
  - Remapping of input data
  - Change in source data from static load profiles to AMI data
- Portfolio Management
  - Implementation of new optimization models
  - Recalibration of existing optimization models beyond the scope of using model's existing control variables
  - Mapping of input data to optimization models

**[End of Exhibit I]**







October 6, 2023

TO: MCE Technical Committee

FROM: Justin Kudo, Senior Strategic Analysis and Rates Manager

RE: MCE Solar Billing Plan Tariff (Agenda Item #06)

ATTACHMENTS: A. Proposed MCE Solar Billing Plan Tariff  
B. Sample Energy Export Rates

Dear Technical Committee Members:

**Summary:**

In December 2022, the California Public Utilities Commission (CPUC) initiated a pivotal transition from the conventional Net Energy Metering (NEM) program to a successor program known as the Net Billing Tariff or Solar Billing Plan (SBP). The SBP realigns compensation for customer-sited electricity exported to the grid to be based on the overall value of that electricity, rather than prevailing retail electric rates. These new price signals represent more sustainable values for expanded electrification, and enhance the value created by battery storage.

MCE's proposed SBP is designed to align with PG&E's SBP and would establish a billing mechanism and export rates for customers who apply for interconnection of an eligible renewable generating system, such as solar or wind, after April 14, 2023. **MCE's proposed SBP would not replace MCE's existing NEM program.** Customer projects with interconnection before April 14, 2023 would remain enrolled in NEM service until 20 years from their PG&E interconnection dates.

Consistent with MCE's goal of promoting equitable community benefits, the proposed SBP includes a bonus credit for qualified low-income customers to improve solar affordability.

**Background**

Net Energy Metering (NEM) is a billing system where customers with eligible renewable projects, whether homes or businesses, get credit for the excess electricity they generate and send back to the grid. At the end of the billing period, they're charged only for the

net amount of electricity used, which is electricity consumed minus electricity generated. If they produce more electricity than they use, they might receive a credit towards future bills.

Net Energy Metering has undergone several changes in its policy and tariff structures, largely driven by the growth of solar adoption, changing grid needs, and the desire to reflect the value of solar energy more accurately on the grid.

Only about 40-50% of electricity produced by Northern California residential solar installations is used on-site; the remainder is exported to the grid.<sup>1</sup> During the early 2000's, initial compensation for these exports was set relatively high as limited solar production coincided with peak periods of strain on the grid, and customers were encouraged to install rooftop solar to offset peak demand and to increase utilization of renewable energy.

The solar industry has grown to provide an estimated 27% of California's total electricity production<sup>2</sup>, a phenomenal success towards renewable energy goals. However, this success also brought new supply-and-demand challenges for the industry: the abundance of solar electricity during daytime hours significantly reduces its value during the day and shifts a supply reliability gap into the evening hours when solar stops producing. When electricity exceeds regional demand during the day, it may in some cases have zero, or even negative value, unless it can be stored or utilized elsewhere.

### **Legacy NEM Customers**

Customers with a PG&E interconnection agreement accepted by the April 14, 2023 deadline are generally allowed to remain on PG&E's NEM program for up to 20 years from their permission-to-operate date; over 99% of pre-April installations meet this criterion. This legacy<sup>3</sup> period is granted even if the system is transferred to a new homeowner/operator and is only forfeit at the customer's discretion or if the system is significantly modified from its original capacity.

Staff recommends that MCE support this same standard, and allow customers to stay on NEM until their service is transitioned by PG&E. No action is required to extend these same protections, as MCE's NEM tariff remains in effect for accounts that, per MCE's NEM Tariff, "comply with all PG&E NEM requirements."

### **Opportunities for Battery Storage**

Consistent with MCE's renewable and reliability objectives, the proposed SBP

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<sup>2</sup> U.S. Energy Information Administration. (2023, April 20). *California State Energy Profile and Energy Estimates*. <https://www.eia.gov/state/analysis.php?sid=CA>

<sup>2</sup> U.S. Energy Information Administration. (2023, April 20). *California State Energy Profile and Energy Estimates*. <https://www.eia.gov/state/analysis.php?sid=CA>

<sup>4</sup> Fields, S. (2023, March 10) What do California solar installers think about NEM 3? We asked them! *Energy Sage*. <https://news.energysage.com/what-california-solar-installers-think-about-nem-3/>

underscores the critical necessity of energy storage. The value of load shifting through energy storage and discharge has been somewhat constrained under NEM due to competing generous NEM export values. The proposed SBC seeks to increase the value of battery storage with hourly export rates that incentivize evening peak discharge.

Recent surveys of solar installers indicate a foreseeable surge in battery installations, rising from the current 19% of installations to 71% post SBP adoption. Additionally, 69% indicated that they would respond to the changes by investing more in storage sales.<sup>4</sup>

### **Proposed Export Rates**

The CPUC has required that PG&E Export Rates be valued based on the hourly avoided cost of energy, as developed biannually by the CPUC.

The initial Export Rates will be determined based on the current avoided cost values, which currently average \$0.04/kWh during typical solar export hours. Customers are allowed to lock-in their Export Rates for 9 years from interconnection, based on the expected payback period for a solar installation. This provides reliable financing expectations for solar installations.

Staff notes that these prices are influenced by supply and demand, therefore, exporting during the day when clean energy is abundant results in the limited values above. Export Rates can be significantly higher during system peak hours - as much as 100 times the average rate. This also adds to the value proposition for battery storage moving daytime exports into peak evening hours.

Staff recommends that MCE adopt the same Export Rates offered by PG&E, plus a 10% adder. A sample of the 2022 PG&E Export Rates are included in Attachment B. A full listing is available from PG&E at <http://pge.com/energyexportcredit/>.

As MCE does not receive green attributes associated with customer energy exports, the Deep Green \$0.01/kWh adder would not apply to exported energy.

### **Low-Income Households**

MCE has identified low-income households as a critical segment to support in installation of distributed energy resources. MCE's data suggests a discernible gap in solar adoption between regular and low-income households. Approximately 6.7% of MCE CARE/FERA households have solar, compared with 15.6% of non-CARE/FERA households<sup>5</sup>. MCE's battery storage program has prioritized low-income households for installations, and Staff is actively pursuing other potential approaches to making these resources available, such as MCE's Virtual Power Plant for low-income residents as part of Richmond's Advanced Energy Community project.

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<sup>4</sup> Fields, S. (2023, March 10) What do California solar installers think about NEM 3? We asked them! *Energy Sage*. <https://news.energysage.com/what-california-solar-installers-think-about-nem-3/>

<sup>5</sup> As of May 2023.

The proposed SBP, consistent with MCE’s mission statement of **creating equitable community benefits**, provides an additional generation-based Export Bonus Credit of \$0.05/kWh for low-income households on CARE or FERA, which would be automatically applied for five years, with a sunset date of January 1, 2029.

The CPUC created an “Energy Export Bonus Credit” providing an additional \$0.09/kWh delivery-based credit for low-income households interconnected in 2023, which also applies to qualified MCE customers automatically. The credit declines by 20% annually for new installations, but the assigned amount continues for up to 9 years.

### Other Changes from Net Energy Metering

**Annual Cash-Out and Net Surplus Compensation (NSC)** – Under MCE’s existing NEM tariff, surplus energy payments are made at the NSC rate, calculated as average market value of electricity during solar generating hours.

This is, effectively, a double payment: once when the energy is first exported and again in an NSC payment. To fix this, the CPUC recommends replacing the initial credit provided with the higher NSC rate. MCE’s proposed SBP adopts this methodology.

The proposed SBP’s Cash-Out would also remove both the \$5,000 maximum payment cap and the \$0.02/kWh NSC adder. The adder is no longer needed because the energy will be correctly priced at its export value. The cap removal will ensure customers receive the full value associated with their electricity deliveries, even if that value exceeds \$5,000.

### Customer Impacts

The following compares the expected value of solar production for a household<sup>6</sup> without a battery storage system under MCE’s proposed SBP versus NEM. When energy is consumed as it is generated, the Generation value of solar production under SBP is equivalent to NEM. Only when electricity is exported to the grid during low-value hours is the value reduced. Battery storage systems can be utilized to significantly increase this value. Inclusive of potential PG&E delivery-based export credits, Staff estimates that a typical storage system may increase the value of solar energy produced by \$100-\$200 per month.

Solar Generation Value <sup>7</sup> (\$/kWh)	Annual Volume (kWh)	NEM Value	SBP Value	Change
If Used On-Site (\$0.141)	5,782	\$815	\$815	\$0
If Exported (Under NEM - \$0.141) (SBP w/Bonus - \$0.044)	5,782	\$815	\$254	-\$561

<sup>6</sup> Assuming a 6 kW install, 50% rate of export, and average export value of \$0.04/kWh.

<sup>7</sup> Generation only, representing MCE charges. Does not include delivery value.

<b>Total Solar Value</b>	11,564	\$1,631	\$1,047	-\$561
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### Fiscal Impacts:

The five-year cost of implementing the proposed SBP is estimated to be as follows:

	2024	2025	2026	2027	2028	Total
<b>Export Credits</b>	\$208,152	\$416,304	\$624,456	\$832,608	\$1,040,760	\$3,122,280
<b>Low-Income Export Adder</b>	\$314,375	\$574,547	\$834,719	\$1,094,891	\$1,355,063	\$4,173,595
<b>Total</b>	\$522,527	\$990,851	\$1,459,175	\$1,927,499	\$2,395,823	\$7,295,875

**Export Credits** - Transition to SBP will reduce the electricity export payments to an estimated fair market value, therefore, the base export credits are generally cash-neutral to MCE. However, the proposed 10% export credit adder has an ongoing cost to MCE.

**Low-Income Export Credit Adder** – Figures provided assume 900 new low-income solar installations annually, with a monthly export of 481 kWh. These numbers increase over the course of the program due to additional installations.

While these costs are substantial, they are primarily allocated to a temporary subsidy of new low-income solar installations. Staff also notes that these costs are considerably less than the additional export credits which would be paid out if the existing NEM program were extended to new installations.

	2024	2025	2026	2027	2028	Total
<b>Export Values Under Existing NEM Program</b>	\$5,047,686	\$10,095,372	\$15,143,058	\$20,190,744	\$25,238,430	\$75,715,290

### Recommendation:

Staff recommends that the Technical Committee approve the proposed SBP tariff included in Attachment A, as well as the proposed Export Rate methodology.



## MCE Solar Billing Plan (SBP) Tariff

*Effective Date: December 1, 2023*

MCE's Solar Billing Plan (SBP) Tariff provides the billing mechanism by which customers can receive credit for self-generated renewable energy exported to the grid.

**Eligibility:** SBP is available to customers operating a solar, wind, biomass, geothermal, or other renewable resources as defined in the California Energy Commission's Renewables Portfolio Standard Eligibility Guidebook. Additionally, the customer must participate in PG&E's SBP (or successor) for non-generation services, such as transmission and distribution. MCE customers may apply for renewable facility interconnection with PG&E; no direct agreement with MCE is necessary.

**Applicability:** MCE's SBP program applies to all PG&E SBP customers receiving electric generation services from MCE, including customers with battery storage, fuel cells, or under future aggregated or virtual designs. The stipulations of this tariff remain in effect until modified or replaced by MCE.

**Rates:** MCE's SBP program provides the bill mechanism for billing and crediting customers with generating facilities only; customers continue to be served by their otherwise applicable rate schedule. Customers served under this tariff are still responsible for all billed usage charges according to their MCE rate schedule, including volumetric usage, demand charges, Deep Green surcharges, taxes, and all other charges owed to MCE. Bill charges or credits for energy supplied by or delivered to MCE will be calculated monthly.

Exported Electricity (defined under "Billing" below) will be credited at an equivalent value to the customer's applicable MCE Energy Export Credit. These rates are available from MCE at [mcecleanenergy.org/export](https://mcecleanenergy.org/export).

All customers will also receive a Solar Bonus Credit which provides an additional 10% of the base export credit.

CARE and FERA customers<sup>1</sup> will receive a \$0.05/kWh generation export bonus credit on all exports until December 31, 2028. This credit is additional to any PG&E delivery-based export bonus credits for eligible customers.

**BILLING:** Customers with SBP service will be billed as follows:

### 1) Monthly Settlement of MCE Charges/Credits

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<sup>1</sup> MCE will apply this credit to customers identified on CARE or FERA by PG&E. This process should occur automatically. If a customer's participation in these programs ends, the credit will also be suspended until the customer re-enrolls in CARE or FERA.

- a) "Imported Electricity" is defined as when a customer uses any metered energy supplied by MCE.
- b) "Exported Electricity" is defined as when a customer supplies any metered energy to the electric grid.
- c) "Export Rates" are defined as the appropriate credit for any Exported Electricity, based on the sum of the applicable interval Energy Export Rate posted on MCE's website and any applicable credit surcharges.
- d) "Export Credit Balance" is defined as when a customer has excess export credits carried into the next month, or into the MCE Annual Cash-Out process.
- e) Each monthly statement will contain the net sum of:
  - i) Imported Electricity usage charges, billed according to the generation rates on a customer's applicable rate schedule plus any applicable service surcharges.
  - ii) Exported Electricity credits, credited according to the applicable Energy Export Credit Rate.
  - iii) Any other eligible credits or charges.
- f) If the balance of these charges and credits is negative (indicating surplus credits available), these credits will be carried to the following month as an Export Credit Balance until MCE's Annual Cash-Out.
- g) Export Credit Balances can offset MCE charges within the same Annual Cash-Out period, but do not have any cash value.

## 2) MCE Annual Cash-Out

- a) Following the conclusion of each customer's March-April billing cycle, MCE will conduct its Annual Cash-Out process as follows:
  - i) **Retroactive Payment:** If the customer has an Export Credit Balance but incurred MCE usage charges earlier within the same Annual Cash-Out period, the credits will be applied against any of these charges still due.
    - (1) If these charges were already paid, the amount will instead be refunded to the customer at the end of the Annual Cash-Out process.
  - ii) **Export Credit Reversal:** If the customer's Exported Electricity is greater than their Imported Electricity during the Annual Cash-Out period, the customer is eligible for Net Surplus Compensation (NSC).
    - (1) To avoid double-payment for exported electricity, the initial export credit will be reversed at the average Energy Export Credit (including Solar Bonus Credit) rate.
    - (2) This will be charged against any Export Credit Balance available, otherwise it will be charged against the NSC payment below.



- iii) **Credit Reset:** Any remaining export credit balance will be reset to zero to start the next Annual Cash-Out period.
  - iv) **Net Surplus Compensation:** If a customer's Exported Electricity is greater than their Imported Electricity, then the customer will receive an NSC payment based on their net electricity exports times the NSC rate.
    - (1) The NSC rate will be determined upon cash-out based on the average wholesale rate during solar generating hours over a 12-month period as determined by MCE, reduced by the approximate value of export credits already provided for the same surplus energy.
  - v) **Cash-Out Payments:** Customer Cash-Outs will be the sum of any eligible NSC payment as detailed in Section 2.a.iv and any refunded payments as detailed in Section 2.a.i.(1).
    - (1) Customers will receive Cash-Out payments automatically, in the form of an on-bill credit or paid by check. Payments less than or equal to \$200 will be credited to the customer's PG&E account balance. Payments greater than \$200 will be issued by check to the customer's mailing address as noted on their PG&E account.
    - (2) If a Cash-Out check is not cashed within 90 days of issuance, the payment will be canceled. If the account is still active, MCE will attempt to contact the customer and make a replacement payment available.
    - (3) If Cash-Out payments remain unclaimed, MCE will follow the requirements of Government Code Section 50050-50057 et. seq. regarding the handling of unclaimed funds.
- 3) Transition from NEM to SBP Service
- a) Customers transitioning from NEM to SBP service will have their current NEM escrow balance at time of transition into their SBP Export Credit Balance.
  - b) Once transitioned to SBP service, only the SBP Annual Cash-Out process will be utilized as detailed in Section 2 above.
- 4) Customers Returning to PG&E Bundled Service and Account Closures
- a) MCE customers with SBP service may opt-out and return to PG&E bundled service at any time, subject to MCE and PG&E's terms and conditions for return to bundled service.
  - b) Customers returning to PG&E bundled service or closing their PG&E account may request a review of their account for Cash-Out payment. This settlement will follow the MCE Annual Cash-Out process as defined in Section 2 and be issued as a check to the address provided by the customer.
  - c) Customers returning to PG&E service or closing their PG&E account must request a review for cash-out payments within 90 days of the end of their MCE service. Credit balances remaining after 90 days will be forfeited.

**Attachment B - Sample Energy Export Rates**

Year	Month	Day-Type	Hour-Starting	EEC - Generation Component	EEC - Delivery Component	EEC - Total
2023	8	Weekday	0	\$0.0569	\$0.0038	\$0.0607
2023	8	Weekday	1	\$0.0507	\$0.0032	\$0.0538
2023	8	Weekday	2	\$0.0502	\$0.0031	\$0.0533
2023	8	Weekday	3	\$0.0498	\$0.0030	\$0.0528
2023	8	Weekday	4	\$0.0495	\$0.0030	\$0.0525
2023	8	Weekday	5	\$0.0499	\$0.0031	\$0.0530
2023	8	Weekday	6	\$0.0496	\$0.0031	\$0.0527
2023	8	Weekday	7	\$0.0512	\$0.0036	\$0.0547
2023	8	Weekday	8	\$0.0519	\$0.0045	\$0.0564
2023	8	Weekday	9	\$0.0502	\$0.0051	\$0.0552
2023	8	Weekday	10	\$0.0498	\$0.0053	\$0.0551
2023	8	Weekday	11	\$0.0492	\$0.0061	\$0.0553
2023	8	Weekday	12	\$0.0489	\$0.0068	\$0.0557
2023	8	Weekday	13	\$0.0489	\$0.0072	\$0.0560
2023	8	Weekday	14	\$0.0501	\$0.0104	\$0.0605
2023	8	Weekday	15	\$0.0571	\$0.0607	\$0.1178
2023	8	Weekday	16	\$0.0628	\$0.0710	\$0.1339
2023	8	Weekday	17	\$0.1007	\$0.2171	\$0.3178
2023	8	Weekday	18	\$0.1883	\$0.3148	\$0.5031
2023	8	Weekday	19	\$0.5062	\$0.2248	\$0.7310
2023	8	Weekday	20	\$0.2177	\$0.1234	\$0.3411
2023	8	Weekday	21	\$0.2176	\$0.0635	\$0.2811
2023	8	Weekday	22	\$0.1804	\$0.0106	\$0.1909
2023	8	Weekday	23	\$0.0566	\$0.0045	\$0.0611
2023	8	Weekend/Holiday	0	\$0.0523	\$0.0037	\$0.0559
2023	8	Weekend/Holiday	1	\$0.0506	\$0.0033	\$0.0539
2023	8	Weekend/Holiday	2	\$0.0483	\$0.0030	\$0.0513
2023	8	Weekend/Holiday	3	\$0.0485	\$0.0030	\$0.0514
2023	8	Weekend/Holiday	4	\$0.0472	\$0.0028	\$0.0500
2023	8	Weekend/Holiday	5	\$0.0450	\$0.0026	\$0.0476
2023	8	Weekend/Holiday	6	\$0.0433	\$0.0033	\$0.0466
2023	8	Weekend/Holiday	7	\$0.0445	\$0.0054	\$0.0500
2023	8	Weekend/Holiday	8	\$0.0335	\$0.0041	\$0.0376
2023	8	Weekend/Holiday	9	\$0.0324	\$0.0026	\$0.0350
2023	8	Weekend/Holiday	10	\$0.0326	\$0.0045	\$0.0372
2023	8	Weekend/Holiday	11	\$0.0326	\$0.0038	\$0.0364
2023	8	Weekend/Holiday	12	\$0.0310	\$0.0041	\$0.0351
2023	8	Weekend/Holiday	13	\$0.0314	\$0.0046	\$0.0360
2023	8	Weekend/Holiday	14	\$0.0332	\$0.0061	\$0.0392
2023	8	Weekend/Holiday	15	\$0.0410	\$0.0088	\$0.0498
2023	8	Weekend/Holiday	16	\$0.0561	\$0.0157	\$0.0718
2023	8	Weekend/Holiday	17	\$0.0874	\$0.1220	\$0.2094
2023	8	Weekend/Holiday	18	\$0.1617	\$0.1419	\$0.3036
2023	8	Weekend/Holiday	19	\$0.4228	\$0.1469	\$0.5698
2023	8	Weekend/Holiday	20	\$0.1767	\$0.1282	\$0.3050
2023	8	Weekend/Holiday	21	\$0.1946	\$0.0197	\$0.2143
2023	8	Weekend/Holiday	22	\$0.1622	\$0.0107	\$0.1729

2023	8	Weekend/Holiday	23	\$0.0596	\$0.0046	\$0.0641
2023	9	Weekday	0	\$0.0580	\$0.0040	\$0.0619
2023	9	Weekday	1	\$0.0497	\$0.0034	\$0.0531
2023	9	Weekday	2	\$0.0492	\$0.0033	\$0.0525
2023	9	Weekday	3	\$0.0483	\$0.0032	\$0.0515
2023	9	Weekday	4	\$0.0477	\$0.0031	\$0.0508
2023	9	Weekday	5	\$0.0476	\$0.0031	\$0.0507
2023	9	Weekday	6	\$0.0495	\$0.0033	\$0.0528
2023	9	Weekday	7	\$0.0498	\$0.0034	\$0.0532
2023	9	Weekday	8	\$0.0452	\$0.0033	\$0.0485
2023	9	Weekday	9	\$0.0367	\$0.0027	\$0.0394
2023	9	Weekday	10	\$0.0369	\$0.0030	\$0.0399
2023	9	Weekday	11	\$0.0365	\$0.0034	\$0.0399
2023	9	Weekday	12	\$0.0358	\$0.0040	\$0.0398
2023	9	Weekday	13	\$0.0363	\$0.0046	\$0.0409
2023	9	Weekday	14	\$0.0372	\$0.0064	\$0.0436
2023	9	Weekday	15	\$0.0461	\$0.0094	\$0.0555
2023	9	Weekday	16	\$0.0575	\$0.0592	\$0.1168
2023	9	Weekday	17	\$0.0736	\$0.0639	\$0.1375
2023	9	Weekday	18	\$2.5880	\$0.0649	\$2.6529
2023	9	Weekday	19	\$2.9329	\$0.0627	\$2.9956
2023	9	Weekday	20	\$0.1985	\$0.0143	\$0.2127
2023	9	Weekday	21	\$0.0776	\$0.0104	\$0.0880
2023	9	Weekday	22	\$0.0744	\$0.0068	\$0.0812
2023	9	Weekday	23	\$0.0573	\$0.0043	\$0.0616
2023	9	Weekend/Holiday	0	\$0.0536	\$0.0037	\$0.0574
2023	9	Weekend/Holiday	1	\$0.0498	\$0.0034	\$0.0532
2023	9	Weekend/Holiday	2	\$0.0480	\$0.0031	\$0.0511
2023	9	Weekend/Holiday	3	\$0.0470	\$0.0030	\$0.0501
2023	9	Weekend/Holiday	4	\$0.0446	\$0.0028	\$0.0474
2023	9	Weekend/Holiday	5	\$0.0430	\$0.0026	\$0.0457
2023	9	Weekend/Holiday	6	\$0.0436	\$0.0027	\$0.0463
2023	9	Weekend/Holiday	7	\$0.0411	\$0.0032	\$0.0443
2023	9	Weekend/Holiday	8	\$0.0300	\$0.0016	\$0.0316
2023	9	Weekend/Holiday	9	\$0.0285	\$0.0016	\$0.0301
2023	9	Weekend/Holiday	10	\$0.0280	\$0.0018	\$0.0299
2023	9	Weekend/Holiday	11	\$0.0256	\$0.0020	\$0.0275
2023	9	Weekend/Holiday	12	\$0.0266	\$0.0025	\$0.0291
2023	9	Weekend/Holiday	13	\$0.0274	\$0.0030	\$0.0304
2023	9	Weekend/Holiday	14	\$0.0286	\$0.0046	\$0.0332
2023	9	Weekend/Holiday	15	\$0.0360	\$0.0090	\$0.0451
2023	9	Weekend/Holiday	16	\$0.0504	\$0.0184	\$0.0687
2023	9	Weekend/Holiday	17	\$0.0663	\$0.0276	\$0.0940
2023	9	Weekend/Holiday	18	\$2.2592	\$0.0325	\$2.2917
2023	9	Weekend/Holiday	19	\$2.5640	\$0.0291	\$2.5931
2023	9	Weekend/Holiday	20	\$0.1675	\$0.0216	\$0.1891
2023	9	Weekend/Holiday	21	\$0.0721	\$0.0140	\$0.0860
2023	9	Weekend/Holiday	22	\$0.0695	\$0.0069	\$0.0764
2023	9	Weekend/Holiday	23	\$0.0564	\$0.0043	\$0.0606



# Update on MCE's Green Hydrogen Activities

MCE TECHNICAL COMMITTEE | OCTOBER 6, 2023

# Hydrogen (H<sub>2</sub>) Overview

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- Tasteless, odorless, colorless gas
- Pure H<sub>2</sub> is scarce, but most abundant element in universe
- Green hydrogen can be manufactured with electricity (electrolytic) or biomass (biogenic)

Hydrogen can be produced from a diverse set of sources and processes with few to no GHG emissions

95% of US hydrogen is produced through natural gas

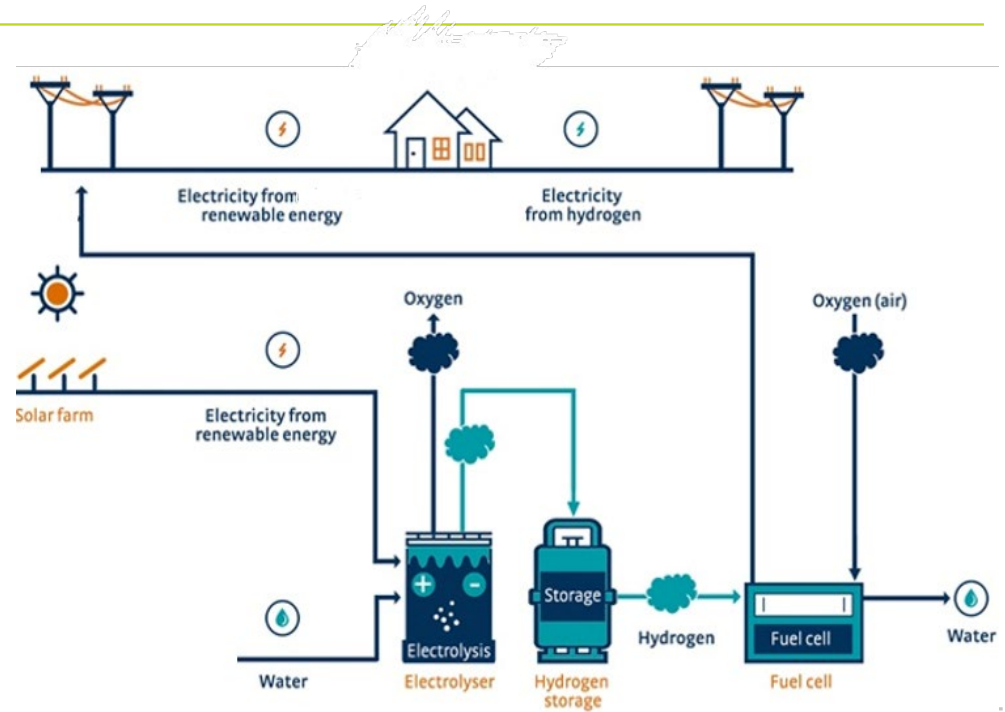
- “blue hydrogen” if CO<sub>2</sub> is captured/stored
- “grey hydrogen” if CO<sub>2</sub> is emitted

**“Green Hydrogen” is produced through renewable-powered electrolysis by splitting water (H<sub>2</sub>O) into oxygen (O<sub>2</sub>) and hydrogen (H<sub>2</sub>)**

# Green Hydrogen as Long-Duration Storage



MCE's primary interest is in renewable electrolytic hydrogen to be pumped through a fuel cell for long-duration storage. This would diversify the storage resources in our portfolio (i.e., not just lithium-ion batteries).



## TEST CASE

## Indicative Costs for Meaningful GH2 Production

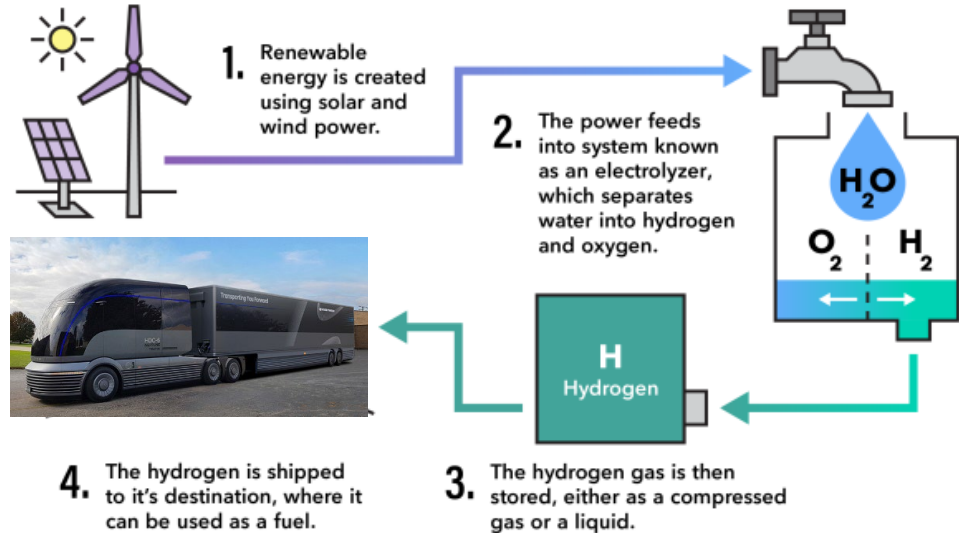
	Battery Storage System	Hydrogen Energy Storage System	
	100 MW / 400 MWh	80 MW Electrolysis / 4-Hour H2 Storage / 20 MW Fuel Cell	80 MW Electrolysis / 8-Hour H2 Storage / 20 MW Fuel Cell
Technical Parameters			
Daily Input Capacity (MWh)	400	326	652
Round-Trip Efficiency	85%	27%	27%
Annual Avg. Stored Energy Sent to (MWh)	60,740	18,000	22,470
Annual Green H2 Produced (kgH2)	0	1,167,000	1,461,000
Annual Water Use (AFY)	0	36.42	45.48
Capital & Operating Costs			
Estimated Capital Costs (\$)	<b>\$140M</b> (includes engineering, construction, commissioning equipment)	<b>\$190M - \$220M</b> (includes Engineering, Construction, Site Works, and Commissioning)	<b>\$195M - \$225M</b> (includes Engineering, Construction, Site Works, and Commissioning)
Annual Fixed O&M Costs	\$3,500,000	\$1,430,000	\$1,430,000

# Green Hydrogen as Transportation Fuel



Green hydrogen is in high demand as a decarbonized transportation fuel. This is especially true for long-range, heavy-duty vehicles like trucks and busses that are challenging to electrify due to their weight.

## How is Green Hydrogen Produced?



Source: [solarthermalworld.org](http://solarthermalworld.org)

Bloomberg Law





- **Infrastructure Investment and Jobs Act**  
**\$9.5 billion for clean hydrogen market**
  - \$8 billion for at least 4 regional DOE Regional Clean Hydrogen Hubs
  - \$1 billion for electrolysis research, development, demonstration
  - \$500 million for clean hydrogen manufacturing and recycling research and development
- **Inflation Reduction Act**
  - Up to \$3/kilogram for tax credits
  - 45V H2 Production Tax Credit

# Statewide Funding

- State General Fund \$110 million
- CEC \$45 million in hydrogen investments
  - include blending, storage, fuel cells,
- CEC \$300 million in Clean Transportation Investments
- Green Hydrogen Market Development Strategy
- Regulations & incentives
  - Low Carbon Fuel Standards
  - Advanced Clean Fleets
  - Advanced Clean Trucks



# Achieving carbon neutrality in California by 2045

photo: Geothermal plants in The Geysers field, Sonoma County. Photo by John Burgess/The Press Democrat

## Achieving Carbon Neutrality in CA requires:

- **2x more electric generation** (including 4x existing wind and solar), **6x more electric appliances; 37x more on road ZEVs**
- 94% decrease in petroleum fuels; 91% decrease in gas for buildings; **1700x increase hydrogen supply**
- Anticipated H2 demand is largely non-combustion transportation (fuel cells, aviation, rail)

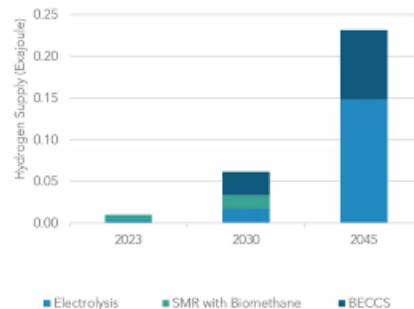
Completed 57th light duty H2 fueling station (goal: 200); 4 transit bus stations; 3 heavy duty fueling stations; planning for a 30-truck project in Oakland.

SB 1075 directs CARB, CEC, CPUC, CA Workforce and Dev Board to produce a H2 report by **June 2025**.

- Policy recs re: hydrogen use
- Strategies for hydrogen infrastructure
- Potential for non-renewable, hydrogen emissions reductions using curtailed electricity
- Air quality benefits and costs with deploying renewable hydrogen

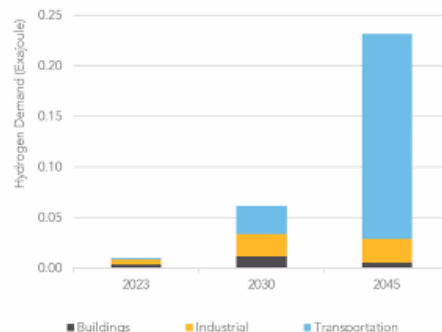
# California Plans

## Hydrogen Supply in the Scoping Plan



- Hydrogen identified as important tool to displace fossil fuel use
- Scoping Plan assumed hydrogen is supplied by 3 methods: electrolysis powered from zero-carbon electricity, steam methane reformation (SMR) of biomethane, and biomass gasification with CCS (BECCS)
- Electrolytic hydrogen demand requires ~ an additional 10 GW of off-grid solar capacity in 2045

## Hydrogen Use by Sector in the Scoping Plan



Hydrogen demand largely driven by non-combustion uses in transport sector:

- Fuel cells for light-, medium-, and heavy-duty vehicles, aviation, ocean-going vessels, freight and passenger rail

Other end-uses with relatively smaller volumes:

- Blended in pipeline to reduce GHG emissions from fossil gas use in buildings
- Blended in natural gas pipeline and in dedicated hydrogen pipelines in industrial manufacturing
- Hydrogen combustion turbines for resource adequacy

# MCE History of H2 Interest

## 2019:

- Q1: MCE Board members from Napa and Contra Costa begin asking about Green H2; staff begins to attend conferences and working groups, focused on significant duck curve impacts & limitations of solar
- Q2: MCE visits **Green Hydrogen Microgrid** in Sonoma and explores H2 for resiliency
- Q3: MCE staff + Board visit UC Irvine's microgrid, identifies downsides of diesel

## 2020:

- Q2: MCE launches **100% Clean RA Request for Offers** for technologies such as green H2, with a preference for projects in MCE's service area that can also provide resiliency services during PSPS events
- Q3: Solicited offers on green H2 project proposals in MCE's service area; **signed term sheets** to start project diligence with counterparties
- Q4: Financial analysis of 2 viable projects (1 solar, 1 wind) proves uneconomic without significant investments (20x market rate); MCE begins **searching for grants & incentives** to decrease costs to protect rate payers from the full costs



# 2021 –Energy Market Assessment



UC Berkeley Goldman School of Economics to produce an original report for MCE on green hydrogen market factors and considerations

Award winning 56-page report: “Plugging Green Hydrogen into California's Energy Landscape”

1. Reviews hydrogen end-uses and production methods, linking them to carbon and air pollutant emissions;
2. Proposes a set of definitions to propose in a fluid regulatory landscape
3. Assesses programs to support the transition to hydrogen
4. Develops viable use cases
5. Defines bounding criteria to evaluate different green hydrogen definitions
6. Evaluates the potential of diverse green hydrogen definitions to deliver on sustainability, equity, and financial objectives

# 2021: CEC's GFO-20-609: Renewable Hydrogen Transportation Fuel Production Program

- Proposal: 1,000 kg H<sub>2</sub>/day using a turn-key electrolyzer at MCE Solar One for transportation fuel; include local workforce hire requirements, free vehicles and fueling
- Offered to meet with Communities for a Better Environment, Asian Pacific Environmental Network, GRID Alternatives
- City of Richmond guidance – CEQA addendum rather than new EIR given industrial use class
- Proposed Project team: MCE, AES Chevron
- Letters of Support from: Mayor Tom Butt, Richmond BUILD, GRID Alternatives, Sup. John Gioia, Sen. Nancy Skinner, BAAQMD, Congressman Mark DeSaulnier
- Selected as a finalist but ultimately not awarded
- Community concerns about Chevron's involvement



RichmondBUILD graduate and Solar One construction worker



# 2022 - ARCHES

## FUNDING UPDATE



Embed in the industry and keep a pulse for upcoming funding opportunities - not just with the DOE's Green Hydrogen Hub funds but also state funding.

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Joined ARCHES in 2022 to collaborate on the H2 Hubs application. Goals include:

1. Establish Clean H2 Hub in CA by 2030
2. Kickstart commercial viability of H2 especially in hard-to-decarbonize sectors
3. Ramp production from 20 tons per day to 500+ especially for ports, power, heavy duty transportation
4. Achieve \$5-7/kilogram carbon negative H2 by 2030

ARCHES has gathered:

1. 39 tier 1 immediately dispatchable projects
2. 31 tier 2 shovel ready projects
3. 400+ Original Equipment Manufacturers, Tech Providers and Suppliers
4. \$150M in direct community benefits
5. \$229M in workforce benefits

MCE staff regularly attend ARCHES Power Working Group





# 2023 – Little Bear

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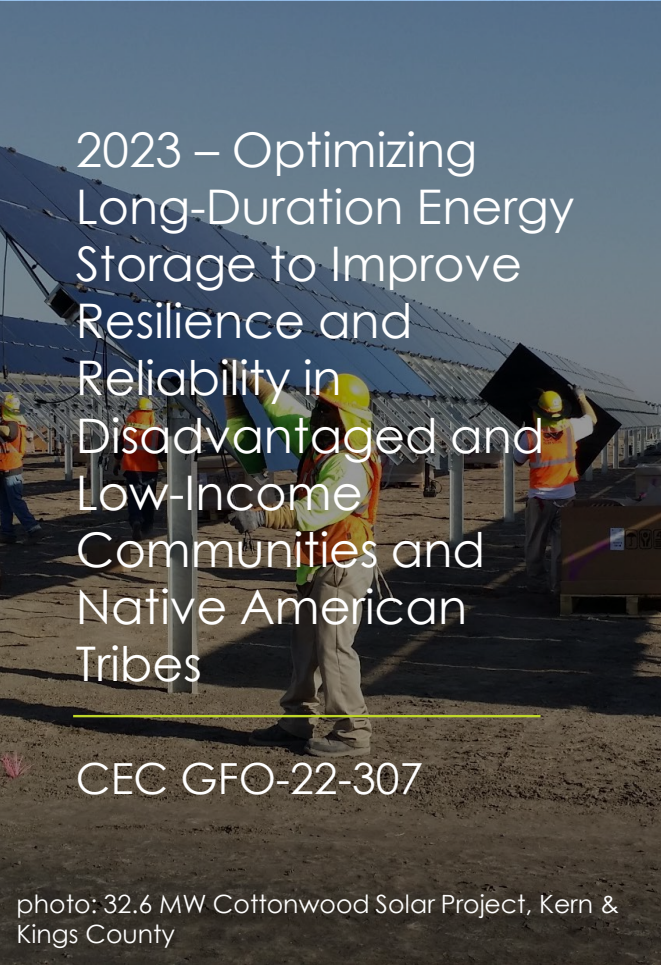
Idea: Convert high seasonal curtailed solar at Fresno's 160MW Little Bear for hydrogen production. Operational since 2020 for a 20-year term.

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Submitted project to ARCHES but rejected due to a lack of technical depth so staff developed a red flag review of project barriers and viability.

## Results:

1. Assessed multiple scenarios to address solutions to curtailment
2. Compared cost efficiencies, water demand, physical footprint, to support MCE staff evaluation.
3. Found that H2 for power was cost prohibitive while H2 for transportation fuel was potentially lucrative



## 2023 – Optimizing Long-Duration Energy Storage to Improve Resilience and Reliability in Disadvantaged and Low-Income Communities and Native American Tribes

CEC GFO-22-307

photo: 32.6 MW Cottonwood Solar Project, Kern & Kings County



Green hydrogen power-to-power proposal: \$9M for a 100kW 24-hour non-Li-ion long-duration hydrogen storage to accelerate commercialization and capabilities validation

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Worked with ARCHES power working group member, Dash2, to develop a proposal to benefit Contra Costa County.

Lessons learned would be shared with Contra Costa County partners already engaged in H2 exploration. Site would expand the fuel-cell green hydrogen microgrid facility at UC Irvine to have:

- demand response capabilities,
- resource adequacy, and
- distribution deferral benefits.

Proposal was disqualified when the Q&A released mid-stream excluded H2 as an eligible resource.



Enable large-scale production of green hydrogen with a customized Green Tariff

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## 2023 – Electrolytic Green Tariff

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- Exploring a collaboration with LS Power to construct a ~220 MW green hydrogen PEM (proton exchange membrane) electrolyzer facility in MCE's service area and requires the supply of up to 400 MW of new wind and solar capacity.
- Assessing the use of a green tariff to use a time-bound generation to support this local electrolytic hydrogen development.

photo: construction at MCE Solar One

## LOCAL PROJECTS

# Raven SR, Richmond

- Convert **99 tons of diverted waste/day** from Republic Services in **Richmond** via **non- combustion tech** to 2400 metric tons H<sub>2</sub>/year
- will produce 60% of its power, needs 3 MW and up to 5.5 MW by 2025
- City Council unanimously approved CEQA permit - **1st waste diversion to RE H<sub>2</sub> facility permitted in CA!**
- H<sub>2</sub> to be sold to Chevron and Hyzon Motors
- MCE staff invited Raven SR to speak at the 2021 Board Retreat and then provided a letter of support. We later received feedback from the community concerned about the criteria air pollution of the project.

## LOCAL PROJECTS

# HCycle, Pittsburg

- **Waste to hydrogen** project that decomposes waste at high temp (no combustion) produces slag, CO<sub>2</sub>, H<sub>2</sub>
- Union commitment
- Writing a full EIR and CEQA and submitting the project to BAAQMD and CalRecycle for waste handling
- Have received ARCHES **H2 Hubs Tier 1 designation for federal funding!**
- Will be the first to submit for Article 2 Diversion Process for **SB 1383 compliance**
- Anticipated second project in unincorporated Contra Costa County
- MCE staff have met to discuss their power needs.

## VENDOR ENGAGEMENT

HyWATTS: Introduction to MCE by Marin Economic Forum. Berkeley Headquarters. Uses a **single-unit reversible hydrogen fuel cell** for long duration storage. Planning for a 100 MW long duration storage project by 2025.

World Business Academy: Worked with MCE staff in a discovery phase for a co-developed **green H2 fuel-cell assisted community microgrid** in Brentwood on a 200-acre golf course. MCE would have dispatched fuel cell into CAISO during blue sky operations. Ultimately, technology assumptions were too optimistic.

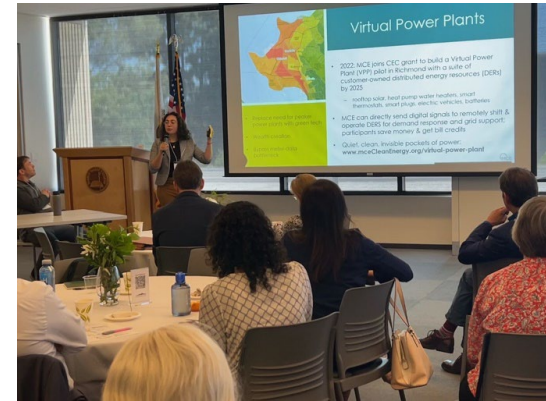


photo: Staff presenting at Contra Costa County Inflation Reduction Act Conference.





# Thank You

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