

**BEHIND THE RETAIL METER
CAPACITY STORAGE AGREEMENT**

between

REDWOOD COAST ENERGY AUTHORITY
(as “Buyer”)

and

SWELL VPP FUND 2021-I LLC
(as “Seller”)

BEHIND THE RETAIL METER CAPACITY STORAGE AGREEMENT

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BEHIND THE RETAIL METER CAPACITY STORAGE AGREEMENT

COVER SHEET

A. Term

Effective Date: _____

Delivery Term: 12 Contract Years

Expected Initial Delivery Date: May 1, 2023

B. Transaction

Capacity Attributes of Product as of Effective Date: (subject to modification pursuant to Section 3.4(a)(v), Section 3.4(a)(vi), or Section 3.4(a)(vii))

System RA Attributes: 300 kW

Local RA Attributes: 300 kW

Flexible RA Attributes: 0 kW

Initial Contract Amount: 300 kW

Contract Amount: The Initial Contract Amount of 300 kW may be subsequently modified pursuant to Section 3.4(a)(i), Section 3.4(a)(ii), or Section 3.4(a)(iii). As specified in Section 3.4(a)(iv), the applicable Contract Amount for a Showing Month is the quantity listed in Column A of the most recently executed version of Appendix II-C, Contract Amount Modification.

Monthly Contract Amount: As specified in Section 3.1, Seller is obligated to deliver Product to Buyer in an amount equal to the Contract Amount multiplied by the applicable Monthly Capacity Factor.

Maximum Contract Amount: 3,000 kW

Contract Price: \$ [REDACTED] /kW-month

C. Milestones

Milestone	Completion Date
1. Fifty percent (50%) of Contract Amount enrolled (pursuant to Section 2.4(a))	6/1/2022
2. Seventy-five (75%) of Contract Amount enrolled (pursuant to Section 2.4(a))	10/1/2022
3. One hundred percent (100%) of Contract Amount enrolled (pursuant to Section 2.4(a))	2/1/2023

D. Performance Assurance

Project Development Security: \$ [REDACTED] (\$ [REDACTED]/kW multiplied by the Initial Contract Amount, subject to increase pursuant to Section 3.4(a)(v), Section 3.4(a)(vi), and Section 11.3(i))

Delivery Term Security: \$ [REDACTED] (\$ [REDACTED]/kW multiplied by the Contract Amount, subject to modification pursuant to Section 3.4(a)(vi), Section 3.4(a)(vii), and Section 11.3(ii))

Form of Security: Cash or Letter of Credit

E. Liquidated Damages

Delay Damages: \$ [REDACTED]/day (amount equal to the daily expected revenue of the Project based on the Contract Amount, as modified pursuant to Section 3.4(a)(v), Section 3.4(a)(vi), and Section 3.4(a)(vii), and the Contract Price plus 20%).

Replacement Damage Amount: \$ [REDACTED]/kW-month (this number shall rise at the rate of inflation set by the Consumer Price Index beginning at the Effective Date)

Damage Payment Amount: \$ [REDACTED] (amount equal to two Contract Years expected revenue of the Project based on the Contract Amount, as modified pursuant to Section 3.4(a)(v), Section 3.4(a)(vi), and Section 3.4(a)(vii), and the Contract Price).

F. Notice List

Seller Notices	Buyer Notices
<p>Name: SWELL VPP FUND 2021-I LLC</p>	<p>Name: Redwood Coast Energy Authority</p>
<p>Delivery & Mailing Address: 1515 7th Street, #049 Santa Monica, CA 90401</p> <p>Attn: Jon Fortune Title: VP, Grid Services Market Development</p> <p>Phone: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>Delivery & Mailing Address: 633 3rd St Eureka, CA 95501</p> <p>Attn: Richard Engel Title: Director of Power Resources</p> <p>Phone: 707-269-1700, ext. [REDACTED]</p> <p>Email: rengel@redwoodenergy.org</p>
<p>DUNS:</p>	<p>DUNS:</p>
<p>Federal Tax ID Number: [REDACTED]</p>	<p>Federal Tax ID Number:</p>
<p>Invoices: Attn: Accounting</p>	<p>Invoices: Attn: Accounts Payable</p>

Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	Phone: 707-269-1700, ext. [REDACTED] Facsimile: 707-269-1777 Email: ap@redwoodenergy.org
Scheduling: Attn: Clinton Davis Phone 1: Phone 2: Email: [REDACTED]	Scheduling: Attn: The Energy Authority designated as Buyer's SC Day Ahead Desk Phone: [REDACTED] Real Time Desk Phone: [REDACTED] Email: Group-Corp-TradingCaiso@teainc.org
Payments: Attn: Accounting Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	Payments: Attn: Accounting Phone: 707-269-1700, ext. [REDACTED] Facsimile: 707-269-1777 Email: accounting@redwoodenergy.org
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Collections Phone: [REDACTED] Email: [REDACTED]	Credit and Collections: Attn: Lori Biondini, Director of Business Planning and Finance Phone: 707-269-1700, ext. [REDACTED] Email: ap@redwoodenergy.org
Notices of an Event of Default to: Attn: Jon Fortune VP, Grid Services Market Development Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	Notices of an Event of Default to: Attn: Lori Biondini, Director of Business Planning and Finance Phone: 707-269-1700, ext. [REDACTED] Facsimile: 707-269-1777 Email: lbiondini@redwoodenergy.org
With additional Notices of an Event of Default to: Attn: Stephen Schmidt Head of Corporate Development, General Counsel and Secretary Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	With additional Notices of an Event of Default to: RCEA General Counsel Nancy Diamond, Law Offices of Nancy Diamond 822 G Street, Suite 3 Arcata, CA 95521 Phone: (707) 826-8540 Facsimile: (707) 826-8541 ndiamond@ndiamondlaw.com

**BEHIND THE RETAIL METER
CAPACITY STORAGE AGREEMENT**

PREAMBLE

This Behind the Retail Meter Capacity Storage Agreement is made by and between Redwood Coast Energy Authority, a California joint powers authority (“Buyer” or “RCEA”) and SWELL VPP FUND 2021-I LLC, a Delaware limited liability company (“Seller”) as of _____, 2021 (the “Effective Date”). Seller and Buyer are referred to individually as “Party” or collectively as “Parties.” The purpose of this Agreement is to facilitate Buyer’s purchase of the Product. The Project associated with this Agreement shall be an aggregation of energy storage systems, each located on the Customer side of (i.e. “behind”) each participating Customer’s retail meter. Therefore, Buyer and Seller hereby agree to the following:

ARTICLE ONE: TERM

1.1 Term.

(a) The “Term” of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 16.1 through 16.6 (Indemnities) and any other indemnity rights survive the end of the Term for an additional twelve (12) months; (ii) all rights and obligations under Article Twenty (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The “Delivery Term” is the period commencing on the Initial Delivery Date and continuing for the period set forth in the Cover Sheet from the Initial Delivery Date unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The “Expected Initial Delivery Date” is the date set forth in the Cover Sheet.

(d) The “Initial Delivery Date” is the first day of the first Showing Month for which Product is delivered. The Initial Delivery Date may not occur until satisfaction of the Conditions Precedent enumerated in Section 2.1.

ARTICLE TWO: INITIAL DELIVERY DATE AND PROJECT CONSTRUCTION

2.1 Conditions Precedent to the Initial Delivery Date. Seller shall provide Buyer with Notice of the expected occurrence of the Initial Delivery Date no later than ninety (90) days prior to the Initial Delivery Date. Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement, which include those obligations set forth below in Sections 2.1(a) – (k) (collectively the “Conditions Precedent”), which must be satisfied at least seventy-five (75) days before the Initial Delivery Date or such deadline as set forth below. The Conditions Precedent are as follows:

(a) At Seller's expense, Seller shall have (i) executed all agreements with Customers whose Units are to be a part of the Project as of the Initial Delivery Date and (ii) secured all CAISO and Governmental Approvals, each of (i) and (ii) as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver the Product to Buyer.

(b) At Seller's expense, Seller or Contractor shall have constructed or caused to be constructed the Seller Units, and Seller shall have taken contractual or operational control of the Capacity Exchange Units that are to be a part of the Project as of the Initial Delivery Date to (i) enable Seller to satisfy the obligations of the Seller herein and (ii) enable the Project to provide Product.

(c) Seller shall have provided to Buyer a certification for Commercial Operation, substantially in the form attached hereto as Appendix VI-A, demonstrating (A) that, for each Seller Unit, the Commercial Operation Date has occurred, (B) the satisfactory completion of the Seller Unit(s) at the Sites that are comprising the Project as set forth in Seller's Final Portfolio List as of the Initial Delivery Date and (C) that the Seller Unit(s) enrolled in the Project as set forth in Seller's Final Portfolio List can deliver, in aggregate, the proportion of the Product attributable to Seller Units in aggregate.

(d) Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Project successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets.

(e) At Seller's expense, Seller shall have executed any necessary Interconnection Agreements and installed any necessary metering to deliver Product in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(f) Seller shall have posted collateral as required by Section 11.3(a)(ii).

(g) As of the Initial Delivery Date, no Seller's Event of Default shall have occurred and remain uncured.

(h) Seller shall have submitted to Buyer a Project Safety Plan and the Seller Attestation in accordance with Section 12.2(a) and the Attestation shall be substantially in the form attached hereto as Appendix VI-D.

(i) Seller shall have provided Buyer with (i) the Seller's Final Portfolio List in a Progress Report in accordance with Section 4.1(e) that demonstrates Units and Customers under contract to Seller sufficient for Seller to deliver Product, as of the Initial Delivery Date ("Seller's Final Portfolio List") and (ii) a description of the Project set forth in Appendices II-A and II-B.

(j) Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product, as all verifiable by Buyer.

(k) Seller shall have provided to Buyer an attestation, in the form attached hereto as Appendix XI, that Seller is following all of the rules set forth in the MUA Decision.

2.2 Confirmation of Initial Delivery Date. Once each of the Conditions Precedent to the Initial Delivery Date has been satisfied or waived in writing by the Buyer, the Parties shall execute and exchange on the Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix IV.

2.3 Deadline for the Initial Delivery Date.

(a) The Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not be later than sixty (60) days later than the Expected Initial Delivery Date (“IDD Cure Period”).

(b) The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date, including providing Supply Plans in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Product beginning on the Initial Delivery Date and Buyer agrees to cause the Buyer’s SC to cooperate in order to achieve the same.

2.4 Milestones, Expected Initial Delivery Date Cure Period, and Delay Damages.

(a) Milestones. Seller shall achieve the following Unit recruitment milestones:

(i) Milestone 1: By no later than the Milestone 1 date specified in Section C of the Cover Sheet, Seller shall have enrolled or otherwise have a binding commitment from Customers sufficient to supply fifty percent (50%) of the Contract Amount, the evidence of which shall be provided by Seller to Buyer by written Notice in a Progress Report in the form and containing the information set forth in Appendix V.

(ii) Milestone 2: By no later than the Milestone 2 date specified in Section C of the Cover Sheet, Seller shall have enrolled or otherwise have a binding commitment from Customers sufficient to supply seventy-five percent (75%) of the Contract Amount, the evidence of which shall be provided by Seller to Buyer by written Notice in a Progress Report in the form and containing the information set forth in Appendix V.

(iii) Milestone 3: By no later than the Milestone 3 date specified in Section C of the Cover Sheet, Seller shall have enrolled or otherwise have a binding commitment from Customers sufficient to supply one hundred percent (100%) of the Contract Amount, the evidence of which shall be provided by Seller to Buyer by written Notice in a Progress Report in the form and containing the information set forth in Appendix V.

(b) Failure to Meet Milestones. If Seller has not met any Milestone identified in Section 2.4(a) by the specified date, then Seller shall pay Delay Damages to Buyer on account of such delay. Delay Damages shall be payable for each day after the specified completion date for which the Milestone has not been completed. Delay Damages shall be equal to the amount set forth on the Cover Sheet. If Delay Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the Project Development Security, provided that if the Project Development Security is not adequate to compensate Buyer for Delay Damages, Buyer shall invoice Seller for the amount still owed to Buyer on a monthly basis during the period of the delay. Each Party agrees that (i) the damages that Buyer would incur due to Seller’s delay in achieving the Expected Initial Delivery Date would be difficult or impossible to predict with certainty and (ii) the Delay Damages are an appropriate approximation of such damages. Ninety-five percent (95%) of the Delay Damages that are paid by Seller to Buyer pursuant to this Section 2.4(b), and which are associated with Seller not achieving Milestone 1 by the deadline specified in Section C of the Cover Sheet or are associated with Seller not achieving Milestone 2 by the deadline specified in Section C of the Cover Sheet, shall be refundable to Seller if Seller meets Milestone 3 by the deadline specified in Section C of the Cover Sheet. Ninety-five percent (95%) of the Delay Damages that are paid by Seller to Buyer pursuant to this Section 2.4(b) which have not been refunded to Seller pursuant to the prior sentence, and which are associated with Seller not achieving any Milestone by the associated deadline specified in Section 2.4(a), shall be refundable to Seller if Seller achieves the Initial Delivery Date by the Expected Initial Delivery Date.

(c) Expected Initial Delivery Date. If Seller has not achieved the Initial Delivery Date as of the Expected Initial Delivery Date for reasons other than a Force Majeure extension, then for every day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay to Buyer Delay Damages. Delay Damages shall be equal to the amount set forth on the Cover Sheet. If Delay Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the Project Development Security, provided that if the Project Development Security is not adequate to compensate Buyer for Delay Damages, Buyer shall invoice Seller for the amount still owed to Buyer on a monthly basis during the period of the delay. Each Party agrees that (i) the damages that Buyer would incur due to Seller's delay in achieving the Expected Initial Delivery Date would be difficult or impossible to predict with certainty and (ii) the Delay Damages are an appropriate approximation of such damages.

(d) Force Majeure Delay. If Seller has not achieved the Initial Delivery Date as of the Expected Initial Delivery Date because of a Force Majeure event, Seller is not responsible for paying Delay Damages for the period during which the Force Majeure event continues, subject to limit specified in Section 9.1(d)(ii).

2.5 Project Construction. Seller shall develop, design and construct the Project in timely fashion in order to perform Seller's obligations under this Agreement.

2.6 Progress Reports. Within fifteen (15) days after the close of every month, starting with the first full month following the Effective Date and until ninety (90) days prior to the Expected Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Starting ninety (90) days prior to the Expected Initial Delivery Date, Seller shall provide to Buyer Progress Reports twice monthly on the second and fourth Monday, and agree to meetings no less frequently than twice per month until the Initial Delivery Date. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.7 Remedial Action Plan. If Seller anticipates that it will not be able to timely satisfy any Milestone or achieve the Expected Initial Delivery Date as set forth on the Cover Sheet, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan ("Remedial Action Plan"), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller's proposed course of action to achieve the missed deadline, any subsequent Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement.

ARTICLE THREE: TRANSACTION

3.1 Product. During the Delivery Term, pursuant to the terms of this Agreement, Seller shall provide Buyer all Capacity Attributes that may be calculated or derived from the Operational Characteristics from the Project ("Product") in the amount of the Monthly Contract Amount for the applicable month, as such Contract Amount may be modified pursuant to Section 3.4(a)(i), Section 3.4(a)(ii), or Section 3.4(a)(iii). The Operational Characteristics specified in Appendix III shall not be modified without prior written consent of Buyer, which consent shall not be unreasonably withheld. Product does not confer to Buyer any right to dispatch or receive Energy or Ancillary Services from the Project. If the Project is not available to provide the full Monthly Contract Amount for the applicable month for any reason other than Force Majeure, then Seller shall be liable for damages and/or be required

to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Sections 6.3 and 6.4 hereof.

3.2 Purchase and Sale Obligation

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer Product for Buyer's exclusive use, pursuant to the terms and conditions contained herein. Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement ("Resold Product").

(i) As of the Effective Date, the amount of Capacity Attributes comprising the Product that Seller commits to deliver to Buyer is listed below in subsection 3.2(a)(iv).

(ii) In the event any change by the CPUC, CAISO, other Governmental Authority or Person having jurisdiction over Capacity Attributes results in the increase or decrease of the amount of Capacity Attributes that may be calculated or derived from the Operational Characteristics prior to the effective date of such change, then either Party shall provide Notice to the other Party upon knowledge of such change specifying the altered amounts of Capacity Attributes of Product ("Change Notice"). Following a Change Notice, Buyer will confirm via Notice to Seller the amended amount of Capacity Attributes of Product based on such change and the date that Seller shall commence delivery of such amended amounts ("Confirmation Notice"). The amounts of Capacity Attributes of Product shall automatically adjust upon the date set forth in the Confirmation Notice ("Capacity Adjustment Date") without further need for the Parties to amend this Agreement. Until the Capacity Adjustment Date, Seller shall continue to deliver the amount of the Capacity Attributes of Product as stated prior to the Confirmation Notice.

(iii) The Parties acknowledge there are ongoing changes and anticipate future changes to resource adequacy regulatory programs, specifically, but not limited to, the CPUC's recent decision to create a central procurement entity for Local RAR (see CPUC Decision 20-06-002) and further contemplated changes to the CPUC's Resource Adequacy Program (see CPUC Rulemaking 19-11-009). To the extent that current or future regulatory changes diminish the value of Capacity Attributes to Buyer, Seller agrees to fully cooperate with Buyer and use reasonable efforts to maximize the value of Capacity Attributes for Buyer in meeting regulatory requirements and/or monetizing the Capacity Attributes provided by this Agreement.

(iv) Buyer shall pay Seller for Product based on the Confirmed Quantity, and fixed price per unit listed in the Cover Sheet ("Contract Price"), for all months of the Delivery Term. All obligations of Seller under this Section 3.2(a), and all Product deliverable to Buyer and compensation due to Seller under this Agreement are subject to and made in accordance with Articles Six (Seller's Delivery), Seven (Compensation) and Ten (Payment and Netting).

(b) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting requirements of all applicable Governmental Authorities and other Persons, as such requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product, including enabling Buyer to apply Product towards Buyer's Compliance Obligations, or sell Resold Product, at all times during the Delivery Term.

(c) Seller may sell Capacity Attributes from the Project in excess of Product, if any, (i) to third parties, (ii) into the applicable market or (iii) to Buyer with Buyer's prior agreement.

(d) In the event a centralized capacity market develops within the WECC region, Buyer will have the exclusive right to offer, bid, or otherwise submit, or cause Buyer's SC to offer, bid, or otherwise submit the Product for re-sale in such market, and retain and receive any and all related revenues.

3.3 Product Transition. At any time during the Delivery Term, Buyer may, at Buyer's sole discretion, elect to receive Load Modification rather than Capacity Attributes from the Project (the "Product Transition"). Upon receipt of a Product Transition notice from Buyer, and as a condition to Buyer's obligation to take and pay for Load Modification for the remainder of the Delivery Term, Seller shall within one hundred and twenty (120) days satisfy the Load Modification Conditions set forth in Part One of Appendix IX. Commencing on the first day of the First Showing Month after Seller's satisfaction of the Load Modification Conditions, and for each day of each Showing Month during the remainder of the Delivery Term, Seller shall deliver to Buyer and Buyer shall pay for all Load Modification, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Part Two of Appendix IX. Upon a Product Transition, and for remainder of the Delivery Term, the Product shall be Load Modification and not Capacity Attributes and Seller shall have no further obligation to provide, or to comply with any provision of this Agreement that is limited to Capacity Attributes, and as specified in Appendix IX, Section 7.1 and 7.2 of this Agreement shall be replaced in total by the alternate Sections 7.1 and 7.2 provided in Appendix IX. For clarity, the Product Transition may occur a maximum of one (1) time during the Delivery Term.

3.4 Project Modifications.

(a) During the Term, Seller may perform a Project Modification, provided that Seller shall Notify Buyer of any proposed Project Modification at least ten (10) Business Days prior to the start of Work for such Project Modification. A Project Modification will not alter nor relieve any of Seller's obligations under this Agreement.

(i) Up to the date which is two (2) years after the Initial Delivery Date, Seller may, in Seller's sole discretion, increase the Contract Amount by any increment up to the Maximum Contract Amount specified in Section B of the Cover Sheet by doing both of the following (i) providing Buyer with Notice by no later than one hundred and eighty (180) days prior to the first Showing Month where the new Contract Amount will be available to provide Product to Buyer consistent with the terms of this Agreement and (ii) posting additional Performance Assurance as specified in Section 11.3. Such Notice shall include as an attachment, an executed copy of Appendix II-C that specifies (a) the new Contract Amount, (b) the new amounts of Capacity Attributes of Product, and (c) the first Showing Month where the increased amount is available to provide Product to Buyer consistent with the terms of this Agreement.

(ii) Up to the date which is two (2) years after the Initial Delivery Date, Seller may submit a request to Buyer to increase the Contract Amount by any increment up to the Maximum Contract Amount specified in Section B of the Cover Sheet by no later than ten (10) days prior to the applicable RAR Compliance Showing deadline for the Showing Month in which the new Contract Amount is proposed to take effect. Such request by Seller shall specify (a) the proposed new Contract Amount, (b) the proposed new amounts of Capacity Attributes of Product, and (c) the proposed first Showing Month where the increased amount would be available to provide Product to Buyer consistent with the terms of this Agreement. Buyer may accept or reject this Seller request at Buyer's sole discretion. Buyer must provide Seller with Notice of its acceptance or rejection of Buyer's request by not later than ten (10) Business Days after such request is received. If Buyer grants Seller's request, Seller shall post additional Performance Assurance as specified in Section 11.3. By no later than five (5) Business Days after Buyer provides Notice to Seller of Buyer's acceptance of Seller's request to increase

the Contract Amount pursuant to this Section 3.4(a)(ii), Seller shall provide Buyer with an executed and complete copy of Appendix II-C that specifies (a) the new Contract Amount, (b) the new amounts of Capacity Attributes of Product, and (c) the first Showing Month where the increased amount is available to provide Product to Buyer consistent with the terms of this Agreement.

(iii) If, after the Initial Delivery Date, despite the use of commercially reasonable efforts, Seller is unable to maintain sufficient Customers in Seller's Portfolio to provide the full Contract Amount to Buyer primarily resulting from existing Customers ceasing to operate within Humboldt County, Seller may reduce the Contract Amount to an amount no lower than the Initial Contract Amount specified in Section B of the Cover Sheet by providing Buyer with Notice by no later than ten (10) days prior to the RAR Compliance Showing deadline for the first Showing Month where the decreased Contract Amount will be available to provide Product to Buyer consistent with the terms of this Agreement. Such Notice shall include as an attachment, an executed copy of Appendix II-C that specifies (a) the new Contract Amount, (b) the new amounts of Capacity Attributes of Product, and (c) the first Showing Month where the decreased amount is available to provide Product to Buyer consistent with the terms of this Agreement. Such Notice shall also include documentation demonstrating that the decrease in Contract Amount is the result of a Customer or Customers ceasing to operate within Humboldt County and that Seller has used commercially reasonable efforts to find a replacement Customer or Customers.

(iv) The applicable Contract Amount for any Showing Month shall be the quantity specified in Column A of the most recently executed copy of Appendix II-C for the Showing Month identified in Column E.

(b) During the Term, in the event that Seller, an Affiliate or Contractor performs a Project Modification pursuant to Section 3.4(a), Seller shall certify, within sixty (60) days of completion of such Project Modification, that the Project is Commercially Operable by providing Buyer all of the following: (i) a signed Project Modification Certification, as found at Appendix VI-B; (ii) a signed copy of Appendix II-B; (iii) a signed copy of Appendix II-C; (iv) a proposed amended version of Appendix III - Operational Characteristics, which is subject to approval by Buyer pursuant Section 3.1; and (v) copies of Government Approvals and completed Electric Generation Interconnection Applications submitted to PG&E pursuant to PG&E's Rule 21 requirements, and the associated documentation of PG&E's approval, for any incremental Seller Units that have received permission to operate. In the event Buyer provides Notice to Seller that the Project Modification Certification for the Project Modification is not acceptable to Buyer, then Buyer will identify the inconsistencies in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 3.4.

3.5 Information Sharing and Shared Learning. Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer's portfolio of assets to meet its customers' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information, including hourly charging and discharging data, with Buyer on at least an aggregated basis but excluding cost or similar proprietary information, upon Buyer's reasonable request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. For information related to Seller's multiple uses of the Project, Seller shall promptly provide Notice to Buyer any time it provides any services or products from the Project to a third party.

3.6 Certification of Product. During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and use

such Product, including use of such Product to satisfy its Compliance Obligations. If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product. Seller shall cooperate with Buyer and provide all information determined by Buyer to be necessary for Buyer to submit all reports and other filings with CAISO and applicable Governmental Authorities.

3.7 Delivery of Product: Buyer Compliance Showings. Buyer shall submit, or cause to be submitted, a Supply Plan to CAISO to identify and confirm the Product to be delivered to Buyer or with regard to Resold Product Buyer's designee, for each Showing Month. For each Showing Month, Seller shall confirm the availability of the Capacity Attributes from the Project that Buyer will submit in its Supply Plan. As soon as Seller becomes aware, but no later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit a Notice to Buyer which includes Seller's confirmation of the availability of Capacity Attributes for such Showing Month in a format as Notified by Buyer to Seller prior to such deadline. The lowest daily quantity that Buyer submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of each of the Capacity Attributes of Product that Seller has delivered for such Showing Month ("Delivered Quantities").

ARTICLE FOUR: CUSTOMERS

4.1 Seller's Portfolio

(a) Seller Obligation to Obtain Customers. Seller shall obtain or cause to be obtained, the Customers necessary to enable the safe and reliable delivery of the Product to Buyer during the Delivery Term. Seller shall contract, or cause its Affiliate to contract, directly with Customers to develop, install, operate, and maintain the Seller Units in the Project, and enroll, operate, and maintain Capacity Exchange Units in the Project, in order for Seller to deliver the Product during the Delivery Term. Seller shall identify, or cause its Affiliate to identify, all such Customers, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority.

(b) Exclusivity. The Parties shall separately execute a co-marketing agreement, which shall include customer exclusivity requirements applicable to Seller.

(c) Customers Eligible for Inclusion in Project. Seller shall provide to Buyer the Product during the Delivery Term only from Units installed at Sites listed in Seller's Portfolio List in accordance with Section 4.1(e). Customers who are added to Seller's Portfolio List after the Initial Delivery Date and during the Delivery Term must meet the definition of a "Customer" during the Delivery Term in order to be included in Seller's Portfolio List. Seller shall be responsible, at its sole cost and expense, for maintaining the metering, interconnection and data collection systems necessary to perform its obligations and complying with all Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority rules and regulations required to deliver Product during the Delivery Term.

(d) Seller's Relationship with Customer. The terms and conditions of the agreements governing the relationship between Seller or its Affiliate and a Customer with respect to such Customer's participation in Seller's Portfolio are independent of Buyer and Buyer shall have no

responsibility with respect to such Customers or Seller's Affiliate for purposes of Seller's Portfolio. Seller agrees to independently resolve, or shall cause its Affiliate to resolve, any disputes arising between Seller or its Affiliate and any Customer. Notwithstanding the foregoing, Seller shall make available for inspection and review by Buyer, at least five (5) business days prior to first execution by a Customer, the terms and conditions of all form agreements between Customer and Seller and all other documents that may be reasonably necessary for the purpose of Buyer's review of Seller's Portfolio and associated Customer agreements.

(e) Seller's Portfolio. Seller's Portfolio will at all times solely contain the Customers associated with the Project. The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio at any time during the Delivery Term, subject to the requirements of this Section 4.1 and Article Twelve (Safety). Notwithstanding the prior sentence, changes to Seller's Portfolio shall not alter the Product Seller must deliver.

(f) Seller's Portfolio List. As of the date first submitted in accordance with Section 2.1(i) and throughout the Delivery Term, Seller shall maintain or cause its Affiliate to maintain, a list of Customers in the Seller's Portfolio in the form and containing the information set forth in Appendix II-B ("Seller's Portfolio List"). If any of the Customer information in Seller's Portfolio List changes during the Delivery Term, Seller shall, within ten (10) Business Days of the change, submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List, and Seller shall provide Buyer an Attestation only with respect to such changes from the previous Seller's Portfolio List. Seller shall timely update any information associated with a change to Seller's Portfolio List in the applicable CAISO portal as required by the relevant CAISO Tariff provisions, Business Practice Manual, or User Guide. In addition, Seller shall provide or cause its Affiliate to provide any additional Customer information reasonably requested by Buyer in connection with this Agreement.

(g) Dual Participation. Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("Other Programs"), provided that (i) participation of Customers in both Seller's Portfolio and Other Programs does not impact Seller's ability to perform its obligations under this Agreement, (ii) Seller complies with all rules and requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority, and (iii) Seller's inclusion of Customers in Seller's Portfolio, where said Customers are also participants in Other Programs, complies with CPUC Decision 18-01-003, as more particularly described in Section 15.3(e) of this Agreement.

(h) Seller shall be fully responsible for all acts and omissions of its Affiliates and for all costs, charges and liabilities incurred by its Affiliates to the same extent that Seller would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Seller directly.

(i) Seller's Agreements with Customers.

(i) Energy Storage Proposed System Information Customer Attestation. Seller shall provide to each Customer a completed copy of the Energy Storage Proposed System Information Customer Attestation, substantially in the form of Appendix XV, prior to executing a contract with such Customer. Upon Buyer's request, Seller shall provide Buyer with a fully executed copy of the Energy Storage Proposed System Information Customer Attestation for any Customer in Seller's Portfolio.

(ii) Minimum Resiliency Requirement. Seller shall ensure that the agreement between Seller and each Customer in Seller's Portfolio includes substantially the following language:

"If Swell causes the [Energy Storage System] to discharge, Swell shall ensure that at least 20% of the [Energy Storage System] energy capacity remains after such discharge is complete. Swell will follow Prudent Industry Practices to ensure your [Energy Storage System] is available to provide backup power as described; provided, however, that Swell cannot guarantee your [Energy Storage System] will perform in every outage or provide backup power for an entire given outage."

Upon Buyer's request, Seller shall provide Buyer with documentation demonstrating that this commitment is included in each such agreement.

ARTICLE FIVE: INTERCONNECTION & OPERATIONS

5.1 Interconnection Agreement. At Seller's expense, Seller shall (a) execute all necessary Interconnection Agreements, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer, Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades, and those requirements set forth in the Utility Distribution Company's applicable tariffs, the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer. Buyer will not bear any costs or liability under this Agreement related to interconnection, electric distribution or transmission service for the Project.

5.2 Operations. Seller shall at all times retain operational control of the Project and be responsible for operation and maintenance of the Project. Buyer will not bear any costs or liability related to ownership, operation and maintenance of the Project.

5.3 Metering. At Seller's expense, Seller shall install, or shall cause the Customers in Seller's Portfolio to install all necessary metering and telemetry required by the CAISO to deliver the Product.

5.4 Scheduling.

(a) Buyer shall be the SC or shall designate a qualified third party to fulfill such role for the Project in order to deliver Product to Buyer during the Delivery Term in accordance with the terms of this Agreement. Buyer shall be solely responsible for all costs associated with the SC, except that, as specified in Section 7.2(b), Seller shall reimburse Buyer an amount equal to the monthly fee applicable to each Scheduling Coordinator ID Code (SCID Fee). Buyer shall take all necessary steps to qualify itself and the Project (or Units, as applicable) in such other manner identified and approved by the CAISO and CPUC that permits Seller to provide Product to Buyer. Seller shall provide Buyer's SC with all information determined to be necessary by Buyer or Buyer's SC for the purpose of qualifying the Project. An initial list of such information is provided in Appendix XIII.

(b) Seller shall comply, and shall cause each Customer, and each Unit owner and operator to comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws. Seller's operational instructions to Buyer's SC, including any information for Bidding of the Project, shall comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, in order to meet any Must Offer Obligations and to

deliver the Product to Buyer, allowing Buyer to use the Product to satisfy Buyer's Compliance Obligations. Seller shall comply with all requirements as specified in Appendix XIII.

(c) Buyer and Buyer's SC shall have no liability for the failure of Seller, any Customer, or any Unit owner or operator to comply with CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller, any Customer, or any Unit owner or operator for such noncompliance. Any such penalties, charges or fines incurred by Buyer or Buyer's SC shall be passed on to Seller.

(d) Buyer or Buyer's SC shall not accept any proposed CPM or RMR designation by the CAISO.

5.5 Charging Energy Obligations. During the Delivery Term, Seller shall be responsible for procuring and delivering all of the Charging Energy to the Project and paying all of the associated costs of such Charging Energy.

5.6 Standards of Care. Seller shall comply with all applicable requirements of Law, the Transmission Provider, Utility Distribution Company, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC in its scheduling, interconnection, operation and maintenance of the Project and as contemplated by this Agreement. For each Seller Unit, Seller shall (a) acquire and maintain all Governmental Approvals necessary for the construction, operation, maintenance, and decommissioning of the Seller Unit consistent with Safety Requirements; (b) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals; and (c) pursuant to Appendix V and/or Section 3.4(b), provide to Buyer digital copies of any Governmental Approvals and completed Electric Generation Interconnection Applications submitted to PG&E pursuant to PG&E's Rule 21 requirements, and the associated documentation of PG&E's approval. For each Capacity Exchange Unit, (a) Seller shall ensure that Customer has acquired and continues to maintain all Governmental Approvals necessary for the construction, operation, maintenance, and decommissioning of the Capacity Exchange Unit consistent with Safety Requirements; (b) Seller shall monitor and immediately notify Buyer of any material modifications or lapse in renewal of Governmental Approvals by any Customer for a Capacity Exchange Unit; (c) pursuant to Appendix V and/or Section 3.4(b), Seller shall obtain and provide to Buyer a digital copy of each Capacity Exchange Unit's completed Electric Generation Interconnection Application submitted to PG&E pursuant to PG&E's Rule 21 requirements and the associated documentation of PG&E's approval; and (d) pursuant to Appendix V and/or Section 3.4(b), Seller shall obtain from Customer and provide to Buyer digital copies of any documents relevant to a demonstration that all applicable Governmental Approvals have been obtained. For the avoidance of doubt, Seller shall be responsible for procuring and maintaining, at its expense, all emissions credits required for operation of the Project throughout the Delivery Term in compliance with Law and to permit operation of the Project in accordance with this Agreement. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any documents, information, or instruments with respect to Product reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority. Nothing hereunder shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

5.7 Distributed Energy Resource Provider. Seller shall execute a Distributed Energy Resource Provider Agreement with the CAISO and shall comply with all requirements applicable to Distributed Energy Resource Providers.

5.8 Settlement Quality Meter Data Services. Seller shall provide Buyer's SC with Settlement Quality Meter Data ("SQMD") pertaining to the Product as required by CAISO. Upon Buyer's request, Seller shall submit the SQMD directly to the CAISO on behalf of Buyer or Buyer's SC.

ARTICLE SIX: SELLER'S DELIVERY

6.1 Confirmed Quantity. For all Capacity Attributes of the Product that Seller delivers in a month, Buyer shall pay Seller for the ratio of (a) the sum of all Capacity Attributes of the Delivered Quantities in a month to (b) the sum of all Capacity Attributes of the Product submitted to Buyer by Seller under Section 3.7 in a month, all as multiplied by (c) the Monthly Contract Amount for the applicable month being measured ("Confirmed Quantity"), as shown in the equation below.

$$\text{Confirmed Quantity} = (\text{sum of Capacity Attributes of Delivered Quantities} / \text{sum of all Capacity Attributes of Product}) \times (\text{Monthly Contract Amount}),$$

where the sum of Capacity Attributes of Delivered Quantities is less than or equal to the sum of all Capacity Attributes of Product

6.2 Post-Showing Shortfall Prior to Showing Month. In the event that CAISO, CPUC, or other Governmental Authority determines in accordance with the CAISO Tariff that Buyer is required to provide outage replacement for any portion of the Delivered Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showing ("Shortfall"), then Seller shall pay to Buyer the Replacement Damage Amount in the amount shown in section E of the Cover Sheet, or the CPI-adjusted amount, multiplied by the Shortfall. All or any portion of such damages are "Replacement Damages". In no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize a Shortfall. Buyer shall not have to enter into any replacement transaction to establish the Replacement Damages. If Replacement Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the Monthly Payment. Each Party agrees that (a) the damages that Buyer would incur due to a Shortfall would be difficult or impossible to predict with certainty and (b) the Replacement Damages are an appropriate approximation of such damages.

6.3 Damages for Failure to Provide Monthly Contract Amount

(a) If Seller fails to provide Buyer with the Monthly Contract Amount for any Showing Month during the Delivery Term prior to the Compliance Showing, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(i) Buyer may, but shall not be required to, replace any portion of the Monthly Contract Amount not provided by Seller with capacity having equivalent System RA Attributes, Local RA Attributes and/or Flexible RA Attributes as the Monthly Contract Amount not provided by Seller ("Replacement Capacity"), by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(ii) Seller shall pay to Buyer on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount equal to the positive value, if any, of (x) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Monthly Contract Amount neither provided by Seller nor purchased by Buyer pursuant to Section 6.3(a)(i) plus (C) the actual cost of any penalties or replacement

capacity charges assessed by the CPUC, CAISO or another regulatory entity due to Seller's failure to provide Buyer with the Monthly Contract Amount, minus (y) the Monthly Contract Amount not provided by Seller for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to this Agreement.

6.4 Indemnities for Failure to Deliver Contract Quantity

(a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(i) Seller's failure to provide any portion of the Monthly Contract Amount as filed in the CAISO Supply Plan for the respective Showing Month for the Delivery Term;

(ii) Seller's failure to provide notice of the non-availability of any portion of Monthly Contract Amount consistent with Sections 3.7; or

(iii) Seller's failure to submit an accurate Notice as specified in Section 3.7 necessary for Buyer to submit Supply Plans that identify Buyer's right to the Monthly Contract Amount purchased hereunder for the respective Showing Month during the Delivery Term.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

ARTICLE SEVEN: COMPENSATION

7.1 Monthly Payment. After the applicable Showing Month and in accordance with Article Eleven, Buyer shall make a Monthly Payment (or "MP") to Seller for Product as follows:

$$MP_m = CP_m \times CQ_m$$

where,

CP_m = Contract Price for month m;

CQ_m = Confirmed Quantity for month m, up to Monthly Contract Amount for the applicable month.

Pursuant to Section 3.3, if a Product Transition occurs, then this Section 7.1 shall be replaced in total and for the remainder of the Delivery Term by the alternate Section 7.1 provided in Appendix IX.

7.2 Allocation of CAISO Payments and Costs

(a) Except as provided in this Article Seven, Seller shall retain any revenues it may receive from and pay all costs charged by the CAISO or any other third party with respect to the Product or Project.

(b) Seller shall pay an amount equal to the SCID Fee, as it may be modified by the CAISO, to Buyer.

(c) All such revenues received by Buyer's SC associated with each SCID from the CAISO shall be remitted to Seller, and Buyer shall be responsible for paying for such revenues to Seller if Buyer's SC fails to remit those revenues to Seller.

(d) To the extent that the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

(e) Pursuant to Section 3.3, if a Product Transition occurs, then this Section 7.2 shall be replaced in total and for the remainder of the Delivery Term by the alternate Section 7.2 provided in Appendix IX.

ARTICLE EIGHT: EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) days after its levy;

(ii) Seller fails to satisfy the creditworthiness and collateral requirements and Seller fails to provide alternate collateral acceptable to Buyer within ten (10) Business Days of Buyer's written demand therefor pursuant to Sections 11.2, 11.3, 11.4 and 11.5;

(iii) any material misrepresentation or omission in any metering (or submetering), Supply Plans, Seller's Portfolio List or any report or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of Buyer's written demand therefor;

(iv) Seller intentionally or knowingly delivers, or attempts to deliver, Product that is not produced by the Project;

(v) Seller fails to achieve the Initial Delivery Date by the end of the IDD Cure Period for reasons other than Force Majeure;

(vi) Seller fails to comply with obligations set forth in Section 3.2;

(vii) during the Delivery Term, the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than eighty percent (80%) of the cumulative Monthly Contract Amounts over a rolling twelve (12) month period for any reason other than Force Majeure; or

(viii) during the Delivery Term, the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than eighty-five percent (85%) of the cumulative Monthly Contract Amounts over a rolling twenty-four (24) month period for any reason other than Force Majeure.

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Party’s Event of Default”):

(i) a Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.

(iii) a Party fails to pay an amount when due and such failure continues for fifteen (15) Business Days after Notice thereof is received by the Party failing to make such payment.

(iv) any representation or warranty made by a Party pursuant to Section 12.1(a) or Article Fifteen (Representations; Warranties; Covenants) is false or misleading in any material respect when made, if not cured within thirty (30) days after delivery of Notice from the other Party that any material representation or warranty made in Section 12.1(a) or Article Fifteen is false, misleading or erroneous in any material respect.

(v) a 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 transferring entity fails to assume all of 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 assumption agreement reasonably satisfactory to the other Party; or

(vi) A Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 8.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice specifying the failure is received; provided, however, that such period shall be extended for an additional reasonable period not to exceed one hundred twenty (120) days if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected.

8.2 Early Termination.

(a) If and for as long as an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (“Non-Defaulting Party”) has the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 22.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 22.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties (except for disputed amounts as provided in Section 10.4), (iii) end the Term effective as of the Early Termination Date, (iv) collect the Termination Payment, (v) withhold

any payments due to the Defaulting Party under this Agreement, (vi) suspend performance, and/or (vii) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement.

(b) In the event of early termination, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date; provided that if the Event of Default occurs prior to the Initial Delivery Date and the Seller is the Defaulting Party, then the Termination Payment will be calculated using the Damage Payment Amount instead of the Settlement Amount. The Non-Defaulting Party shall not have to enter into any transactions to replace the Agreement in order to establish a Settlement Amount.

(c) As soon as practicable after establishing the Early Termination Date, the Non-Defaulting Party shall Notify the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is owed to the Non-Defaulting Party. The Notice will include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Party that owes the Termination Payment shall make such payment to the other Party within ten (10) Business Days after such Notice is effective.

(d) 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 resolved in accordance with Article Nineteen (Dispute Resolution).

8.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Nine are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the sole remedy for damage due to termination of this Agreement (but will not preclude recovery by a Party for other damages sustained as a result of an Event of Default that does not result in termination of this Agreement).

8.4 Waiver. The Non-Defaulting Party will be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 8.2 if the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for remedies will not be deemed waived if (a) the Defaulting Party has consented to an extension of time or (b) the Non-Defaulting Party has provided Notice of the Event of Default and the Defaulting Party has represented that it is seeking to cure and the delay in providing such Notice is in reliance by the Non-Defaulting Party on the good faith attempt by the Defaulting Party to cure. A Party may not withhold payments or suspend performance under Section 8.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 8.2.

ARTICLE NINE: FORCE MAJEURE

9.1 Force Majeure.

(a) Effect of Force Majeure. A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for

establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim. If a Force Majeure event only causes a failure or delay of performance for a subset of the Units, then the suspension of Seller's performance under this Agreement due to a claim of Force Majeure shall only be applicable to the portion of the Product associated with the affected Units, and Seller shall continue to provide the amount of Product associated with the Units that have not failed or experienced a delay in performance due to the Force Majeure event.

(b) Notice of Force Majeure. Within five (5) Business Days of the commencement of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) Mitigation of Force Majeure. The suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with Article Two, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

(d) Force Majeure Failure. Subject to Section 9.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "Force Majeure Failure":

(i) if during the Delivery Term:

(A) the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than seventy percent (70%) of the cumulative Monthly Contract Amounts over a rolling twenty-four (24) month period for any reason; or

(B) Units accounting for more than seventy percent (70%) of the cumulative Monthly Contract Amounts have been destroyed or rendered inoperable by an event of Force Majeure.

(ii) if Seller is unable, due solely to a Force Majeure event, to achieve the Initial Delivery Date by one hundred eighty (180) days after the Expected Initial Delivery Date.

(e) Effect of Termination for Force Majeure Failure. If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 9.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE TEN: PAYMENT AND NETTING

10.1 Billing. On or before the fifteenth (15th) calendar day following each month of the Delivery Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable:

- (a) the Monthly Payment, and
- (b) other compensatory adjustments required by this Agreement, including adjustments for Governmental Charges.

10.2 Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Buyer is expressly authorized to set off from any of its payments hereunder an amount owed by Seller to Buyer in accordance with this Agreement.

10.3 Payment. Payment of all undisputed amounts owed shall be due by the later of the twenty-fifth (25th) day of the month or ten (10) calendar days after receipt of invoice (“Monthly Payment Date”). If the Monthly Payment Date is not a Business Day, then such invoice or payment shall be provided on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date but excluding the date the delinquent amount is paid in full.

10.4 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article Nineteen (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, 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 unless the other Party is Notified in accordance with this Section 10.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred (or in the case of amounts based on CAISO invoices within twelve (12) months after the close of the month during which such invoice or revised invoice giving rise to the payment obligation was rendered), the right to payment for such performance is waived.

ARTICLE ELEVEN: CREDIT AND COLLATERAL REQUIREMENTS

11.1 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller’s annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days

after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles.

11.2 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Performance Assurance, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence, and during the continuation, of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, 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 remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.3 Performance Assurance

(a) Performance Assurance. Seller agrees to deliver to Buyer Performance Assurance in a form acceptable to Buyer to secure its obligations under this Agreement, which Performance Assurance Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security. The Project Development Security will be in the form of cash and/or Letter of Credit; Seller shall post Project Development Security in the amount shown in the Cover Sheet within ten (10) Business Days following the Effective Date. If Seller increases the Initial Contract Amount pursuant to Section 3.4(a)(i) or Section 3.4(a)(ii) prior to the Initial Delivery Date, then Seller shall within ten (10) Business Days of submitting the Notice specified in Section 3.4(a)(i) or within ten (10) Business Days of Buyer submitting the Notice to Seller pursuant to Section 3.4(a)(ii), post additional Project Development Security in an amount such that the total Project Development Security is equal to the new Contract Amount multiplied by the rate specified in Section D of the Cover Sheet.

(ii) Delivery Term Security. Prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the amount equal to the Contract Amount multiplied by the rate specified in Section D of the Cover Sheet and in the form of cash and/or Letter of Credit provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 11.3(a)(i) toward the Delivery Term Security posted pursuant to this Section 11.3(a)(ii). If Seller increases the Contract Amount pursuant to Section 3.4(a)(i) after the Initial Delivery Date, then Seller shall within ten (10) Business Days of submitting the Notice specified in Section 3.4(a)(i) or within ten (10) Business Days of Buyer submitting the Notice to Seller pursuant to Section 3.4(a)(ii) post additional

Delivery Term Security in an amount such that the total Delivery Term Security is equal to the new Contract Amount multiplied by the rate specified in Section D of the Cover Sheet. If Seller decreases the Contract Amount pursuant to Section 3.4(a)(iii) after the Initial Delivery Date, then Buyer shall within ten (10) Business Days of receiving the Notice specified in Section 3.4(a)(ii) return to Seller an amount such that the remaining Delivery Term Security is equal to the reduced Contract Amount multiplied by the rate specified in Section D of the Cover Sheet.

(iii) Except with respect to the Damage Payment Amount, the amount of Performance Assurance required under this Agreement is not a limitation of damages. For the avoidance of doubt, Buyer has no obligation to post collateral under this Agreement.

(b) Use of Project Development Security. Buyer is entitled to draw upon the Project Development Security posted by Seller for Delay Damages in accordance with Section 2.4(a). Buyer is also entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date in accordance with Section 8.2(b). Seller shall within ten (10) Business Days after any draw thereon replenish the Project Development Security in the event Buyer collects or draws down any portion of the Project Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment.

(c) Return of Project Development Security. If, after the Initial Delivery Date, no damages are due and owing to Buyer under this Agreement, then Seller will no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less any amounts drawn in accordance with Section 2.4(b). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within ten (10) Business Days of Buyer's receipt and acceptance of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 11.3(a)(i) toward the Delivery Term Security posted pursuant to Section 11.3(a)(ii).

(d) Payment of Interest. Buyer shall not pay interest on cash held as Performance Assurance.

(e) Use of Delivery Term Security. Buyer is entitled to draw upon the Delivery Term Security posted by Seller for damages which may be collected by Buyer from Seller pursuant to the terms of this agreement, including pursuant to Sections 6.2, 6.3. and/or 6.4. Buyer is also entitled to draw upon the Delivery Term Security for any damages arising upon Buyer's declaration of an Early Termination Date in accordance with Section 8.2(b). Seller shall within ten (10) Business Days after any draw thereon replenish the Delivery Term Security in the event Buyer collects or draws down any portion of the Delivery Term Security for any reason permitted under this Agreement other than to satisfy a Termination Payment.

(f) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 8.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including the Termination Payment, indemnification payments or other damages are paid in full.

11.4 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit (see Appendix VII) is subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eleven, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsection 11.4(b)(A) or 11.4(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 11.4(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eleven.

(c) Notwithstanding the foregoing in Section 11.4(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 11.4(b) and, if Seller fails to Cure, then the last paragraph in Section 11.4(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE TWELVE: SAFETY

12.1 Safety

(a) As of the Effective Date, Seller represents and warrants to Buyer that information relating to Seller's, its Affiliates' and Contractors' qualifications, experience, and safety record that Seller provided to Buyer in connection with the Request for Proposals process and prior to the Effective Date is materially accurate.

(b) Seller agrees and acknowledges that Buyer's receipt, review, approval or acceptance of Seller's Project Safety Plans, Safety Remediation Plans, Attestation, or related documentation or information shall not relieve Seller of any of its obligations to comply with the Safety Requirements.

(c) For all Seller Units, Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, maintain, and decommission the Seller Units and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates to, take all actions to comply with the Safety Requirements. For all Capacity Exchange Units, Seller shall ensure that all Work associated with the design, construction, operation, maintenance, and decommissioning of the Capacity Exchange Unit was and continues to be conducted in accordance with the Safety Requirements. Upon request by Buyer, Seller shall provide documentation demonstrating that all Work associated with the design, construction, operation, maintenance, and decommissioning of the Capacity Exchange Unit was and continues to be conducted in accordance with the Safety Requirements.

(d) Seller shall document a Project Safety Plan and incorporate the Project Safety Plan's features into the design, development, construction, operation, maintenance, and decommissioning of the Project. Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, maintaining, or decommissioning the Project, if in the Seller's judgment, the deviation is necessary to design, develop, construct, operate, maintain, or decommission the Project safely or in accordance with the Safety Requirements. Seller must monitor and comply with changes to Safety Requirements, even if such compliance requires Seller to modify the Project, subject to Section 3.4.

12.2 Project Safety Plan

(a) Prior to Delivery Term. At least ninety (90) days prior to the Initial Delivery Date, Seller shall submit for Buyer's review a Project Safety Plan, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Initial Delivery Date and (B) Seller's consideration of the Project Safety Plan items in Appendix X. Seller shall submit an Attestation with the Project Safety Plan. In the event Buyer provides Notice to Seller that the Project Safety Plan or Attestation is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 12.4.

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

12.3 Reporting Serious Incidents. Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the Contractor or Customer(s) involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its Contractors and Customers to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

12.4 Remediation

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(i) In the event the Seller determines that a Remediation Event could or may affect, implicate or impact other Sites, in addition to the Site where the Remediation Event occurred (as applicable), then Seller shall also identify such other effects, implications or impacts on the other Sites and include in the Safety Remediation Plan a plan to address or resolve the circumstances of the Remediation Event at such other Sites. Further, if the Remediation Event is an occurrence of an Exigent Circumstance with respect to a Site, then Seller shall not deliver and Buyer will not accept Product from such Site(s) until such Remediation Event is resolved in accordance with this Section 12.4.

(ii) Following the occurrence of any Remediation Event, Seller shall also provide an Attestation to Buyer for Buyer's review and acceptance. Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide an Attestation, in a form and level of detail that is reasonably acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as reasonably requested by Buyer.

(b) Seller's failure to resolve a Remediation Event by obtaining Buyer's written acceptance of the Attestation within the Remediation Period is a material breach of this Agreement; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days. Buyer shall not unreasonably withhold approval of such extension. Seller may request an additional extension of the Remediation Period of up to ninety (90) days, which Buyer may approve in its sole discretion. The Remediation Period will not, under any circumstance, continue for more than two-hundred and seventy (270) days from the first occurrence of the Remediation Event. The number of days of the Buyer Remediation Review Period shall not be included in calculating the number of days of the Remediation Period. The Initial Delivery Date shall not occur during a Remediation Period.

ARTICLE THIRTEEN: GOVERNMENTAL CHARGES

13.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

13.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product, by reason of the execution, delivery, performance, or enforcement of this Agreement or by reason of transactions contemplated by this Agreement, but not with respect to Buyer's use of the Product after delivery by Seller, including any resales or transfers of the Product. If Buyer is required by Law to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any

such Governmental Charges from the sums due to Seller under Article Seven (Compensation) of this Agreement. Nothing shall obligate or cause a Party to pay, or be liable to pay, any Governmental Charges for which it is exempt under Law.

ARTICLE FOURTEEN: LIMITATIONS

14.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, 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. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS 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 UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTIONS 16.1 THROUGH 16.6) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 16.1 THROUGH 16.6 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE FIFTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS

15.1 Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) except for the Governmental Approvals necessary to install, operate, and maintain the Project, in the case of Seller, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of 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) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

(e) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(f) 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;

(g) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(h) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(i) reasonably believes it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Effective Date of this Agreement);

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement; and

(k) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

15.2 General Covenants. Each Party covenants that throughout the 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 qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement; and

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it.

15.3 Covenants of Seller. Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(b) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Compliance Obligations;

(c) it shall operate the Project during the Delivery Term in accordance with Appendix III, and Safety Requirements;

(d) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to behind the retail meter energy storage facilities;

(e) it shall follow all the rules set forth in Appendix A of the MUA Decision; and

(f) To the extent a change in Law occurs after execution of this Agreement that causes Seller to fail to perform this covenant, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

ARTICLE SIXTEEN: INDEMNITIES AND INSURANCE

16.1 Indemnity by Seller

(a) Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates ("Buyer Group") against and from any Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Seller's delivery of the Product to Buyer, (ii) Seller's or its Affiliates' ownership, development, construction, operation, maintenance and/or decommissioning of the Project, including the Unit(s) and Sites(s); (iii) Third Party Claims arising from Seller's or its Affiliates' actions or inactions, including Seller's breach of this Agreement or other agreements related to the development, construction, ownership, operation, maintenance or decommissioning of the Project, Unit(s), Seller's Portfolio, or Site(s); (iv) any environmental matters associated with the Project, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; (v) Third Party Claims arising under any agreement between Seller or its Affiliates and a Customer in Seller's Portfolio; or (vi) resulting from Seller's or its Affiliates' violation of any applicable Law, or requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller's Affiliates, Customers or others, excepting only such Indemnifiable Losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group.

(b) Seller shall indemnify, defend and hold the Buyer Group harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

16.2 [Reserved]

16.3 Notice of Claim

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Sixteen, Buyer (the "Indemnitee") will promptly Notify Seller (the "Indemnitor") in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to an Indemnifiable Loss under Sections 16.1 or 16.2. (The Notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third Party Claim against it with respect to which the Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) days after such Indemnitee's receipt of Notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving Notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(c) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty (60) day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

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

16.4 Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 16.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 16.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) days after receiving Notice from the Indemnitee that the Indemnitee believes

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

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

16.6 Rights and Remedies are Cumulative. The rights and remedies of a Party pursuant to this Article Sixteen are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

16.7 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverage and be responsible for its Contractors maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.7 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance will not be less than one million dollars (\$1,000,000.00).

(b) Commercial General Liability

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form or similar "claims made" form acceptable to Buyer.

(ii) The limit will not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller, including Seller's Contractors. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

(B) be endorsed (blanket or otherwise) to specify that the Seller's or its Contractor's insurance is primary and that any insurance or self-insurance maintained by RCEA shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."

(ii) The limit will not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage will be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Seller's Pollution Liability

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will not be less than one million dollars (\$1,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse RCEA as additional insured.

(e) Additional Insurance Provisions

(i) Upon Buyer's request, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller and its Contractors.

(ii) The insurance documentation will state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer.

(f) Form and Content. All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against RCEA, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

ARTICLE SEVENTEEN: RECORDS AND AUDIT RIGHTS

17.1 Operations Logs. From the Initial Delivery Date until four (4) years after the end of the Delivery Term, Seller shall maintain a complete and accurate log of all material operations on a daily basis starting on the Initial Delivery Date and ending on the last day of the Delivery Term. Such log will include, but not be limited to, information on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Project. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's written request. At the request of Buyer, the CPUC, or the staff of the CPUC, Seller shall provide all records demonstrating that the Project is operated and maintained in accordance with Prudent Electrical Practices and applicable Laws, including CPUC General Order 167.

17.2 [Reserved]

17.3 General Audit Right. Each Party has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement (including the Project Safety Plan or other documents that supplement this Agreement), charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy in any statement, the necessary adjustments shall be made promptly; provided that, if the examining Party raises its objection more than twelve (12) months after the date of the statement in question, that objection shall be deemed waived. Buyer has the right to request from Seller an attestation, in the form attached hereto in Appendix XI, that Seller is following all rules of the MUA Decision.

17.4 Data Request Cooperation. Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities and/or the Utility Distribution Company that are related to or associated with the Project, delivery of Product and/or this Agreement, subject to the requirements of Article Twenty.

17.5 Access Rights. Buyer, its authorized agents, employees and inspectors, have, while observing and abiding by safety and security procedures of the Parties, Seller's Affiliate, and Customers the right of ingress to and egress from the Project, including the Site(s) with reasonable advance Notice and for any purposes reasonably connected with this Agreement. Buyer shall make reasonable efforts to request from Seller access during normal business hours and to coordinate its emergency activities with the safety and security departments, if any, of the Project operator, Seller's Affiliate, and/or the Customer. Seller shall keep Buyer advised of current procedures for contacting the Project operator's, Seller's Affiliate, and/or Customer's safety and security departments.

ARTICLE EIGHTEEN: ASSIGNMENT

18.1 General Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent will not be unreasonably conditioned, delayed, or withheld so long as (a) the assignee assumes the transferring Party's payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the proposed assignee is a Qualified Transferee, and (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.

18.2 Assignment to Financing Providers. Seller may assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent will not be unreasonably conditioned, delayed, or withheld. If Buyer gives its consent, then the consent will be in a form substantially similar to the Form of Financing Consent to Assignment attached as Appendix VIII provided that (a) Buyer will not be required to consent to any additional terms or conditions beyond those contained in Appendix VIII, including extension of any cure periods or additional remedies for financing providers, and (b) Seller is responsible, at Buyer's request, for Buyer's reasonable costs and attorneys' fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

18.3 Assignment in Connection with a Change in Control. Any direct Change of Control of Seller or Seller's Parent (whether voluntary or by operation of Law) is deemed an assignment and shall require the prior written consent of Buyer which consent shall not be unreasonably conditioned, delayed or withheld, provided that the assignee is a Qualified Transferee. Seller shall use commercially reasonable efforts to provide Buyer (a) Notice at least ten (10) days prior to the effectiveness of any indirect change in control, and shall in any event provide such Notice no later than ten (10) Business Days after the indirect change in control, and (b) such other information as Buyer may reasonably request in connection with such change in control.

18.4 Unauthorized Assignment. Any assignment or purported assignment in violation of this Article Eighteen is void.

ARTICLE NINETEEN: DISPUTE RESOLUTION

19.1 Dispute Notice. In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 19.1) (a "Dispute"), any Party (the "Notifying Party") may deliver to the other Parties (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

19.2 Meet and Confer. The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably

necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

19.3 Other Legal Remedies. In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 19.1 and 19.2 by the expiration of the thirty (30) day period set forth in Section 19.2, then a Party may pursue any legal remedy available to it in accordance with this Agreement.

ARTICLE TWENTY: CONFIDENTIALITY

20.1 Confidential Information. Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Law, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, “CPRA”), all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked “Confidential” at the time a Party shares such information with the other Party or customer-specific information or data, customer energy usage information or data, or information or data concerning California residents; “customer specific information or data” means customer-related information and data that is subject to the CPUC or other rules, regulations and orders regarding customer privacy pursuant to law, including, without limitation, California Public Utilities Code Section 8380 et seq. and CPUC Decision 12-08-045 (“Confidential Information”). The provisions of this Section 20 shall survive and shall continue to be binding upon the Parties for a period of two (2) years following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party’s possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

20.2 Permitted Disclosures. Subject to the CPRA, either Party may, without violating this Section 20 disclose matters that are made confidential by this Agreement:

(a) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(b) to governmental officials and parties involved in any proceeding in which a Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(c) to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

20.3 Notice of Discovery Request. If a Party is requested or required, pursuant to any applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written

notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

20.4 California Public Records Act

(a) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; *provided* that Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 20.3, (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA, and (iii) support, to the extent in compliance with Buyer's rights and obligations under applicable laws, Seller in its efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Project or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

(b) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify the Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

20.5 Remedies. Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 14.1

20.6 Other Confidential Information. Seller shall comply with all applicable laws and regulations relating to the protection of customer-specific information and data, including California Public Utilities Code Section 8380, et seq. and Decision 12-08-045 "Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators" adopted by the California Public Utilities Commission.

20.7 Credit Support. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

ARTICLE TWENTY-ONE: GENERAL PROVISIONS

21.1 General. 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. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties; provided however, that amendments to the amounts of Capacity Attributes shall be governed by the terms of Section 3.2(a)(ii). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 21.3. The Parties acknowledge and agree that this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Effective Date). This Agreement shall be binding on each Party's successors and permitted assigns.

21.2 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

21.3 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. Delivery of an executed counterpart of this Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

21.4 Mobile Sierra. Notwithstanding any 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 the FERC pursuant to the 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, a non-Party, or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United States 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

21.5 Interpretation. The following rules of interpretation apply:

(a) The term "including" means "including without limitation"; the terms "year" and "calendar year" mean the period of months from January 1 through and including December 31; the term

“month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively.

(b) Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed.

(c) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies unless otherwise specified.

(d) Capitalized terms used in this Agreement, including the appendices hereto, have the meaning set forth in Appendix I, unless otherwise specified.

(e) References in the singular include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons include partnerships, firms, companies, corporations, limited liability companies, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practice have the meaning generally ascribed to such words in California.

(g) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment will, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(h) Any reference in this Agreement to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity succeeding to its functions.

(i) All references to dollars or “\$” are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

(k) All references to Product mean each and all components of the Product unless the context infers a particular component of Product.

21.6 Recordings. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of an electronic recording of all telephone conversations between the Parties to this Agreement related to the scheduling of any Product, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Article Twenty. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of

such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the recordings pursuant to this Agreement.

21.7 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to make or receive other Notices on behalf of such Party or to represent a Party (“Authorized Representative”) and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

21.8 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent Load Serving Entity or Seller as an independent individual or entity.

21.9 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.

ARTICLE TWENTY-TWO: NOTICES

22.1 Notices. Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. Notices may be sent by overnight mail or courier or e-mail. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. The Cover Sheet contains the names and addresses to be used for Notices.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its Authorized Representative as of the dates provided below:

SWELL VPP FUND 2021-I LLC, a Delaware limited liability company		REDWOOD COAST ENERGY AUTHORITY, a California Joint Powers Authority	
Signature:		Signature:	
Name:	Suleman Khan	Name:	
Title:	President	Title:	
Date:		Date:	

APPENDIX I: GENERAL DEFINITIONS

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” means this Behind the Retail Meter Capacity Storage Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties (and for certain amendments consistent with the terms of Section 3.2(a)(ii)), constitutes the entire agreement of the Parties as to the matters set forth herein.

“Ancillary Services” has the meaning set forth in the CAISO Tariff.

“Attestation” means a Seller Attestation.

“Authorized Representative” has the meaning set forth in Section 21.7.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Balancing Authority” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

“Bid” shall have the meaning in the CAISO Tariff.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“Buyer” means Redwood Coast Energy Authority.

“Buyer Group” has the meaning set forth in Section 16.1.

“Buyer Remediation Review Period” means the number of days, not to exceed 10 Business Days, starting with the date of the next Business Day after the date Buyer receives the Attestation and is reviewing the Attestation, and ends with and includes the date Buyer provides Seller with Notice of Buyer’s acceptance or rejection of the Attestation.

“Buyer Revenues” has the meaning set forth in Section 7.2(b).

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

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

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

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“Capacity Adjustment Date” has the meaning set forth in Section 3.2(a)(ii).

“Capacity Attributes” means, any and all of the following attributes:

- (a) System RA Attributes,
- (b) Flexible RA Attributes,
- (c) Local RA Attributes and
- (d) Other Capacity Attributes

“Capacity Exchange Unit” means any Unit that meets all of the following conditions: (a) the Unit was not constructed or caused to be constructed by Seller, Seller’s Affiliates, or Contractor, (b) Seller has taken contractual or operational control of the Unit; and (c) the Unit is located at a Site and the Customer with the Site has been enrolled by Seller in the Project.

“Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 6.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Monthly Contract Amount not provided by Seller to Buyer. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

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

“Change Notice” has the meaning set forth in Section 3.2(a)(ii).

“Change of Control” means the occurrence of any one of the following events with respect to Seller: (i) any consolidation or merger of Seller in which Seller is not the continuing or surviving entity, or (ii) a sale or conveyance of any direct or indirect ownership interest in Seller, in the case of either (i) or (ii), following which parent entity (1) is no longer the direct or indirect owner of at least fifty one percent (51%) of the ownership interests of Seller, or (2) no longer has the ability to control the management and policies of Seller, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a permitted transfer or any merger, sale or reorganization at or above the level of Seller’s parent entity.

“Charging Energy” means the amount of Energy withdrawn from the Utility Distribution Company’s electrical system, Participating Transmission Owner’s electrical system or the CAISO Grid to be stored by the Units of the Project.

“Commercially Operable” with respect to each Seller Unit, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete and the Seller Unit has been released by the EPC Contractor to Seller for commercial operations.

“Commercial Operation Date” means the date stated in Seller’s Notice, substantially in the form of Appendix VI-A, upon which the Project became Commercially Operable.

“Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and any other resource adequacy or capacity procurement requirements imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, or by any other Governmental Authority having jurisdiction.

“Compliance Showings” means the total combination of (a) through (d) below that a Load Serving Entity (as defined in the CAISO Tariff) is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Authority having jurisdiction. (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings)

“Conditions Precedent” has the meaning set forth in Section 2.1.

“Confirmation Notice” has the meaning set forth in Section 3.2(a)(ii).

“Confirmed Quantity” has the meaning set forth in Section 6.1.

“Consumer Price Index” or “CPI” means the Consumer Price Index - California for All Urban Consumers, not seasonally adjusted, as published monthly by the California Department of Industrial Relations; or such other or similar index as Supplier reasonably selects to measure change in the purchasing power of the U.S. dollar in California, as approved in advance by RCEA.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating, maintaining, or decommissioning the Project during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating, maintaining or decommissioning the Project during the Term.

“Contract Amount” shall mean either the Initial Contract Amount or the revised Contract Amount as modified pursuant to Section 3.4(a)(i), Section 3.4(a)(ii), or Section 3.4(a)(iii), and as specified for the applicable Showing Month in Column A of the most recently executed version of Appendix II-C, “Contract Amount Modification.”

“Contract Price” means the amount specified in Section B of the Cover Sheet.

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date. The final Contract Year may be a period of less than twelve (12) consecutive months.

“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 this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“CPM” means “Capacity Procurement Mechanism” and has the meaning set forth in the CAISO Tariff and is inclusive of any successor mechanisms authorized by CAISO.

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

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

“CPUC General Order 167” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

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

“Cure” has the meaning set forth in Section 11.4(b).

“Customer” means a Person that is electrically interconnected to any substation within Humboldt County.

“Damage Payment Amount” means the amount set forth on the Cover Sheet.

“Day-Ahead Energy Price” or “DAP” means the price reported by CAISO at the Sub LAP(s) specific to the Project for each Settlement Period in a day in the Day-Ahead Market. To the extent there is more than one Sub-LAP associated with the Project, the DAP shall be the weighted average of the applicable Sub-LAP Day-Ahead Energy Prices based on installed Unit capacity in each Sub-LAP. The Sub-LAP(s) specific to the Project and the installed Unit capacity in each Sub-LAP shall be determined based on the Seller’s Final Portfolio List submitted to Buyer in accordance with Section 2.1(h) and shall not change during the Delivery Term, unless changed by the CAISO, irrespective of subsequent changes to Seller’s Portfolio.

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

“Defaulting Party” means the Party that is subject to an Event of Default.

“Delay Damages” means that amount set forth on the Cover Sheet.

“Delivered Quantities” has the meaning set forth in Section 3.7(a).

“Delivery Term” has the meaning set forth in Section 1.1(b).

“Delivery Term Security” means the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“Disclosing Party” has the meaning set forth in Section 20.2.

“Disclosure Order” has the meaning set forth in Section 20.2.

“Dispatch Instruction” has the meaning set forth in the CAISO Tariff.

“Dispatch Plan Deadline” means, with respect to each year of the Delivery Term, March 20, or such other date which is thirty (30) days prior to the date on which Buyer is required to submit its annual aggregate peak demand forecast pursuant to rules and published guidance of the CEC.

“Early Termination Date” has the meaning set forth in Section 9.2(a).

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

“Electric System Upgrades” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Project such that the Project can provide Product at all times during the Delivery Term.

“Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

“Emission Reduction Credits” means emission reductions that have been authorized by a local air pollution control district pursuant to California Health and Safety Code, Division 26 Air Resources Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means three-phase, 60-cycle alternating current electric energy, measured in MWhs.

“Energy Storage Proposed System Information Customer Attestation” means the form attached hereto as Appendix XV.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Project’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits, Marketable Emission Trading Credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project, and the decontamination or remediation, on or off a Site or the Project, necessitated by the introduction of such hazardous substances on a Site or the Project.

“EPA” means the U.S. Environmental Protection Agency or any successor entity performing similar functions.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other Laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain the same may be pending.

“Event of Default” means a Seller’s Event of Default and/or a Party’s Event of Default.

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Project or portion thereof.

“Expected Initial Delivery Date” has the meaning set forth in Section 1.1(c).

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes, and Other Capacity Attributes.

“Flexible RAR” means the flexible resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance to the extent beyond the control of and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Additionally:

- (a) Force Majeure may include:

(i) acts of God, including pandemic, epidemic, landslide, lightning, earthquake, fire, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy; or

(iv) restraint by court order or other Governmental Authority.

(b) Force Majeure does not include:

(i) the pandemic resulting from the novel coronavirus, known as COVID-19, and any resulting impacts on labor force, permitting, design, construction, and/or supply chain needs that may affect the Project, unless a specific action or order of a Governmental Authority directly prevents performance;

(ii) a failure of performance of any third party, including any party providing electric interconnection, distribution, or transmission service, except to the extent that the third party's failure of performance is caused by an event or circumstance that otherwise qualifies as Force Majeure;

(iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iv) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other Third Party employed by Seller to work on the Project;

(v) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(vi) Seller's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Project, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to complete interconnection by the Expected Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; and

(ix) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(x) Seller's inability to obtain or retain sufficient Customers; or

(xi) any failure of a Customer to perform (whether or not due to Force Majeure affecting Customer).

“Force Majeure Failure” has the meaning set forth in Section 9.1(d).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

“Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Project.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, independent system operator, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 13.2.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls (“PCBs”), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“IDD Cure Period” has the meaning set forth in Section 2.3(a).

“Indemnifiable Loss(es)” means any damages, claims, losses, liabilities, obligations, fines, penalties, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” means the Buyer Group.

“Indemnitor” means the Seller Group.

“Ineligible LC Bank” has the meaning set forth in Section 11.4(c)(i)(A).

“Ineligible LC Bank Notice Period” has the meaning set forth in Section 11.4(c)(i).

“Initial Contract Amount” means the Contract Amount as of the Effective Date, as specified in Section B of the Cover Sheet.

“Initial Delivery Date” has the meaning set forth in Section 1.1(d).

“Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC or the CPUC) by and among Seller and, as applicable, the Utility Distribution Company, the Participating Transmission Owner, and the CAISO, governing the terms and conditions of the interconnection of the Units with the Utility Distribution Company’s or CAISO’s grid, including any description of the plan for interconnecting the Units to the applicable grid.

“Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“kW” means kilowatts.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Effective Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“LC Notice” has the meaning set forth in Section 11.4(c).

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix VII to this Agreement; provided, that if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount exceeding ten million dollars (\$10,000,000.00) requires Buyer’s prior written consent.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

“Load Modification” means the reduction of Buyer’s aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance.

“Load Modifying Resource Dispatch Plan” means a one-year plan, submitted for each calendar year of the Delivery Term, specifying on a month-by-month basis the hours of day during which the Monthly Contract Amounts will be delivered from the Project upon election of a Product Transition to receive Load Modification instead of Capacity Attributes. The form of the Load Modifying Dispatch Plan shall be mutually developed and agreed upon by the Parties.

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

“Local RA Attributes” means any and all resource adequacy attributes or other locational attributes related to a Local Capacity Area, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with a physical location or point of electrical interconnection within the CAISO’s Balancing Authority, that can be counted toward a Local RAR.

“Local RAR” means the local resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to CPUC Decisions, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits, grants, or benefits related to the Project or generation therefrom or any costs or fees related to the Site or Project.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Health & Safety Code Division 26 Air Resources; Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Maximum Contract Amount” means the amount specified in Section B of the Cover Sheet.

“Mechanical Completion” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

“Monthly Capacity Factor” has the meaning set forth in Appendix XIV.

“Monthly Contract Amount” means the Contract Amount multiplied by the Monthly Capacity Factor in Appendix XIV for the applicable Showing Month.

“Monthly Payment” has the meaning set forth in Section 7.1.

“Monthly Payment Date” has the meaning set forth in Section 10.3.

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

“MUA” means multiple-use applications as such term applies to energy storage facilities.

“MUA Decision” means CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

“Must Offer Obligations” means Buyer’s SC’s obligation to Bid the Project into the CAISO Markets due to delivery of the Product to Buyer and in accordance with the CAISO Tariff.

“MW” means megawatts.

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

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 8.2(a).

“Non-Exporting” means a Unit design such that the output from the Unit(s) is used for Customer load only and is prevented from transferring Energy from the Unit(s) to the Utility Distribution Company’s grid or the CAISO Grid.

“Non-Spinning Reserve” has the meaning set forth in the CAISO Tariff.

“Notice” unless otherwise specified in this Agreement, means a written communication which is delivered by hand delivery, United States Mail, overnight courier service or electronic messaging (e-mail), and in the manner required by Section 22.1, as applicable to a given communication.

“Notice of Claim” has the meaning set forth in Section 16.3(a).

“Notify” means to provide a Notice.

“Operational Characteristics” means the operational characteristics set forth in Appendix III.

“Other Capacity Attributes” means, exclusive of System RA Attributes, Local RA Attributes and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to provide Ancillary Services, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person; (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition; and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

“Other Programs” has the meaning set forth in Section 4.1(f).

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Party’s Event of Default” has the meaning set forth in Section 8.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Project Development Security and Delivery Term Security. Buyer only accepts two forms of collateral to satisfy the Performance Assurance obligations: (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“PG&E” means Pacific Gas and Electric Company.

“Product” has the meaning set forth in Section 3.1.

“Progress Report” means a report similar in form to that attached hereto as Appendix V.

“Project” means the combination of all Seller Units and Capacity Exchange Units described in Appendix II, as such may be revised from time to time in accordance with this Agreement.

“Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 11.3(a)(i).

“Project Review Milestone” means the date designated in the Cover Sheet, by which Seller would begin substantial development of the Project, including selecting Contractors, vendors or major equipment for the Project.

“Project Modification” means the construction of a new Unit or the expansion of an existing Unit that increases the Contract Amount that the Project is capable of providing to the Buyer by more than five percent (5%). Project Modification does not include any routine maintenance performed in the ordinary course of business. Project Modification does not include a circumstance where the same Unit ceases to be located at the premises of one Customer and is transferred or otherwise begins providing services to another Customer.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Appendix X.

“Project Safety Plan Documents” means the information and documentation listed in Appendix X.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to energy storage facilities during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally

accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Safeguards are implemented and maintained for the Project and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Project safely and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Project and at each Site, including identifying and responding to System Emergencies, Emergencies, or Exigent Circumstances originating from or impacting the Project or Site;

(d) the Project's material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power and/or energy storage facilities operating in the relevant region;

(e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

“Qualified Transferee” means any entity that:

(a) (i) has, or has a parent that has, a tangible net worth of not less than the net worth of Swell Energy Inc. as of the Effective Date or (ii) has financial qualifications (including, collateral support and any other additional security as may be required by Buyer) as determined by Buyer in its sole discretion; and

(b) (i) has at least three (3) years of experience in the construction, operation and ownership of energy or energy storage facilities; or (ii) has retained a reputable third party with at least three (3) years of experience in the construction, operation and ownership of energy or energy storage facilities; and

(c) has demonstrated to Buyer's satisfaction that the entity has the ability to fully comply with all of Seller's obligations under the Agreement, which determination by Buyer shall not be unreasonably withheld or conditioned.

“Referral Date” has the meaning set forth in Section 20.2(a).

“Regulation Down” has the meaning set forth in the CAISO Tariff.

“Regulation Up” has the meaning set forth in the CAISO Tariff.

“Regulatory Disclosure” has the meaning set forth in Section 21.2(i).

“Reliability Organization” means an “Electric Reliability Organization” as defined in Section 215(a)(2) of the Federal Power Act or a “regional entity” as defined in Section 215(a)(7) of the Federal Power Act.

“Remedial Action Plan” has the meaning set forth in Section 2.7.

“Remediation Event” means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Project’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 12.2, in its sole discretion, that the Seller, the Project Safety Plan, and/or Seller Attestation, as applicable, is not consistent with the Safety Requirements; or (g) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, maintenance, or decommissioning of the Project or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days unless extended pursuant to Section 12.4.

“Replacement Capacity” has the meaning set forth in Section 6.3.

“Replacement Damages” have the meaning set forth in Section 6.2.

“Replacement Damage Amount” means the amount set forth in Section E of the Cover Sheet.

“Request for Proposals” means the Request for Proposals for Behind-the-Meter Distributed Resource Adequacy issued by RCEA in April 2020.

“Residual Unit Commitment” or “RUC” has the meaning set forth in the CAISO Tariff.

“Residual Unit Commitment (RUC) Availability Payments” has the meaning set forth in the CAISO Tariff.

“Resold Product” has the meaning set forth in Section 3.2(a).

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, 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, and all other capacity procurement obligations established by any other entity, including the CAISO.

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

“Resource Adequacy Requirement” or “RAR” means the Resource Adequacy or successor program requirements established by the CPUC, CAISO or any other regional entity, including submission of a Supply Plan or Resource Adequacy Plan.

“RMR” means “Reliability Must-Run” and has the meaning set forth in, and as used in, the CAISO Tariff.

“RMR Contract” has the meaning set forth in the CAISO Tariff.

“RMR Generation” has the meaning set forth in the CAISO Tariff.

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

“Safeguard” means any procedures, practices, or actions with respect to the Project, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Requirements, and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC, including, but not limited to, any applicable regulations adopted by the California Department of Toxic Substances Control relating to the disposal of materials used in the Project.

“Scheduling Coordinator” or “SC” has the meaning set forth the CAISO Tariff. Under the terms of this Agreement, the SC may be Buyer or Buyer’s designated agent (i.e., third-party).

“SEC” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“Seller” is the entity named in the preamble to this Agreement.

“Seller Attestation” means a Seller Notice with a written attestation or certification from Seller substantially in the form attached hereto as Appendix VI-D.

“Seller Group” means Seller, its directors, officers, agents, attorneys, representatives and Affiliates.

“Seller Unit” means any Unit that meets all of the following conditions: (a) the Unit was constructed or caused to be constructed by Seller, Seller’s Affiliates, or Contractor, and (b) the Unit is located at a Site and the Customer with the Site has been enrolled by Seller in the Project.

“Seller’s Event of Default” has the meaning set forth in Section 8.1(a).

“Seller’s Final Portfolio List” has the meaning set forth in Section 2.1(i).

“Seller’s Parent” means any entity or Person that directly holds fifty percent (50%) or more of the equity interests in Seller.

“Seller’s Portfolio” means the Customers and the corresponding Sites assembled by Seller for purposes of delivering the Product to Buyer under this Agreement, as such Seller’s Portfolio may be amended in accordance with this Agreement from time to time.

“Seller’s Portfolio List” has the meaning set forth in Section 4.1(e).

“Serious Incident” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars (\$100,000.00); (d) release of hazardous material above the limits or violating the requirements established by Permits, codes,

standards, regulations, Laws, or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“Settlement Amount” means the amount equal to the aggregate of the Losses and Costs of the Non-Defaulting Party, offset by its Gains, if any, calculated by the Non-Defaulting Party as of the Early Termination Date, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. The Settlement Amount is expressed in U.S. dollars and will never be less than zero. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount will be zero.

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

“Settlement Quality Meter Data” has the meaning set forth in the CAISO Tariff.

“Shortfall” has the meaning set forth in Section 6.2.

“Showing Month” incorporates each day of each calendar month of the Delivery Term that is the subject of the Compliance Showings, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Effective Date, the monthly Compliance Showings made in June are for the Showing Month of August and the annual Compliance Showing made in October is for the twelve (12) Showing Months of the following year.

“Site(s)” means each individual real property of each Customer on which a Unit of the Project is located, as identified in Appendix II-B as further updated by Seller pursuant to Section 4.1(e).

“Spinning Reserve” has the meaning set forth in the CAISO Tariff.

“Sub-LAP” has the meaning set forth in the CAISO Tariff.

“Substitute Bank Period” has the meaning set forth in Section 11.4(c).

“Substitute Letter of Credit” has the meaning set forth in Section 11.4(c).

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

“System Emergency” has the meaning set forth in the CAISO Tariff.

“System RA Attributes” means, any and all resource adequacy attributes, including Local RA Attributes but exclusive of any Flexible RA Attributes or Other Capacity Attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward RAR and Local RAR.

“Term” has the meaning set forth in Section 1.1(a).

“Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount or Damage Payment Amount, as applicable, and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

“Transmission Provider” means the CAISO.

“Utility Distribution Company” has the meaning set forth in the CAISO Tariff.

“Unit” (or “Units,” if more than one), means the Non-Exporting, behind-the-retail-meter energy storage facilities installed at the Sites as more particularly described in Appendices II and III, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide the Product to Buyer pursuant to this Agreement.

“Watch” has the meaning set forth in Section 11.4(c).

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

APPENDIX II: DESCRIPTION OF PROJECT

The following describes the Project to be constructed, operated, maintained and decommissioned by Seller through the Term in accordance with the Agreement.

APPENDIX II-A: PROJECT DESCRIPTION

Project name: RCEA Community Grid Program

Project description: The project is a virtual power plant, which includes multiple software-aggregated energy storage facilities located behind-the-meter of RCEA's electricity customers.

Energy storage technology of Units: Lithium-ion

CAISO transmission access charge area: PG&E

Initial anticipated nameplate capacity: 1.7 MW / 4.5 MWh based on residential customer segment (~190 customer energy storage systems) comprising (Qty. 335) Tesla Powerwall 2 batteries.

APPENDIX II-B: SELLER'S PORTFOLIO LIST & PROJECT SIZE

As of [____]

SELLER'S PORTFOLIO LIST

Customer service agreement ID number	Customer name	Unit Type (Seller Unit or Capacity Exchange Unit)	Physical address of Site	Total Project capacity installed as part of the Portfolio	Project capacity installed to meet capacity associated with Operational Characteristics	Project capacity installed in excess of capacity associated with Operational Characteristics	Unit manufacturer(s) and model number(s) installed at Site with corresponding Unit capacity	Customer type (eg. residential, commercial, industrial)	System type (standalone storage, solar + storage, etc.)	CAISO Resource ID	Sub-LAP

PROJECT SIZE

Aggregated Nameplate Capacity: _____

By submitting this Seller's Portfolio List & Project Size to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Units comprising Seller's Portfolio List are in compliance with the terms of the Agreement.

Signature:	
Name:	
Title:	
Date:	

APPENDIX II-C: CONTRACT AMOUNT MODIFICATION

CONTRACT AMOUNT

As of [____]

A	B	C	D	E	F
Contract Amount	Modification Type <i>(Initial, Section 3.4(a)(i), Section 3.4(a)(ii), Section 3.4(a)(iii))</i>	Date of Contract Modification	Amount of Capacity Attributes of Product	Fist Showing Month of Contract Amount	Last Showing Month of Contract Amount
300 kW	Initial Contract Amount	Effective Date			

Instructions:

1. If Seller provides Notice to Buyer of a modification to the Contract Amount pursuant to Section 3.4(a)(i) or Section 3.4(a)(iii), then Seller shall include with such Notice an executed copy of this Appendix II-C, completing Column E for the prior Contract Amount and completing Columns A, B, C, D and E for the modified Contract Amount. Seller shall leave Column F blank for the modified Contract Amount. The Column C “Date of Contract Modification” shall be the date on which Seller submits the Notice and executed copy of this Appendix II-C, consistent with Section 3.4(a)(i) or 3.4(a)(iii).

2. If Seller provides Notice to Buyer of a proposed modification to the Contract Amount pursuant to Section 3.4(a)(ii), then Seller shall provide an executed copy of this Appendix II-C to Buyer within five (5) Business Days of receiving Notice from Buyer of Buyer’s acceptance of Seller’s request for the modification of the Contract Amount, completing Column E for the prior Contract Amount and completing Columns A, B, C, D and E for the modified Contract Amount. Seller shall leave Column F blank for the modified Contract Amount. The Column C “Date of Contract Modification” shall be the date on which Buyer submits Notice of its acceptance of Seller’s request to modify the Contract Amount, consistent with Section 3.4(a)(ii).

By submitting this Contract Amount Modification to Buyer, Seller attests as of the date signed below, that all of the information is accurate and in compliance with the terms of the Agreement.

Signature:	
Name:	
Title:	
Date:	

APPENDIX III: OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Capacity Attributes of the Product.

Physical Location and Point of Interconnection

CAISO transmission access charge area (e.g. PG&E): Shall be as set forth in Appendix II-A

Sub-LAP(s): weightings to be set in accordance with Seller's Final Portfolio List

Point of interconnection: Shall be as set forth in Appendix II-A

Discharging and Charging

Maximum continuous discharge power (Dmax): 0.3 MW

Minimum continuous discharge power (Dmin): 0.3 MW

Maximum discharge duration at constant Dmax : 4 hours

Maximum continuous charge power (Cmax): ___ MW

Minimum continuous charge power (Cmin): ___ MW

Maximum charge duration at constant Cmax: ___ hours

Amount of Energy released to fully discharge: ___ MWh

Amount of Energy required to fully charge: ___ MWh

Round-trip efficiency: _____ %

Ramp Rates

[Describe ramp rates. If ramp rates vary with loading level, please provide a ramp rate for each segment within the operational range in which it differs. If ramp rates vary based on the operating mode (e.g. regulation), please provide separately.]

Dmin to Dmax: ___ MW/second

Cmin to Cmax: ___ MW/second

Dmax to Dmin: ___ MW/second

Cmax to Cmin: ___ MW/second

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the system is neither charging nor discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to Dmax: ___ seconds

Idle to Cmax: ___ seconds

Dmax to Cmax: ___ seconds

Cmax to Dmax: ___ seconds

Dmin to Cmin: ___ seconds

Cmin to Dmin: ___ seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up Time is the amount of time needed to go from non-operation to Dmin (Cmin). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) If applicable, provide start-up time for each Unit. Provide in seconds if appropriate.]

Discharge Start-up time (from notification to Dmin): ___ seconds

Charge Start-up time (from notification to Cmin): ___ seconds

Discharge Start-up Fuel: ___ MMBtu

Starts and other Run Time Limitations

[Describe start limitations. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s).]

Start limitations: 1 start (dispatch) per day, 15 starts per month

Run hour limitations: 4 hrs/day max, 60 hrs/month, 720 hrs/yr

[Describe minimum times.]

The minimum run time after a Discharge Start-up is 2,400 seconds

The minimum run time after a Charge Start-up is ___ seconds

The minimum down time after a shutdown is ___ seconds

Ancillary Services (defined terms below have the meaning found in the CAISO Tariff as of the Effective Date)

At ISO conditions, normal efficiency mode:

Spinning Reserves: Range: ____ MW
Non-Spinning Reserves: Range: ____ MW
Regulation Up: Range: ____ MW
Regulation Down: Range: ____ MW
Black Start capability (if applicable):
Other:

Voltage Services

Generator voltage regulation range (+/-): ____ volts per unit
Maximum reactive power leading: ____ mega volt amps reactive (MVar)
Maximum reactive power lagging: ____ mega volt amps reactive (MVar)

APPENDIX IV: INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Behind the Retail Meter Capacity Storage Agreement dated _____ (“Agreement”) by and between Redwood Coast Energy Authority (“Buyer”) and SWELL VPP FUND 2021-I LLC (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Conditions Precedent to the occurrence of the Initial Delivery Date have been satisfied or waived in writing by Buyer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, each Party has caused this Initial Delivery Date Confirmation Letter to be duly executed by its Authorized Representative as of the date of last signature provided below:

SWELL VPP FUND 2021-I LLC		REDWOOD COAST ENERGY AUTHORITY	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

APPENDIX V: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Program progress executive summary, including the program progress summary table below.
2. Description and explanation of any material planned changes to the Project.
3. Schedule showing progress on Project construction generally and achieving each of the Milestones and the Expected Initial Delivery Date.
4. Written description about the progress relative to the Milestones and the Expected Initial Delivery Date, including whether Seller is on schedule with respect to the same.
5. List of issues that could potentially affect achievement of the Milestones or the Expected Initial Delivery Date.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar month.
8. Progress and schedule of the Seller's Contractors, all major equipment supply agreements, Governmental Approvals, technical studies, interconnection agreements and financing arrangements.
9. Copies of Government Approvals and completed Electric Generation Interconnection Applications submitted to PG&E pursuant to PG&E's Rule 21 requirements, and the associated documentation of PG&E's approval, for any Seller Unit that has received permission to operate.
10. Updated Seller's Portfolio List.
11. Any other documentation reasonably requested by Buyer.

PROGRAM PROGRESS SUMMARY TABLE

As of [____]

	Last month's progress	Cumulative progress	Total target	Cumulative/total (%)
All customers				
Number of customers enrolled				
Associated battery capacity (MW-AC)				
Associated new PV (MW-DC)				
Commenced installation (MW-AC)				
Received permission to operate (MW-AC)				
Equity resiliency customers				
Number of customers Enrolled				
Associated battery capacity (MW-AC)				

APPENDIX VI: ATTESTATIONS & CERTIFICATIONS

APPENDIX VI-A: CERTIFICATION FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to Redwood Coast Energy Authority (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Capacity Storage 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) The Project became Commercially Operable on / /.
- (2) The Project has been constructed in accordance with Appendix II and III.
- (3) The Project is capable of producing and delivering the Product, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the Project to have a design life for the Delivery Term in accordance with Prudent Electrical Practices.
- (5) The design and construction of the Project was carried out by the original equipment manufacturer or other qualified organization.

EXECUTED by SELLER this _____ day of _____, 20__.

		[Licensed Professional Engineer]	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
		Date:	
		License Number	
	LPE Stamp		

APPENDIX VI-B: PROJECT MODIFICATION CERTIFICATION

This certification of commercial operation for a Project Modification (“Project Modification Certification”) is delivered by _____ (“Seller”) to Redwood Coast Energy Authority (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Capacity Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Project Modification 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) All parts of the Project affected by the Project Modification became Commercially Operable on / /.
- (2) All parts of the Project affected by the Project Modification have been constructed in accordance with Appendix II.
- (3) The Project is capable of producing and delivering the Product in the Monthly Contract Amount, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the Project to have a design life for the Delivery Term in accordance with Prudent Electrical Practices.
- (5) The design and construction of the Project affected by the Project Modification was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Project as modified under the Project Modification is able to operate in a manner consistent with the Safety Requirements.

EXECUTED by Seller this _____ day of _____, 20__.

		[Licensed Professional Engineer]	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
		Date:	
	License Number		
	LPE Stamp		

APPENDIX VI-C: [Not used]

APPENDIX VI-D: SELLER ATTESTATION

This Seller Attestation is delivered by _____ (“Seller”) to Redwood Coast Energy Authority (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Capacity Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Seller Attestation 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) The Seller Units (including each of the Site(s)) is able to operate in a manner consistent with the Safety Requirements; and
- (2) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Seller Units and applicable Site(s).

EXECUTED by SELLER this _____ day of _____, 20__.

Signature:	
Name:	
Title:	

APPENDIX VII: FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: *[insert issue date]*

Beneficiary:	Redwood Coast Energy Authority	Applicant:	[Insert name and address of Applicant]

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* (“Applicant”), we hereby issue in favor of Redwood Coast Energy Authority (the “Beneficiary”) our irrevocable standby letter of credit No. *[insert number of letter of credit]* (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* (“Letter of Credit Amount”). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on *[insert expiry date]* (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain *[insert name of Agreement]* (the “Agreement”), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
 - B. “Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;

2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date in case of an interruption of our business as stated below), at our offices at *[insert issuing bank's address for drawings]*.

All demands for payment shall be made by presentation of original drawing documents and a copy of this Letter of Credit; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank's receiving department]*, with original drawing documents and a copy of this Letter of Credit to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and will effect payment accordingly.

The law of the State of California shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

<i>[insert name of issuing bank]</i>	
By:	
	Authorized Signature
Name:	<i>[print or type name]</i>
Title:	<i>[print or type title]</i>

[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]

Exhibit A SIGHT DRAFT

TO

[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____

DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF REDWOOD COAST ENERGY
AUTHORITY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

[No Bank's signature on Exhibit A]

APPENDIX VIII: FORM OF FINANCING CONSENT TO ASSIGNMENT

FINANCING CONSENT AND AGREEMENT

This FINANCING CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between REDWOOD COAST ENERGY AUTHORITY (“RCEA”), and [_____] a *[include place of formation and business type]* as collateral agent^{1[1]} (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). RCEA, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Behind the Retail Meter Capacity Storage Agreement dated as of [_____, 2___] (as amended, modified, supplemented or restated from time to time, and including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between RCEA and Seller, RCEA has agreed to purchase Resource Adequacy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including, but not limited to, a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, RCEA has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, RCEA consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. Limitations on Assignment.

3.1 Limitations. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party designated by Financing Provider, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement is a Permitted Transferee. Financing Provider further acknowledges that this assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no

^{1[1]} This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the Secured Parties. If that is not the case, please modify.

rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining RCEA’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 “Permitted Transferee”.

(a) A Permitted Transferee is a person or entity that: (i) cures any and all defaults of Seller under the Assigned Agreement which are “Capable of Being Cured” as defined in Section 3.2(b); (ii) executes and delivers to RCEA a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to RCEA; (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, including credit and collateral requirements; (iv) if requested by RCEA, provides (A) tax and enforceability assurance as RCEA may reasonably request, to ensure that RCEA does not incur any costs or lose any benefits by such assignment; (B) documentation to demonstrate the Permitted Transferee’s safety record and ability to meet applicable safety obligations; and (C) its ability to construct (if applicable), operate, maintain, and decommission the Project, and evidence that the Permitted Transferee has operated other energy storage facilities with a similar technology and operating profile; and (v) is reasonably acceptable to RCEA.

(b) “Capable of Being Cured” means that the Assigned Agreement specifies that a cure is available to Seller for a default(s), whether such cure is financial or by performance, and the terms of the cure as specified in the Assigned Agreement remain unfulfilled and available as set forth in the Assigned Agreement without modification. If the Assigned Agreement does not specify that a cure is available for a default(s), or a cure is specified but is no longer available as a cure (due to the passage of time or for any other reason), then the default(s) shall not be “Capable of Being Cured”. An incurable default by Seller shall be cause for termination by RCEA of the Assigned Agreement and the Assigned Agreement will not be available for assignment to a Permitted Transferee.

(c) Financing Provider shall, following the occurrence of a Financing Default, Notify RCEA of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and RCEA shall, within thirty (30) Business Days of its receipt of such Notice, confirm to Financing Provider whether or not such proposed transferee is a Permitted Transferee (together with a written statement of the reason(s) for any negative determination), it being understood that if RCEA shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a Permitted Transferee.

4. Cure Rights.

4.1 Notice to Financing Provider by RCEA. Concurrently with the delivery to Seller of any Notice of an event of default under the Assigned Agreement (each, an “Event of Default”) (and, a “Default Notice”), RCEA shall provide a copy of such Default Notice to Financing Provider pursuant to Section 9.1 of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next Business Day after receipt from RCEA, independent of any agreement of RCEA to deliver such Default Notice.

4.2 Cure Period Available to Financing Provider Prior to Any Termination by RCEA. Upon the occurrence of an Event of Default, but only if the default is curable, RCEA agrees not to terminate the Assigned Agreement unless it or Seller first provides Financing Provider with Notice of the Event of Default and RCEA affords Financing Provider an additional cure period of ten (10) calendar days for a financial cure or thirty (30) calendar days for a non-financial cure.

4.3 Failure to Deliver Default Notice. If neither RCEA nor Seller delivers a Default Notice to Financing Provider as provided in Section 4.1, then the Financing Provider's applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Financing Provider by either RCEA or Seller, whichever is received first. Except for a delay in the commencement of the cure period for Financing Provider and a delay in RCEA's ability to terminate the Assigned Agreement (in each case only if both RCEA and Seller fail to deliver Notice of an Event of Default to Financing Provider), failure of RCEA to deliver any Default Notice shall not waive RCEA's right to take any action under the Assigned Agreement and will not subject RCEA to any damages or liability for failure to provide such Notice.

4.4 Extension for Foreclosure Proceedings. If (a) it is necessary for the Financing Provider to have possession of the Project (as defined in the Assigned Agreement) in order for Financing Provider to cure an Event of Default which is Capable of Being Cured, as defined in Section 3.2(b), and (b) Financing Provider commences foreclosure proceedings against Seller within thirty (30) calendar days of receiving Notice of an Event of Default from RCEA or Seller, whichever is received first, then Financing Provider shall be allowed an additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; provided, however, that Financing Provider shall provide a Notice to RCEA that it intends to commence foreclosure proceedings with respect to Seller within ten (10) calendar days of receiving a Notice of such Event of Default from RCEA or Seller, whichever is received first. In the event Financing Provider or its designated Permitted Transferee succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or Permitted Transferee shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that RCEA shall have the right to set off or deduct from payments due to Seller each and every amount due RCEA from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action RCEA may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that RCEA makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases RCEA from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that RCEA may agree with Seller to modify or amend the Assigned Agreement, and that RCEA is not obligated to Notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases RCEA from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. RCEA shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [_____/], as depositary agent, to ABA No.

[_____/], Account No. [_____/], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, RCEA and Financing Provider agrees that each such payment by RCEA to such depository agent of amounts due to Seller from RCEA under the Assigned Agreement shall satisfy RCEA's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

9.1 Notices. All Notices given or requirements of a Party to Notify hereunder shall be in writing, receipt of which shall be deemed complete (i) at the close of business of the date of receipt, if delivered by hand or by electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such Notice was properly addressed to the appropriate address set forth below or to such other address that a Party may designate by prior Notice to the other Parties.:

To Financing Provider:	
Attn:	
Department	
Street Address:	
Telephone:	
Facsimile	
Email:	

To RCEA:	
Attn:	
Department	
Street Address:	
Telephone:	
Facsimile	
Email:	

9.2 No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of RCEA, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and Permitted Transferees and assigns under the Financing Documents.

9.3 No Modification. This Consent and Agreement is neither a modification of, nor an amendment to, the Assigned Agreement.

9.4 Choice of Law. The Parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

9.5 No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party claimed to have so waived or excused.

9.6 Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the Parties, shall constitute a single binding agreement.

9.7 No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

9.8 Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

9.9 Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all Parties hereto.

IN WITNESS WHEREOF, each of RCEA and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

REDWOOD COAST ENERGY AUTHORITY, a California Joint Powers Authority		<i>[FINANCING PROVIDER, a (include place of formation and business type)], as collateral agent</i>	
Signature:		Signature:	
Name:		Name:	
Title:		Title:	
Date:		Date:	

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from RCEA to Financing Provider the next Business Day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned Seller.

[SELLER, a *(include place of formation and business type)*]

Signature:	
Name:	
Title:	
Date:	

APPENDIX IX: LOAD MODIFICATION SPECIFIC TERMS AND CONDITIONS

PART ONE: LOAD MODIFICATION CONDITIONS PRECEDENT

1. Seller shall have met all conditions precedent as described by Section 2.1 of that certain Behind the Retail Meter Capacity Storage Agreement dated as of [_____, 2____] (“Agreement”).
2. Seller has received notice of Buyer’s election to receive Load Modification pursuant to Section 3.3 of the Agreement.
3. No later than the Dispatch Plan Deadline, Seller shall have delivered to Buyer a Load Modifying Resource Dispatch Plan, which shall be in a form mutually agreed upon by the Parties upon Buyer’s election of a Product Transition, for the applicable year of the Delivery Term.

PART TWO: LOAD MODIFICATION PAYMENT TERMS

A. Load Modification Protocols

Upon a Product Transition, and for the remainder of the Delivery Term, Seller shall comply with the following Load Modification Protocols:

1. For each year of the Delivery Term, Seller shall submit to Buyer a Load Modifying Resource Dispatch Plan on or before the Dispatch Plan Deadline.
2. No less than 15 days before the Load Modifying Resource Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the coming year.
3. Buyer may require Seller to modify Dispatch Plan to maximize Load Modification for Buyer outside of Customers’ peak and partial-peak TOU periods upon mutual agreement of an equitable adjustment to the Contract Price to reflect the demonstrable economic loss to Seller.
4. At all times during the Delivery Term, Seller shall operate the Portfolio to provide the Contract Amounts of Load Modification as specified in the applicable Load Modifying Resource Dispatch Plan.

B. Maximizing Load Modification Benefits

In the event that a change in Buyer’s or the Utility Distribution Company’s rates results in adverse changes to the economic benefits provided to Customers under the Customer agreements, upon request by Buyer, Buyer and Seller shall take commercially reasonable efforts to make changes to the Load Modifying Resource Dispatch Plan to maximize benefits for Customers.

C. Load Modification Payment Terms

The provisions of this Part Two of this Appendix IX shall replace Sections 7.1 and 7.2 of the Agreement if a Product Transition occurs:

7.1. Monthly Payment.

(a) Each monthly invoice prepared by Seller pursuant to Article 10 of the Agreement shall include meter data substantiating the quantity of Load Modification, in kWh, delivered to Buyer from the Project consistent with the Load Modifying Resource Dispatch Plan for the applicable month (the “Delivered Quantities”).

(b) For all Load Modification that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 10 of the Agreement, pay Seller a monthly payment (“Monthly Payment” or “MP”) as follows:

$$MP = DQ \times CP$$

where,

DQ = The Delivered Quantities;

and

CP = The contract price set forth on the Cover Sheet (“Contract Price”) of the Agreement.

7.2 Allocation of CAISO Payments and Costs.

(a) For clarity, Buyer has no obligation to pay Seller for Load Modification that is delivered outside the parameters of the applicable Load Modifying Resource Dispatch Plan.

(b) Except as may otherwise be provided in the Agreement, Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to the Product or Project.

(c) To the extent that the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of Seller and for Seller’s account.

APPENDIX X: PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related Codes, Standards, and regulations (CSR) which govern the design, construction, operation, maintenance, and decommissioning of the Project using the proposed technology.

Describe the Seller's and the Seller's Contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

Part Two: Project Design and Description

Describe Seller's safety engineering approach to select equipment and design systems and the Project to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a Safety Review Report for each energy storage system class (e.g. residential/small commercial, medium/large C&I), which includes but is not limited to, a list of major facility components, systems, materials, associated equipment, and the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Project. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,
- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

APPENDIX XI: MULTIPLE-USE ATTESTATION

This attestation is delivered by _____ (“Seller”) to Redwood Coast Energy Authority (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Capacity Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Project, Seller is following all the rules set forth in Appendix A of the MUA Decision.

EXECUTED by SELLER this _____ day of _____, 20__.

Signature:	
Name:	
Title:	

APPENDIX XII: [Not used]

APPENDIX XIII: OPERATIONS

GRDT

Seller shall be responsible for providing all characteristics needed for the CAISO generator resource data template.

Bid Data

Buyer's SC shall provide a web-based portal, ftp site, or spreadsheet template for Seller to enter necessary bid input data for submission to market.

Day Ahead Market bid data: Seller shall provide all necessary Day Ahead bid data to be submitted to Buyer's SC by 3pm PPT the day prior to the Day Ahead Market close. Buyer's SC will use reasonable efforts to process and submit data received by Seller after the specified time and up to two hours before Day Ahead Market close.

Real Time Market bid data: Seller shall provide all necessary Real Time bid data to be submitted to Buyer's SC by three hours prior to flow. Buyer's SC will use reasonable efforts to process and submit data received by Seller after the specified time and up to 30 minutes before the applicable flow hour Real Time Market close.

Dispatch

Buyer's SC shall grant certificate access to Seller to directly connect to CAISO's automated dispatch system. Seller shall be responsible for interpreting dispatch and operating instructions directly from CAISO systems.

Outages

Seller shall communicate outages to Buyer's SC via phone call within 15 minutes of discovery.

Meter Data Submission

Buyer's SC shall grant Seller certificate access to CAISO's meter data submissions portal. Seller shall be responsible for submitting all required meter data and performance data directly to the CAISO meter data submissions portal per the CAISO tariff requirements.

APPENDIX XIV: MONTHLY CAPACITY FACTOR

Seasonality of customer loads influences the amount of eligible site demand that can be reduced by Seller. To adjust for seasonality, the amount of Product provided by Seller to Buyer in a given month is to be determined by multiplying the Contract Amount by the Monthly Capacity Factor for the given month as set forth in the below table. The result of this calculation is referred to as the “Monthly Contract Amount.”

The Parties may mutually agree to amend the Monthly Capacity Factor values in this Appendix XIV, provided that such modification shall be confirmed in writing signed by both Parties by no later than (i) October 1 of the prior year for modifications to the Monthly Capacity Factor value for the months of January, February, March, April, May, and June; and (i) April 1 of the same year for modifications to the Monthly Capacity Factor value for the months of the months of July, August, September, October, November, and December

Applicable Month	Monthly Capacity Factor
January	80%
February	80%
March	75%
April	65%
May	50%
June	70%
July	85%
August	100%
September	96%
October	90%
November	65%
December	60%

APPENDIX XV: SGIP ATTESTATION

Energy Storage Proposed System Information Customer Attestation

1) Provide an estimate of how long the project’s fully charged battery will provide electricity for the relevant facility average load during an outage.

2) Indicate whether the project’s critical loads can and will be isolated.

3) Provide an estimate of how long the project’s fully charged battery will provide electricity to critical uses during an outage.

4) Provide an estimate of how long the project can operate in less-than favorable circumstances, such as if an outage occurs when the battery has been discharged or during the winter (if paired with solar).

5) Summarize information given to the customer about how the customer may best prepare the storage system to provide backup power, in the case of a Public Safety Power Shutoff (PSPS) event announced in advance (provide an attachment with more information if necessary).

ATTESTATION

[SELLER SECTION]

I, _____ (print name of Seller), hereby attest that each of the statements provided in this document are true and correct. Any estimates provided have been provided in good faith and based upon information available to Seller before the date hereof.

Signature: _____

Name Printed: _____

Title: _____

Date: _____

[CUSTOMER SECTION]

I, _____ (print name of Customer), hereby attest I have received the information provided in this document prior to signing a contract with the developer.

Signature: _____

Name Printed: _____

Date: _____

END OF AGREEMENT