RESOURCE ADEQUACY AGREEMENT

COVER SHEET

Seller: Fairhaven Energy Storage LLC, a Delaware limited liability company.

Buyer: Redwood Coast Energy Authority, a California joint powers authority.

Unit Information

Project Name:	Fairhaven Energy Storage LLC
Location:	Samoa, CA
CAISO Resource ID:	N/A
Unit SCID:	BRP1
Unit NQC:	17.25 MW
Unit EFC:	34.5 MW
Resource Type:	Standalone Storage
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	1
Path 26 (North or South):	North
Local Capacity Area (if any, as of Effective Date):	Humboldt
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	None

RA Product and Attributes: During the Delivery Term, Seller shall provide Buyer with the Contract Quantity of RAR Attributes and, if applicable, LAR Attributes and FCR Attributes, from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

☒ RAR Attributes

☒ LAR Attributes

☒ FCR Attributes

Milestones

Milestone	Expected Date for Completion
Demonstrate Site Control	As of Effective Date
Submit Material Modification Request	[redacted]
Material Modification Approved	[redacted]
Procure Major Equipment	As of Effective Date
Complete Project Permitting	[redacted]
Expected Construction Start Date	[redacted]
Expected Commercial Operation Date	10/01/2023

Delivery Term: The period for Product delivery will be for 10 Contract Years

Contract Quantities: The Contract Quantities for the entire Delivery Term shall be:

RAR Attributes: 17.25 MW NQC

LAR Attributes: 17.25 MW, subject to revision pursuant to Section 3.1.

FCR Attributes: 34.5 MW EFC

Payment Quantity: 17.25 MW

Contract Price: $[redacted] per kW-month

Scheduling Coordinator: Seller or Seller's Agent

Initial Delivery Date

The Expected Initial Delivery Date shall be 12/01/2023.

The Initial Delivery Date Deadline shall be 06/01/2024.

Security and Damages

Development Security: $[redacted].

Performance Security: $[redacted], which amount shall be reduced to $[redacted] as of the start of the fifth Contract Year.

Damage Payment: An amount equal to the remaining amount of Development Security held by Buyer.

[redacted]

NOTICES

Seller	Buyer
All Notices: BRP Capital & Trade LLC Attn: Legal 333 Clay St, Suite 2800 Houston, TX 72002 Phone: [redacted] Email: [redacted]	**All Notices:** Redwood Coats Energy Authority Attn: Richard Engel 633 3rd St Eureka, CA 95501 Phone: 707-269-1700, ext. [redacted] Email: rengel@redwoodenergy.org With cc to jgwynn@redwoodenergy.org
Reference Numbers: DUNS (BRP LLC): [redacted] Federal Tax ID No. (BRP LLC): [redacted] EIN (Fairhaven BESS LLC): [redacted]	**Reference Numbers:** DUNS: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: Settlements Phone: [redacted] E-mail: [redacted]	**Invoices:** Attn: Accounting Phone: 707-269-1700, ext. [redacted] Facsimile: 707-269-1777 Email: ap@redwoodenergy.org
Scheduling: Attn: Power Desk Phone: [redacted] Email: [redacted]	**Scheduling:** Attn: The Energy Authority designated as Buyer's SC Day Ahead Desk Phone: [redacted] Real Time Desk Phone: [redacted] Email: [redacted]
Confirmations: Attn: [redacted] Phone: [redacted] Email: [redacted]	**Confirmations:** Attn: Richard Engel Phone: 707-269-1700, ext. [redacted] Email: rengel@redwoodenergy.org
Payments: Attn: Settlements Phone: [redacted] E-mail: [redacted]	**Payments:** Attn: Accounting Phone: 707-269-1700, ext. [redacted] Facsimile: 707-269-1777 Email: ap@redwoodenergy.org
ACH Wire Transfer: BNK: [redacted] ABA: [redacted] ACCT: [redacted]	**ACH Wire Transfer:** BNK: [redacted] ABA: [redacted] ACCT: [redacted]

Seller	Buyer
Credit and Collections: Attn: Credit, Phone: Email:	**Credit and Collections:** Attn: Lori Biondini Director of Business Planning and Finance Phone: 707-269-1700, ext. Email: lbiondini@redwoodenergy.org
Notice of an Event of Default to: Attn: Phone: Email:	**Notice of an Event of Default to:** Attn: Lori Biondini Director of Business Planning and Finance Phone: 707-269-1700, ext. Facsimile: 707-269-1777 Email: lbiondini@redwoodenergy.org
With additional Notices of an Event of Default to: Attn: Legal Phone: Email:	**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: Facsimile:
Emergency Contact: Attn: Legal Phone: Email:	**Emergency Contact:** Attn: Jocelyn Gwynn Phone: 707-269-1700, ext. Email: jgwynn@redwoodenrgy.org

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RESOURCE ADEQUACY AGREEMENT

PREAMBLE

This Resource Adequacy Agreement ("**Agreement**") is entered into as of [_____] (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate an energy storage facility (the "**Project**," as more fully defined below); and

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

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

ARTICLE 1: DEFINITIONS

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

"**Affiliate**" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"**Agreement**" has the meaning set forth in the Preamble.

"**Alternate Capacity**" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 3.5.

"**Applicable Laws**" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.

"**Availability Incentive Payments**" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Availability Standards**" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Bankrupt**" means with respect to any entity, such entity (i) 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 petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

"**Buyer**" has the meaning specified in the introductory paragraph hereof.

"**CAISO**" means the California Independent System Operator or its successor.

"**CAISO Control Area**" has the meaning set forth in the Tariff.

"**CAISO RA Enhancement**" means a change to the CAISO tariff provisions and business practice manuals that (a) changes the basis for submission and assessment of Supply Plans from (i) a value reflecting installed capacity (currently, NQC) to (ii) a value that takes into account historical performance of a facility (such as "Unforced Capacity" or "UCAP," as referenced in CAISO's Resource Adequacy Enhancements Draft Final Proposal – Phase 1 and Sixth Revised Straw Proposal dated December 17, 2020)), and (b) eliminates or otherwise substantially modifies the application of Resource Adequacy Availability Incentive Mechanism (RAAIM) charges to forced outage periods.

"Capacity Attributes" means any and all of the following attributes: RAR Attributes, LAR Attributes, FCR Attributes, and Other Capacity Attributes.

"**Capacity Replacement Price**" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.7 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 Contract Quantity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

"**Claims**" means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

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

"**Commercial Operation Date**" has the meaning set forth in Section 19.2(a).

"**Commercial Operation Delay Damages**" means an amount equal to (a) the amount of Development Security that is remaining as of the Expected Initial Delivery Date, as such date has

been extended pursuant to Section 19.3, divided by (b) the total number of days between the Expected Initial Delivery Date, as such date has been extended pursuant to Section 19.3, and the Initial Delivery Date Deadline.

"**Construction Start Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred eighty (180).

"**Compliance Actions**" has the meaning set forth in Section 3.11.

"**Compliance Cost**" has the meaning set forth in Section 3.11.

[redacted]

"**Compliance Obligation**" means the RAR, Local RAR, FCR, 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.

"**Construction Start Date**" has the meaning set forth in Section 19.1(b).

"**Contingent Firm RA Product**" has the meaning set forth on the Cover Sheet.

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

"**Contract Quantity**" means, the quantities specified on 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 a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

"COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's, as applicable.

"**CPUC**" means the California Public Utilities Commission or its successor.

"**CPUC Decisions**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**CPUC Filing Guide**" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

"**Damage Payment**" means the dollar amount that is equal to the remaining amount of Development Security held by Buyer.

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

"**Delivery Point**" has the meaning specified in Section 3.3.

"**Delivery Term**" has the meaning set forth in Section 2.1(b).

"**Development Cure Period**" has the meaning set forth in Section 19.2(b).

"**Development Security**" means collateral in the form of either cash or Letter(s) of Credit in the amount set forth on the Cover Sheet.

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

"**Effective Date**" is the date set forth in the Preamble.

"**Effective Flexible Capacity**" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

"**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 same may be pending.

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

"**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 Construction Start Date**" is the date set forth on the Cover Sheet.

"**Expected Initial Delivery Date**" is the date set forth on the Cover Sheet.

"**FCR Attributes**" means, with respect to a Unit, any and all flexible resource adequacy attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

"**FCR Showings**" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

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

"**Flexible Capacity Category**" has the meaning set forth in the CPUC Decisions.

"**Flexible Capacity Requirements**" or "**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**Flexible RA Product**" has the meaning specified in Section B of the Cover Sheet.

"**Force Majeure**" has the meaning set forth in Section 10.1.

"**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 a Terminated Transaction, determined in a commercially reasonable manner.

"**GADS**" means the Generating Availability Data System or its successor.

"**Governmental Body**" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal; provided that "Governmental Body" shall not in any event include any Party.

"**Governmental Charges**" has the meaning set forth in Section 20.2.

"**Governmental Approvals**" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body 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, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided that that "Governmental Authority" shall not in any event include any Party.

"**Initial Delivery Date**" has the meaning set forth in Section 2.1.

"**Initial Delivery Date Deadline**" has the meaning set forth on the Cover Sheet.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Project and Seller's Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.

"**Investment Grade**" means a Credit Rating of at least "BBB-" from S&P and/or "Baa3" from Moody's (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).

"**LAR**" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement ("LCR") in other regulatory proceedings or legislative actions.

"**LAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

"**LAR Showings**" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Project or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest

Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Project.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.

"**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 a Terminated Transaction, determined in a commercially reasonable manner.

"**LRA**" has the meaning set forth in the Tariff.

"**LSE**" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

"Material Modification" has the meaning set forth in the Tariff.

"**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 Applicable 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.

"**Milestones**" means the events specified on the Cover Sheet.

"**Monthly Delivery Period**" means each calendar month during the Delivery Term and shall correspond to each Showing Month.

"**Monthly RA Capacity Payment**" has the meaning specified in Section 3.9(a) hereof.

"**Moody's**" means Moody's Investor Services, Inc. or its successor.

"**NERC**" means the North American Electric Reliability Corporation, or its successor.

"**NERC Business Day**" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"**NERC/GADS Protocols**" means the GADS protocols established by NERC, as may be updated from time to time.

"**Network Upgrades**" has the meaning set forth in the Tariff.

"**Net Qualifying Capacity**" has the meaning set forth in the Tariff.

"**Non-Availability Charges**" has the meaning set forth in the Tariff.

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

"**Notification Deadline**" has the meaning specified in Section 3.5 hereof.

"**Operational Characteristics**" means the operational characteristics set forth in Exhibit F.

"**Other Capacity Attributes**" means, exclusive of RAR Attributes, LAR Attributes and FCR 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 (as defined in the Tariff), 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 Body 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.

"**Outage**" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (as defined below).

"**Participating Transmission Owner**" 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. The Participating Transmission Owner for purposes of this Agreement is Pacific Gas and Electric Company ("PG&E").

"**Payment Quantity**" has the meaning set forth on the Cover Sheet.

"**Performance Security**" means collateral in the form of either cash or Letter(s) of Credit in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means:

(i) any Affiliate of Seller; or

(ii) [redacted]

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

"**Planned Outage**" means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"**Product**" has the meaning specified in Article 3 hereof.

"**Project**" means the facility described on the Cover Sheet and in Exhibit D.

"**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 Exhibit G.

"**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 in the Western United States 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.

"**RA Capacity**" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

"**RAR**" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**RAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

"**RAR Showings**" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

"**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 Government Bodies 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; or (f) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, or maintenance 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 6.5.

"**Replacement Capacity**" has the meaning specified in Section 3.7 hereof.

"**Replacement Price**" has the same meaning as Capacity Replacement Price.

"**Replacement Unit**" means a generating unit meeting the requirements specified in Section 3.5 hereof.

"**Resold Product**" has the meaning set forth in Section 5.1.

"**Resource Category**" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**S&P**" means the Standard & Poor's Rating Group (a division of McGraw-Hill, 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, and all applicable requirements of Applicable Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

"**Sales Price**" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, (a) in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability, and (b) if Seller is unable to resell the Product not received by Buyer, then the Sales Price shall be deemed to be zero dollars ($0). For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable

manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

"**Schedule**" or "**Scheduling**" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

"**Scheduling Coordinator**" has the same meaning as in the Tariff.

"**Seller**" has the meaning specified in the introductory paragraph hereof.

"**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, Applicable Laws or Governmental Bodies; or (e) environmental impacts exceeding those authorized by permits or Applicable Law.

"**Settlement Amount**" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 11.2.

"**Showing Month**" shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Project is located as identified in Appendix D.

"**Supply Plan**" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.

"**Tariff**" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

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

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

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Transmission Provider**" means the CAISO. "Transmission System" means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.

"**Unit**" or "**Units**" shall mean the storage assets described in Section A of the Cover Sheet and Exhibit D hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit or Replacement Unit may not include a coal-fired or nuclear generating resource.

"**Unit EFC**" means the Effective Flexible Capacity set by the CAISO for the applicable Unit.

"**Unit NQC**" means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

"**Utility Distribution Company**" has the meaning set forth in the CAISO Tariff. The Utility Distribution Company for purposes of this Agreement is PG&E.

"**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.

ARTICLE 2: DELIVERY TERM AND CONDITIONS PRECEDENT

2.1. Delivery 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 Development Security or Performance Security 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 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 18 (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 a period of ten (10) Contract Years 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 set forth on the Cover Sheet.

(d) The "**Initial Delivery Date**" is the first day of the first Showing Month for which Product is delivered hereunder. For the avoidance of doubt, the Parties acknowledge that the Commercial Operation Date must occur at least forty-five (45) days prior to the initial Showing Month in order for the Product to be considered deliverable. If the Project (or any portion thereof) commences operation prior to the Expected Initial Delivery Date, Seller may sell the RAR Attributes, LAR Attributes, and/or FCR Attributes of the Project to one or more third parties prior to the Expected Initial Delivery Date (a "Third Party Sale"). Any Third-Party Sale shall be limited to a delivery period that ends before the Expected Initial Delivery Date. Seller shall have the right to all revenues generated from such sale, and will be responsible for any costs, charges, fees, fines, or penalties associated with such sale.

2.2. Conditions Precedent to Initial Delivery Date. Seller shall take all actions and obtain all approvals necessary to perform Seller's obligations under this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the "Conditions Precedent") and must be satisfied at least sixty (60) days before the Initial Delivery Date, unless a different deadline is set forth below, in which case such other deadline shall govern:

(a) Seller shall have provided to Buyer, by no earlier than ninety (90) days prior to the Initial Delivery Date and no later than sixty (60) days prior to the Initial Delivery Date, updated correct and complete copies of (A) Seller's most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller's certification of formation or certification of incorporation, and any amendments thereto.

(b) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver the Product to Buyer.

(c) Seller shall have secured Site control.

(d) Seller shall have provided to Buyer a certification of Seller and a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Commercial Operation Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 7.2.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have submitted to Buyer a Project Safety Plan pursuant to Section 6.5.

(h) Seller shall have obtained an NQC and an EFC for the Project of at least the amounts shown under Unit Information on the Cover Sheet.

(i) In accordance with Section 3.6(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 17.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including damages pursuant to Section 19.2(c).

(l) If any applicable Governmental Body required Seller to develop a decommissioning plan as part of any permitting process for the Project, then Seller shall have provided such decommissioning plan to Buyer.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1. Resource Adequacy Capacity Product. During the Delivery Term, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Contract Quantity of RAR Attributes and, if specified on the Cover Sheet, LAR Attributes and FCR Attributes (the "**Product**"); provided that, notwithstanding anything to the contrary herein:

(a) the Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Contract Quantity in RAR Showings, LAR Showings, and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Agreement;

(b) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing local capacity areas that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes related to a local capacity area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(c) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of the Unit, that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes provided hereunder will not result in a change in payments made pursuant to this Agreement;

(d) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing local capacity areas whereby the Unit subsequently qualifies for a local capacity area, the Product, to the extent specified in the Cover Sheet, shall include all LAR Attributes related to such local Capacity Area;

(e) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing RAR or Flexible Capacity

Requirements, LAR Attributes or RAR Attributes, or attributes of the Unit whereby the Unit, or a portion of the Unit which did not previously qualify, subsequently qualifies to satisfy RAR or Flexible Capacity Requirements, the Product, to the extent specified in the Cover Sheet, shall include all FCR Attributes or RAR Attributes of the Unit, including any FCR Attributes or RAR Attributes with respect to any portion of the Unit which previously was not able to satisfy RAR or Flexible Capacity Requirements, as applicable. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement; and

(f) consistent with the foregoing, in the event any change by the CPUC, CAISO, CPUC Decisions, LRA, or other Governmental Body or Person having jurisdiction over RAR Attributes results in the increase or decrease of the amount of Capacity Attributes that may be calculated or derived from the Operational Characteristics, such occurrence is a change in Applicable Laws subject to Section 3.11(b) and (g), and prior to the effective date of such change, 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 Contract Quantity 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 the Contract Quantity 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 Contract Quantity amount of the Capacity Attributes of Product as stated prior to the Confirmation Notice. Buyer shall pay Seller for Product based on the Payment Quantity and Contract Price in accordance with the formula set forth in Section 3.9.

3.2. Seller's and Buyer's Obligations. Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Contract Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3. Delivery Point. The "Delivery Point" for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.4. Adjustments to Contract Quantity.

(a) Planned Outages. Seller is obligated to meet the Tariff obligations with respect to securing Planned Outage approvals from CAISO.

(b) The Parties acknowledge that Contract Quantity as stated in the Cover Sheet is based on an expected Effective Flexible Capacity for the Project as of the Effective Date, and the intention herein is for Seller to sell to Buyer, and Buyer to buy from Seller, the entire Effective Flexible Capacity of the Project.

3.5. Alternate Capacity and Replacement Units.

(a) The "**Notification Deadline**" for a given Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO supply plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends, as applicable (i) not to provide or (ii) to provide with Alternate Capacity from identified Replacement Units meeting the above requirements no later than the Notification Deadline; and provided further that such Alternate Capacity shall be required to comply with the requirements of D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. If Seller notifies Buyer in writing as to the particular Replacement Units in accordance with this Section 3.5 and such Replacement Units otherwise meet the requirements of a Unit under this Agreement, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

3.6. Delivery of Product. Seller shall provide Buyer with the Contract Quantity of Product for each Showing Month consistent with the following:

(a) No later than fifteen (15) Business Days prior to the applicable Showing Month deadline, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Contract Quantity provided to Buyer for each pertinent Showing Month so that the total amount of Contract Quantity identified and confirmed for such Showing Month equals the Contract Quantity, unless specifically requested not to do so by the Buyer.

3.7. Damages for Failure to Provide Contract Quantity. If Seller fails to provide Buyer with the Contract Quantity of Product for any Showing Month or the annual

RA compliance filing during the Delivery Term, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Contract Quantity not provided by Seller with D.21-06-035 compliant capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Contract Quantity not provided by Seller, provided that, if any portion of the Contract Quantity that Buyer is seeking to replace is Contract Quantity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if specified on the Cover Sheet), then Buyer may replace such portion of the Contract Quantity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if specified on the Cover Sheet) ("**Replacement Capacity**"), in either case, 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. Buyer will purchase Replacement Capacity that is D.21-06-035 compliant capacity only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties.

(b) Seller shall pay to Buyer on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any Replacement Capacity, plus (B) the product of the Capacity Replacement Price times the amount of the Contract Quantity neither provided by Seller nor purchased by Buyer pursuant to Section 3.7(a), and (ii) the product of the Contract Quantity not provided by Seller for the applicable Showing Month times the Contract Price times 1,000 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 Article 8 of this Agreement.

3.8. Indemnities for Failure to Deliver Contract Quantity. 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:

(a) Seller's failure to provide any portion of the Contract Quantity for the respective Showing Month for the Delivery Term;

(b) Seller's failure to provide notice of the non-availability of any portion of the Contract Quantity consistent with Sections 3.5; or

(c) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder for the respective Showing Month or the annual RA compliance filing 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. Seller will have no obligation to Buyer under this Section 3.8 in respect of the portion of the Contract Quantity for any portion of the Delivery Term for which Seller has paid damages for Replacement Capacity under Section 3.7. 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.

3.9. Monthly RA Capacity Payment.

(a) Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be paid in accordance with Section 8.2. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (i) the applicable Contract Price for that Monthly Delivery Period, (ii) the Payment Quantity for the Monthly Delivery Period, and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.10. Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for sales of any products other than the Product sold to Buyer hereunder, including (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity of any Unit during the Delivery Term (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.10(a) above).

(c) In accordance with Section 3.9 of this Agreement:

(i) all such Buyer revenues described in Section 3.10(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to

Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.10(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Contract Quantity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.11. <u>Change in Law</u>.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide RAR Attributes, and, if applicable, LAR Attributes and FCR Attributes, that satisfy the requirements of the CPUC Decisions, including the requirements of D.21-06-035. Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Applicable Laws. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Applicable Laws, including changes, modifications, or amendments to this Agreement to: (i) amend the definition of RAR Attributes, LAR Attributes, or FCR Attributes, including amendments to this Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) require submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. The Parties agree that any proposed modifications or required actions that would increase Seller's costs (not including any costs associated with the time expended by Seller staff, consultants, or attorneys) to perform under this Agreement, or result in a reduction of payments to Seller, are

hereby deemed to materially adversely affect Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) [redacted]

(c) [redacted]

(d) [redacted]

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

(f) [redacted]

[redacted]

(g) If a change in Applicable Laws by the CPUC, CAISO, CPUC Decisions, LRA, or other Governmental Body or Person having jurisdiction over RAR Attributes requires the Seller to materially alter the Operational Characteristics of the Project in a manner that increases Seller's costs in order to maintain the amount of Capacity Attributes, then such costs shall be considered Compliance Costs, [redacted] Seller's obligation to materially alter the Operational Characteristics of the Project pursuant to this Section 3.11(g) does not include any requirement to increase the nameplate capacity of the Project.

ARTICLE 4: CAISO OFFER REQUIREMENTS

4.1. **CAISO Offer Requirements**. During the Delivery Term, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Contract Quantity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Contract Quantity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: BUYER'S RE-SALE OF PRODUCT

5.1. Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement ("**Resold Product**"), Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.7 and 3.8.

5.2. In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 5) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale:

(a) Benefitting load serving entity SC identification number (SCID),

(b) Volume (in MW) of Resold Product,

(c) Subsequent sale delivery period for Resold Product.

ARTICLE 6: MAINTENANCE OF THE PROJECT

6.1. **Maintenance of the Project**. Seller shall comply with Applicable Laws and Prudent Operating Practice relating to the operation and maintenance of the Project and the sale of the Product.

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

6.3. **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements. Any such agreement is permissible only if it (i) permits Seller to perform or satisfy, and does not purport to limit, its obligations hereunder and (ii) provides for separate metering of the Project. Without limiting the foregoing, Buyer acknowledges that the Project may share a transformer with a separate, but neighboring energy generating or storage plant.

6.4. **Decommissioning Project and Other Costs**. Buyer shall not be responsible for any cost of decommissioning or demolition of the Project or any environmental or other liability associated with the decommissioning or demolition of the Project without regard to the timing or cause of the decommissioning or demolition. Seller agrees to indemnify, defend, and hold harmless, Buyer for any costs incurred by Buyer if and to the extent that Seller's actions or inactions causes Buyer to become required, whether statutorily or otherwise, to bear the cost of any decommissioning or demolition of the Project or any environmental or other liability associated therewith, including, but not limited to, any investigations, actions, suits, claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys'

fees) associated with clean-up costs and defense costs. The indemnity requirements set forth in this Section shall survive the termination of this Agreement.

6.5. Project Safety Plan.

(a) Prior to Delivery Term. At least ninety (90) days prior to the Commercial Operation 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 Exhibit G. 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 6.5(d).

(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.

(c) Reporting Serious Incidents. Seller shall provide informal notice of a Serious Incident to Buyer via email or telephone as soon as is reasonably practicable and Notice of a Serious Incident to Buyer within ten (10) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, 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 to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

(d) Remediation.

(i) Seller shall make commercially reasonable efforts to 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.

(ii) If the Remediation Event is an occurrence of an Exigent Circumstance with respect to the Project or the Site, then Seller shall not deliver and Buyer will not accept, Product from the Project until such Remediation Event is resolved in accordance with this Section 6.5.

(iii) Following the occurrence of any Remediation Event, Seller shall also provide an attestation to Buyer for Buyer's review. Seller shall 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. Within thirty (30) days of receiving an attestation from Seller, Buyer may provide Seller with a Notice that identifies any deficiencies in the attestation. Seller shall provide a revised attestation responding to the identified deficiencies within thirty (30) days of receiving such Notice from Buyer.

(iv) Seller's failure to resolve a Remediation Event, other than due to the occurrence of a Force Majeure Event as described in this Section 6.5(d)(iv), within the Remediation Period is a material breach of this Agreement; provided that that Seller may request to extend the Remediation Period by up to ninety (90) days, or if the Remediation Event is not reasonably capable of being resolved within such ninety (90) day period, then Seller may request to extend the Remediation Period by such reasonable period. 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. Except as the result of a Force Majeure Event, the Remediation Period will not 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 Commercial Operation Date shall not occur during a Remediation Period. If Seller provides Notice to Buyer, in compliance with Section 10.3, demonstrating that a Remediation Event is a Force Majeure Event, and that Seller's ability to resolve the Remediation Event is prevented by the Force Majeure Event, then the Remediation Period shall be extended on a day-for-day basis until Seller is no longer prevented from resolving the Remediation Event by the Force Majeure Event. This Section does not limit, reduce, or otherwise modify any rights of remedies of Buyer under any other provisions of this Agreement.

ARTICLE 7: COLLATERAL REQUIREMENTS

7.1. **Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within ten (10) business days of the Effective Date. Seller shall maintain the Development Security in full force and effect; *provided* Seller shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in an amount equal to the Development Security then held by Buyer that otherwise meets the requirements set forth in the definition of Development Security.

7.2. **Performance Security.**

(a) To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

(b) Upon the end of the fourth Contract Year, Buyer shall return to Seller the unused portion of the original Performance Security posted, and Seller shall replace such Performance Security with new Performance Security in the amount required to be posted by the start of the fifth Contract Year. Seller shall post the new Performance Security no later than five (5) Business Days after Buyer returns the original Performance Security.

(c) If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

7.3. <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>.

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

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

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

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

(iii) Liquidate Development Security or Performance Security 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.

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

ARTICLE 8: PAYMENT AND NETTING

8.1. Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable and within fifteen (15) days after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

8.2. Timeliness of Payment. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month, or fifteenth (15th) day after receipt of the invoice or, if such day is not a Business Day, then 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

8.3. Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, 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. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.3 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 occurred, the right to payment for such performance is waived.

8.4. Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.7, 3.8, or 19.2(c), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.5. Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.7 or 3.8, interest, and payments or credits, that Party shall pay such sum in full when due.

8.6. Security. Unless the Party benefiting from Development Security or Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 11, all amounts netted pursuant to this Article 8 shall not take into account or include any Development Security or Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 9: NOTICES

9.1. Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10: FORCE MAJEURE

10.1. Definition.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure may include delays in performance or inability to perform or comply with the terms and conditions of this Agreement due to delays in obtaining necessary equipment, labor or materials or other issues caused by or attributable to pandemics or epidemics, COVID-19, if the elements of Force Majeure defined in this Section 10.1(a) (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) have been satisfied; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in the first sentence hereof (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) has occurred.

(b) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Project; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2. No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to

fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

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

10.4. Termination Following Force Majeure Event. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Project experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a) and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is

provided in Section 3.7 and 3.8) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 7 hereof if such failure is not remedied within ten (10) Business Days after written notice; and

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

11.2. Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Initial Delivery Date), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party) and terminate this Agreement (referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable).

11.3. Termination Payment. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, non-Affiliate dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in

connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4. Notice of Payment of Damage Payment or Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Damage Payment or Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

11.5. Disputes with Respect to Damage Payment or Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall, to the extent not already held by the Non-Defaulting Party, first transfer Development Security or Performance Security, as applicable, to the Non-Defaulting Party in an amount equal to the Termination Payment.

11.6. Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 11.3 or a Damage Payment in accordance with 11.2, if the Defaulting Party would be owed the Damage Payment or Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Damage Payment or Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 11.2, withhold payment of the Damage Payment or Termination Payment to the Defaulting Party. The remedy provided for in this Section 11.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

11.7. Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days unless an early Termination Date shall have been declared and notice thereof pursuant to Section 11.2 given, and (ii) to the extent an

Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 12: LIMITATIONS

12.1. Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. 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. 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 OR OTHERWISE. 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 13: REPRESENTATIONS; WARRANTIES; COVENANTS

13.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Project and sell the Product therefrom in the case of Seller;

(c) 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) 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.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) 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;

(g) 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;

(h) 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;

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

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

13.2. Buyer and Seller Covenants. Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 5. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by

the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR~~,~~ LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; provided, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

13.3. Seller Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Agreement from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(d) Each Unit is within the CAISO Control Area;

(e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(f) If Seller is the owner of any Unit, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(g) With respect to the RA Capacity provided under this Agreement, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(h) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Contract Quantity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, at least five (5) Business Days before the Notification Deadline, the Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(j) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.10(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and

(k) As between Seller and Buyer, Seller shall be solely responsible for the decommissioning of the Project.

13.4. Buyer's Representations and Warranties. Buyer represents and warrants as follows:

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

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

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

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

creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

ARTICLE 14: ASSIGNMENT

14.1. **Assignment**. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Project by Seller, Buyer agrees to execute a consent to collateral assignment substantially in the form attached hereto as Exhibit H ("**Collateral Assignment Agreement**"), and to the extent requested by Collateral Agent (as defined in Exhibit H) and/or Seller shall in good faith negotiate and agree upon such changes to Exhibit H as are requested by Financing Provider or Seller, *provided* such changes must be commercially reasonable and customary in the industry.

ARTICLE 15: DISPUTE RESOLUTION

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

15.2. **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3. **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16: INDEMNIFICATION

16.1. **Indemnification**.

(a) To the full extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, and/or caused in whole or in part by any negligent or wrongful act, error, or omission of Seller or by any individual or agency for which Seller is legally liable, including officers, agents, employees or subcontractors of Seller.

(b) Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Project site, 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 of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or any Buyer of any liability to the other for any breach of this Agreement. No Party shall be indemnified for any damages resulting from its gross negligence, intentional acts, or willful misconduct or for the gross negligence, intentional acts, or willful misconduct of its Affiliates, directors, officers, employees and agents. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2. **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify

the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided that that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.3. Environmental Indemnity. Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any third party liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of or are in any way attributable to, and or caused by (a) any Release on the Site caused by Seller or Seller's contractors or service providers or (b) any claim or legal proceeding pursuant to Environmental Law by any third party with regard to any violation or alleged violation of any Environmental Laws by Seller or the Seller's contractors or service providers. For the purposes hereof, (A) "**Release**" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment of Hazardous Materials introduced to the Project by Seller or Seller's contractors or service providers in violation of any Environmental Laws that are required to be investigated, remediated or otherwise cleaned up by a Governmental Authority; and (B) "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any binding judicial or administrative interpretation thereof relating to the protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species and vegetation), including laws and regulations relating to Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

ARTICLE 17: INSURANCE

17.1. Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement, subject to policy terms and conditions and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) 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.

(ii) The limit will not be less than two million dollars ($2,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Redwood Coast Energy Authority as an additional insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of

coverage not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Applicable Laws; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

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

ARTICLE 18: CONFIDENTIAL INFORMATION

18.1. Confidential Information.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Laws, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), 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 ("Confidential Information"). The provisions of this Section 18.1 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.

(b) Subject to the CPRA, either Party may, without violating this Section 18.1, disclose matters that are made confidential by this Agreement:

(i) 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;

(ii) 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

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other requirement of Applicable Laws, 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.

(c) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Contract Quantity under this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose (i) the transfer of the Contract Quantity under this Agreement to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans, and (ii) to CAISO, the Operational Characteristics, signature pages, Delivery Term, Expected Initial Delivery Date, and any other Milestones, or other dates as requested by CAISO; provided that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to effect such resale transaction, provided that such other party agrees to keep such information confidential.

(d) 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 extent practical and permissible) 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.

(e) 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 18.1.(c), (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.

(f) 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 laws, the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(g) 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 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' invoices for all fees and costs incurred by Buyer and all indemnitees, as well as all damages or liability of any nature.

(h) 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 Article 12.

18.2. Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19: PROJECT CONSTRUCTION AND COMMERCIAL OPERATION

19.1. Construction of the Project.

(a) The Parties agree that time is of the essence with respect to a Party's performance of its material obligations under this Agreement, unless such delayed performance has been expressly permitted or excused under this Agreement. For the avoidance of doubt, payment of Construction Start Delay Damages or Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.

(b) Construction Start. "**Construction Start**" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Project, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Project may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Project at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the "**Construction Start Date**." The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Expected Construction Start Date.

(c) If Construction Start is not achieved by the Expected Construction Start Date, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable for each day for which Construction Start has not begun by the Expected Construction Start Date. Construction Start Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Project. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in such invoice. Construction Start Delay Damages shall be refundable to Seller pursuant to Section 19.2(b). The Parties agree that Buyer's receipt of Construction Start Delay Damages shall (x) not be construed as Buyer's

declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.

(d) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start and (ii) each calendar month from the first calendar month following the Construction Start until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller's possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Project.

19.2. Commercial Operation.

(a) Commercial Operation Date. "**Commercial Operation Date**" means the date on which the Project became Commercially Operable, as stated by Seller in the written notice provided to Buyer substantially in the form of Exhibit C (the "**COD Certificate**"). Seller shall use commercially reasonable efforts to notify Buyer that it intends to achieve Commercial Operation Date at least sixty (60) days before the anticipated Commercial Operation Date.

(b) If Seller achieves the Initial Delivery Date by the Initial Delivery Date Deadline, then ninety-five percent (95%) of all Construction Start Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Start Delay Damages with the first invoice to Buyer after Commercial Operation.

(c) If Seller does not achieve the Initial Delivery Date by the Expected Initial Delivery Date, as such date may be extended pursuant to Section 19.3(a), Seller shall, at Seller's option, either: (i) provide Buyer with Alternate Capacity (which, notwithstanding anything to the contrary in Section 3.5, for purposes of this Section 19.2(c), [redacted] or (ii) pay Commercial Operation Delay Damages for each day following the Expected Initial Delivery Date, as such date may be extended pursuant to Section 19.3, until the Initial Delivery Date; provided that in no event shall Seller be obligated to pay aggregate Construction Start Delay Damages and Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial

Operation Delay Damages, if any, accrued during the prior month. If Seller provides Alternate Capacity (as modified in clause (i) of the first sentence of this Section 19.2(c)) to Buyer pursuant to this Section 19.2(c) that meets the requirements specified in Section 3.5 as modified in clause (i) of the first sentence of this Section 19.2(c), then Buyer shall pay a Contract Price for such Alternate Capacity of [redacted]. The Parties agree that Buyer's receipt of Alternate Capacity and/or Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Initial Delivery Date on or before the Expected Initial Delivery Date, up until the Initial Delivery Date Deadline, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of either Party's termination right pursuant to Section 19.3(c) in the event that such unexcused delay exceeds the Initial Delivery Date Deadline. The Parties further agree that Buyer's receipt of Alternate Capacity pursuant to this Section 19.2(c) does not start the Delivery Term or otherwise reduce the Delivery Term specified under Section 2.1.

19.3. Extension of the Expected Dates.

(a) The Expected Construction Start Date and the Expected Initial Delivery Date shall, subject to notice and documentation requirements set forth below, both be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:

(i) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Project, and to permit the Seller and Project to make available and sell Product by the Expected Initial Delivery Date, despite the exercise of commercially reasonable efforts by Seller;

(ii) The Interconnection Facilities or Network Upgrades, if applicable, are not complete and ready for the Project to connect and sell Product at the Delivery Point by the Expected Initial Delivery Date despite the exercise of commercially reasonable efforts by Seller; or

(iii) An Event of Force Majeure occurs.

(b) Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not extend the Expected Initial Delivery Date beyond the Initial Delivery Date Deadline, for any reason, including an event of Force Majeure. No extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines (other than in the case of the extension set forth in Section 19.2(b)). Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's failure to take such commercially reasonable actions (other than in the case of the extension set forth in Section 19.2(b)).

(c) Termination for Failure to Achieve Initial Delivery Date. If the Project has not achieved the Initial Delivery Date by the Initial Delivery Date Deadline, then either Party may terminate this Agreement upon written notice to the other Party. If either Party terminates this Agreement under this Section 19.3(c), Buyer has the right to collect as liquidated damages an amount equal to the remaining Development Security; provided that payment of such amount shall constitute liquidated damages and Buyer's sole and exclusive remedy for such termination and Seller's failure to achieve the Initial Delivery Date. Notwithstanding anything to the contrary herein, in no event will Seller's liability hereunder prior to the Initial Delivery Date exceed the amount of the Development Security.

ARTICLE 20: GOVERNMENTAL CHARGES

20.1. 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.

20.2. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("**Governmental Charges**") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation 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 8 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 the law.

ARTICLE 21: MISCELLANEOUS

21.1. Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

21.2. Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Contract Quantity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse

of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

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

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

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

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

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

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

21.9. Service Contract. The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

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

21.11. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any Applicable Law.

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

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

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

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

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

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

[Remainder of Page Intentionally Left Blank]

Acknowledged and agreed to as of the Effective Date.

[Seller]	**Redwood Coast Energy Authority, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with

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

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

_____

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

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

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

_____

Name and Title of Authorized Representative

Date_____

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [Seller] ("Seller") to [Buyer], a California joint powers authority ("Buyer") in accordance with the terms of that certain Agreement dated [date] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

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

[Seller]

By:_____

Its:_____

Date:_____

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [Seller] ("Seller") to [Buyer], a California joint powers authority ("Buyer") in accordance with the terms of that Agreement dated [date] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

a) The Project is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
b) Seller has installed equipment for the Storage Project with a nameplate capacity of no less than one hundred percent (100%) of the Contract Quantity.
c) The Storage Project is fully capable of charging, storing and discharging energy up to no less than [eighty-five percent (85%)] of the Contract Quantity and receiving instructions to charge, store and discharge energy.
d) Authorization to parallel the Project was obtained by the Participating Transmission Owner, PG&E on___[DATE]____.

SELLER:

Signature:_____

Name:_____

Title:_____

Date:_____

ENGINEER

Signature:_____

Name:_____

Title:_____

Date:_____

EXHIBIT D: DESCRIPTION OF PROJECT

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

Project name: _____

Resource type: _____

Nameplate capacity: _____MW

Location: _____

Project physical address: _____

Project elevation: _____

Project latitude: _____° (decimal form)

Project longitude: _____ (decimal form)

Interconnection: _____

CAISO transmission access charge area (e.g., PG&E): _____

Point of interconnection: _____

Point of interconnection address: _____

Existing zone (e.g., NP-15): _____

PNode: _____

CAISO Resource ID: _____

Substation: Point of interconnection is near _____

EXHIBIT E: OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of RAR Attributes, and, if applicable, LAR Attributes and FCR Attributes, of Product. Physical Location and Point of Interconnection shall be as set forth in Exhibit D. The amounts set forth below reflect the full Project. Buyer is only entitled to the Contract Quantity of Product as adjusted pursuant to the terms of this Agreement.

Discharging and Charging

Maximum continuous discharge power (Dmax): ___ MW

Minimum continuous discharge power (Dmin): ___ MW

Maximum discharge duration at constant Dmax : ___ (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: _____at BOL%

Ramp Rates

Dmin to Dmax: ___ MW/second

Cmin to Cmax: ___ MW/second

Dmax to Dmin: __ MW/second

Cmax to Cmin: ___ MW/second

System Response Time

Idle to Dmax: ___ second

Idle to Cmax: ___ second

Dmax to Cmax: ___ second

Cmax to Dmax: ___ second

Dmin to Cmin: ___ second

Cmin to Dmin: ___ second

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

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

Discharge Start-up Fuel: ___ MMBtu

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items, highlighting incremental progress and changes from the previous Progress Report:

1. Executive Summary.
2. Project description.
3. Site plan of the Project.
4. Description of any material planned changes to the Project or the Site.
5. Summary of activities during the Progress Report period, including any OSHA labor hour reports.
6. Written description about the progress relative to the Milestones, the Commercial Operation Date, and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.
7. Schedule showing progress on Project construction generally and achieving each of the Milestones, the Commercial Operation Date, and the Initial Delivery Date.
8. Forecast and schedule of activities scheduled for the next Progress Report period.
9. List of issues that are likely to potentially affect achievement of the Milestones, the Commercial Operation Date, and the Initial Delivery Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Compliance with workforce and prevailing wage requirements.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT G: 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 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 list of major Project components, systems, materials, and associated equipment, which includes but is not limited to, 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

EXHIBIT H: FORM OF FINANCING CONSENT TO ASSIGNMENT

Consent and Agreement
[NAME OF ASSIGNED AGREEMENT]

This Consent and Agreement (this "**Agreement**") is dated as of [_____], among each of Redwood Coast Energy Authority, a California joint powers authority ("**Contracting Party**"), [_____], as collateral agent (together with its successors and assigns in such capacity, "**Collateral Agent**") for the Secured Parties (as defined below), and [_____] (the "**Assignor**").

Recitals

A. [_____] ("**Borrower**"), Collateral Agent, [_____], as administrative agent, the financial institutions from time to time party thereto and certain other parties thereto have entered into that certain [Financing Agreement], dated as of [_____] (as may be amended, amended and restated, modified or otherwise supplemented from time to time, the "**Financing Agreement**") pursuant to which the financial institutions referred to therein (collectively the "**Secured Parties**") will make loans and certain other extensions of credit to Borrower related to the [_____] (the "**Project**");

B. [Borrower is the [in]direct owner of one hundred percent (100%) of the issued and outstanding membership interests in Assignor, and Assignor is providing a secured guarantee of the loans and other obligations of Borrower under the Financing Agreement pursuant to a Security and Guarantee Agreement entered into between Assignor and Collateral Agent (as amended, restated, supplemented or otherwise modified and in effect from time to time, the "**Security Agreement**");]

C. Contracting Party and Assignor have entered into the Resource Adequacy Agreement, dated as of [_____] (as may be amended, amended and restated, modified or otherwise supplemented from time to time, the "**Assigned Agreement**");

D. As partial security for (i) the credit accommodations made by the Secured Parties under the Financing Agreement and other related documents and (ii) the obligations of Assignor under the Security Agreement, Assignor entered into the Security Agreement, pursuant to which it assigned all of the right, title and interest of Assignor in, to and under, and granted a security interest in, the Assigned Agreement to Collateral Agent on behalf of the Secured Parties; and

E. As an inducement for the Secured Parties to enter into the Financing Agreement and to make the extensions of credit contemplated thereby and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions

Capitalized terms used herein and not otherwise defined herein have the meanings assigned to them in the Financing Agreement. Unless otherwise stated, references herein to any person shall include its successors and permitted assigns and, in the case of any governmental authority, any person succeeding to its functions and capacities.

2. Consent and Agreement

(a) Contracting Party hereby acknowledges and irrevocably consents to the collateral assignment by Assignor pursuant to the Security Agreement of all of the right, title and interest of Assignor in the Assigned Agreement to Collateral Agent as collateral security for the payment and performance by Borrower of its obligations under the Financing Agreement.

(b) Contracting Party acknowledges the right of Collateral Agent, in its sole discretion, upon the occurrence and during the continuation of a default under the Financing Agreement to exercise and enforce all rights of Assignor under the Assigned Agreement in accordance with the terms of the Assigned Agreement.

(c) Upon the occurrence and during the continuation of a default under the Financing Agreement and the exercise by Collateral Agent of any of the remedies set forth in the Security Agreement or the Financing Agreement (or any other related security or pledge document), Collateral Agent may assign its rights and interests and the rights and interests of Assignor under the Assigned Agreement to any person that (i) is a purchaser or transferee of the Project, (ii) assumes the obligations of Assignor under the Assigned Agreement arising from and after the date of such assignment, and (iii) meets the definition of a Permitted Transferee under the Assigned Agreement. Prior to any such assignment, Collateral Agent shall provide written notice of such default and exercise of remedies by Collateral Agent to Contracting Party.

(d) Contracting Party acknowledges and agrees, notwithstanding anything to the contrary contained in the Assigned Agreement, that none of the following events shall constitute a default by Assignor under the Assigned Agreement or require the consent of Contracting Party: (i) the construction or operation of the Project by or on behalf of Collateral Agent following the occurrence and continuation of a default under the Financing Agreement and the related documents, or (ii) foreclosure or any other enforcement of the Security Agreement or the Financing Agreement (or any other related security or pledge document) by Collateral Agent.

(e) If an Event of Default (as defined in the Assigned Agreement) by the Assignor occurs under the Assigned Agreement, Contracting Party shall, before terminating the Assigned Agreement or suspending its performance, give written notice to Collateral Agent specifying such existing termination or suspension right that it is entitled to exercise arising from such Event of Default and the steps necessary to cure such Event of Default, and Collateral Agent or its designee shall have ninety (90) days (forty-five (45) days in the case of an Event of Default in payment by Assignor) after the later to occur of (x) expiration of any applicable cure period under the Assigned Agreement with respect to such Event of Default and (y) receipt of such notice from Contracting Party (or such longer period of time in the case of a nonpayment Event of Default as may be necessary under the circumstances, provided that Collateral Agent or its designee is diligently pursuing such cure to cure such Event of Default or to cause it to be cured and, in any event, not to exceed additional ninety (90) days from the end of the ninety (90) day period following receipt of such notice) to cure such default. For the avoidance of doubt, the preceding sentence shall not limit or delay the ability of the Contracting Party to collect liquidated damages from the Assignor pursuant to the Assigned Agreement. Notwithstanding the foregoing, if Collateral Agent or its designee is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition, but not more than one hundred eighty (180) days from the date of such court order or proceeding. Nothing herein shall require Collateral Agent to cure any Event of Default of Assignor under the Assigned Agreement or to perform any act, duty or obligation of Assignor under the Assigned Agreement, but shall only give it the option to do so. It is understood that the Collateral Agent shall not be required to cure any non-monetary Event of Default which by its nature cannot be cured by a person other than the Assignor.

(f) In the event Collateral Agent (or its designee) succeeds to Assignor's interests under the Assigned Agreement, whether by foreclosure or otherwise, Collateral Agent (or its designee) shall assume liability for all of Assignor's future obligations under the Assigned Agreement. Except as set forth in the immediately preceding sentence, neither Collateral Agent nor any other Secured Party shall be liable for the performance or observance of any of the obligations or duties of Assignor under the Assigned

Agreement, including the performance of any cure of Event of Default permitted pursuant to paragraph (e) above, and the assignment of the Assigned Agreement by Assignor to Collateral Agent pursuant to the Security Agreement shall not give rise to any duties or obligations owing to Contracting Party on the part of any of the Secured Parties.

(g) In the event that (i) the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Assignor or (ii) the Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding involving Assignor, and if within sixty (60) days after such rejection or termination, Collateral Agent shall so request and shall certify in writing to Contracting Party that it intends to perform the obligations of Assignor as and to the extent required under the Assigned Agreement, Contracting Party shall execute and deliver to Collateral Agent or such designee or assignee a new agreement ("**New Assigned Agreement**"), (A) pursuant to which New Assigned Agreement, Contracting Party shall agree to perform the obligations contemplated to be performed by Contracting Party under such original Assigned Agreement and Collateral Agent or such designee or assignee shall agree to perform the obligations contemplated to be performed by Assignor under such original Assigned Agreement, (B) which shall be for the balance of the remaining term under such original Assigned Agreement before giving effect to such rejection or termination, and (C) which shall contain substantially the same conditions, agreements, terms, provisions and limitations as such original Assigned Agreement (except for any requirements which have been fulfilled by Assignor and Contracting Party prior to such rejection or termination). References in this Agreement to "Assigned Agreement" shall be deemed also to refer to such New Assigned Agreement.

(h) Contracting Party shall deliver to Collateral Agent, concurrently with the delivery thereof to Assignor, a copy of each material notice, request or demand given by the Contracting Party pursuant to the Assigned Agreement, including, but not limited to, any notice, request or demand relating to (i) an Event of Default or breach by the Assignor under the Assigned Agreement or (ii) any matter that would require the consent of the Collateral Agent pursuant to Section 2(i) of this Agreement.

(i) Contracting Party covenants and agrees with Collateral Agent that without prior written consent of Collateral Agent (i) Contracting Party will not amend, modify, terminate (prior to the expiration of the applicable cure periods) or assign, transfer or encumber any of its interest in the Assigned Agreement and (ii) no waiver by Assignor of any of the obligations of Contracting Party under the Assigned Agreement, and no consent, approval or election made by Assignor in connection with the Assigned Agreement shall be effective as against Collateral Agent.

3. Representations and Warranties

Contracting Party hereby represents and warrants to the Secured Parties as follows:

(a) Contracting Party is a [*entity* type] duly [*formed/incorporated/organized*], validly existing and in good standing under the laws of [*jurisdiction*]. Contracting Party has full [*entity* type] power, authority and legal right to incur the obligations provided for in this Agreement and the Assigned Agreement.

(b) The execution, delivery and performance by Contracting Party of this Agreement and the Assigned Agreement have been duly authorized by all necessary organizational action, and do not and will not require any consent or approval of Contracting Party's [*board of directors/ shareholders/managing member/members*] or any other person or entity which has not been obtained.

(c) Each of this Agreement and the Assigned Agreement is in full force and effect and is a legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency and similar

laws.

(d) The Assignor has complied with all conditions precedent set forth in the Assigned Agreement required to be complied with by or on behalf of the Obligor on or prior to the date hereof pursuant to the Assigned Agreement and the ["Effective Date"] (as such term is defined in the Assigned Agreement) has occurred.

(e) Contracting Party is not in default under any covenant or obligation hereunder or under the Assigned Agreement. Assignor is not in default under any covenant or obligation of the Assigned Agreement.

(f) The execution and delivery by the Contracting Party of this Consent and the Assigned Agreement and the performance by the Contracting Party of its obligations under this Consent and the Assigned Agreement, do not (i) violate any federal or [State] statute, rule or regulation applicable to the Contracting Party, (ii) conflict with, result in a breach of or violate any of the terms, conditions or provisions of the Contracting Party's formation, constituent or governing documents; or (iii) result in a breach of any agreement, lease, or instrument presently in effect to which Contracting Party is a party or by which Contracting Party's properties or assets may be bound, the breach of which could reasonably be expected to have a material adverse effect on the ability of Contracting Party to perform its obligations under this Consent.

(g) All representations and warranties made by Contracting Party in the Assigned Agreement were true and correct in all respects on the day when made and, except for those that by their terms speak as of a specific date, are true and correct in all material respects on and as of the date of this Agreement.

(h) The Assigned Agreement (i) represents the entire agreement between Assignor on the one hand, and Contracting Party on the other hand, and (ii) has not been amended, modified or supplemented, other than as disclosed to the Collateral Agent, as of the date hereof.

(i) There is no litigation, action, suit, or legal proceeding pending or, to the knowledge of Contracting Party, threatened, against Contracting Party or any of its properties, rights or assets, before or by any court, administrative agency, environmental council, arbitrator or governmental authority, body or agency, which could reasonably be expected to materially and adversely affect the performance by Contracting Party of its obligations hereunder or under the Assigned Agreement or which questions the validity, binding effect or enforceability hereof or thereof.

(j) No authorizations, approvals or consents of any governmental or regulatory authority or agency or any other person, and no filings or registrations with any governmental authority or agency, are necessary for the execution, delivery or performance by Contracting Party of this Agreement or the Assigned Agreement, or for the validity or enforceability thereof, except for any authorizations, approvals, consents or filings which (i) have been made or obtained prior to the date hereof and are in full force and effect or (ii) are not yet required and will be obtainable without material expense or delay when required;

(k) As of the date hereof, Contracting Party has not (i) received notice of, or consented to, the assignment of Assignor's right, title, or interest in the Assigned Agreement to any person other than Collateral Agent nor (ii) received or delivered notice of force majeure under the Assigned Agreement.

(l) The Contracting Party is not aware of any proceedings in any court or by or before any governmental authority, arbitration board or tribunal between the parties with respect to the Assigned Agreement.

4. Arrangements Regarding Payments

All payments to be made by Contracting Party to Assignor under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds (or as otherwise permitted under the Assigned Agreement), directly to:

Bank Name: [_____]
ABA: [_____]
Account Name: [_____]
Account #: [_____]

(or to such other person or account as may be specified from time to time by Collateral Agent to Contracting Party in writing).

Assignor hereby authorizes and directs Contracting Party to make such payments as aforesaid, and agrees that such payments shall satisfy Contracting Party's obligation to pay such amounts to Assignor under the Assigned Agreement.

5. Additional Provisions

[*Insert provisions specific to the Assigned Agreement.*]

6. Miscellaneous

(a) Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns (provided, however, that the Contracting Party shall not assign or transfer its rights hereunder without the prior written consent of the Collateral Agent).

(b) Amendments and Waivers. No amendment or waiver of any provisions of this Agreement or consent to any departure from any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by each of the parties hereto.

(c) Notices. Notices and other communications provided for hereunder shall be in writing and shall be deemed to have been properly given:

(i) if delivered in person;

(ii) if sent by a nationally recognized overnight delivery service;

(iii) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested; or

(iv) if sent by facsimile, as a ".pdf" attachment to an electronic mail or other direct written electronic means.

Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following business day; provided, however, that if any notice is tendered to an addressee and the

delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving thirty (30) days' written notice to the other parties in the manner set forth hereinabove;
in each case, to the applicable address set forth as follows:

If to Contracting Party:

[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]
E-mail: [_____]

If to Collateral Agent:

[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]
E-mail: [_____]

If to Assignor:

[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]
Email: [_____]

(d) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CONFLICTS OF LAWS PROVISIONS THEREOF.

(e) Consent to Jurisdiction. Each of the parties hereto hereby submits to the nonexclusive jurisdiction of the courts of the State of New York or of the United States of America for the Southern District of New York, each in and for the County of New York, for the purposes of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby. Each party hereto irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(f) Waiver of Jury Trial. To the extent enforceable at such time, the parties hereto hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement or the transactions contemplated hereby.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original but all of which together shall constitute one

instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic delivery shall be effective as delivery of a manually executed counterpart of this Agreement.

(h) Delay and Waiver. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder and no course of dealing between parties hereto shall impair any such right, power or privilege or operate as a waiver thereof. No single or partial exercise by any party hereto of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies provided herein are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have.

(i) Conflicts with Assigned Agreement. In the event of a conflict between any provision of this Agreement and the Assigned Agreement, the provisions of this Agreement shall prevail.

(j) Further Document and Acts. Contracting Party will from time to time, upon the written request of Collateral Agent, execute and deliver such further documents and such other acts and things as Collateral Agent may reasonably request in order to effectuate more fully the purposes of this Agreement.

(k) Termination. The obligations of the parties hereunder are absolute and unconditional, and no termination shall be effective except by an instrument in writing signed by each party hereto; provided that all rights and obligations of the parties shall terminate upon: (x) the release of the Project or the Assigned Agreement from the collateral in accordance with the Financing Documents as confirmed by the Collateral Agent, (y) the termination of the Assigned Agreement in accordance with the terms thereof and the terms of this Agreement (except with regard to any applicable provisions that survive the termination of the Agreement) or (z) the [Term Conversion Date]. The provisions of Section 2(d) and (e) hereof shall survive the termination of this Agreement.

(l) Headings. Article, section, subsection and other headings have been inserted in this Agreement as a matter of convenience for reference only, and it is agreed that such items are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

(m) Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties hereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

(n) Limitation on Liability. No claim shall be made by any party hereto or any of its affiliates, directors, employees, attorneys or agents against any other party hereto or any of its affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort, duty imposed by law or otherwise), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or any act or omission or event occurring in connection therewith; and each party hereby waives, releases and agrees not to sue upon any such claim for any such special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(o) Third Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties hereto that this Agreement shall not be construed as a third-party beneficiary contract.

(p) The Collateral Agent. All references to the Collateral Agent contained herein refer to the Collateral Agent not acting in its individual capacity but solely as Collateral Agent acting at the written direction of the applicable requisite Secured Parties under the Financing Documents in accordance and subject to the Financing Documents In the performance of its obligations hereunder, the Collateral Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the Financing Documents, and shall exercise all rights and remedies hereunder and provide any consents, directions, approvals, acceptances, determinations, certifications, rejections or other similar actions pursuant to this Agreement in accordance with directions received from the applicable requisite Secured Parties, and shall have no liability for taking any such actions or failing to take any such actions in accordance with such directions (and shall not be liable for any failure or delay in taking such actions resulting from any failure or delay by such Secured Parties in providing such directions).

(q) Electronic Communication and Signatures. The parties hereto agree that this Agreement and all notices and disclosures made or given in connection with this Agreement may be created, executed, delivered and retained electronically. Accordingly, the parties hereto agree that this Agreement and any related documents may be signed electronically, and that the electronic signatures appearing on this Agreement or any related documents shall have the same legal effect for all purposes, including validity, enforceability and admissibility, as a handwritten signature.

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

[_____],
as Assignor
By:
_____
Name:
Title:

[_____],
as Collateral Agent

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

[_____]
as Contracting Party

By:
_____
Name:
Title: