

RESOLUTION NO. 2025-6

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDWOOD COAST ENERGY
AUTHORITY APPROVING THE FORM OF AND AUTHORIZING EXECUTION OF THE
HATCHERY ROAD POWER PURCHASE AGREEMENT WITH RPCA SOLAR 5 LLC**

WHEREAS, Redwood Coast Energy Authority (“RCEA”) issued the Request for Offers for Local Distributed Energy Storage Resources on December 19, 2024 (“RFO”), which was open to co-located generation and storage resources; and

WHEREAS, the Hatchery Road Solar and Storage project (“Project”) was submitted into RCEA’s RFO by Renewable Properties and subsequently approved for shortlisting by the Board RFO subcommittee; and

WHEREAS, RPCA Solar 5 LLC (“Seller”) is a project company owned by Renewable Properties; and

WHEREAS, under the Hatchery Road Power Purchase Agreement (“Agreement”), Seller will provide RCEA with energy, renewable energy certificates, ancillary services, and potentially resource adequacy in exchange for an escalating price over the term, thereby securing more of RCEA’s power portfolio under long-term contract and contributing to RCEA’s local development goals; and

NOW, THEREFORE, the Board of Directors of the Redwood Coast Energy Authority resolves as follows:

1. The Hatchery Road Power Purchase Agreement between Redwood Coast Energy Authority and RPCA Solar 5 LLC is hereby approved.
2. The RCEA Executive Director is authorized to execute the Agreement substantially in the form attached hereto as Appendix A on behalf of RCEA, and in consultation with legal counsel, is authorized to approve any needed future amendment to the Agreement so long as the term, volume, and price are not changed and the amendment does not fundamentally change the business terms of the Agreement or measurably increase risk exposure for RCEA.

Adopted this 23rd day of October 2025.

ATTEST:

Scott Bauer, RCEA Board Chair

Lori Taketa, Clerk of the Board

Date: _____

Date: _____

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Resolution 2025 - 6 passed and adopted at a regular meeting of the Redwood Coast Energy Authority, County of Humboldt, State of California, held on the 23rd day of October 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

Clerk of the Board, Redwood Coast Energy Authority

Appendix A:

Renewable Plus Storage Power Purchase Agreement

Between RPCA Solar 5, LLC, and Redwood Coast Energy Authority

Note: A copy of this agreement can be found online at

<https://redwoodenergy.org/about/governance/public-meetings/>.

RENEWABLE PLUS STORAGE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: RPCA Solar 5, LLC, a California limited liability company.

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

Description of Facility: A 3.96 MW solar photovoltaic electric generating facility combined with a 4 MW / 16 MWh lithium iron phosphate battery energy storage facility.

Delivery Term: Commences on the Generating Facility Commercial Operation Date and ends on the twentieth (20th) anniversary of the Storage Facility Commercial Operation Date.

Milestones:

Milestone	Generating Facility Completion Date	Storage Facility Completion Date
Evidence of Site Control	As of Effective Date	As of Effective Date
Conditional Use Permit obtained	As of Effective Date	
Phase I Interconnection Study results (or equivalent) obtained	As of Effective Date	
Phase II Interconnection Study results (or equivalent) obtained	As of Effective Date	TBD
Interconnection Agreement executed	As of Effective Date	
Major equipment procured		
Generating Facility Expected Construction Start Date		NA
Storage Facility Expected Construction Start Date	NA	
Initial Synchronization	NA	
Network Upgrades completed	NA	TBD
Generating Facility Expected Commercial Operation Date	5/1/2027	NA
Storage Facility Expected Commercial Operation Date	NA	2/1/2028

Expected Energy:

Contract Year	Expected Energy
1	7808
2	7651
3	7628
4	7606

Contract Year	Expected Energy
5	7583
6	7560
7	7537
8	7515
9	7492
10	7470
11	7447
12	7425
13	7403
14	7380
15	7358
16	7336
17	7314
18	7292
19	7270
20	7249
21	7229
22, if applicable	7205

Guaranteed Efficiency Rate¹:

Contract Year	Guaranteed Efficiency Rate
1	N/A
2	%
3	%
4	%
5	%
6	%
7	%
8	%
9	%
10	%

¹ The Guaranteed Efficiency Rate will not apply until the occurrence of the Storage Facility Commercial Operation Date and the Guaranteed Efficiency Rates stated in this table will start in the Contract Year in which the Storage Facility Commercial Operation Date occurs which may not align with the way the table is included herein.

Contract Year	Guaranteed Efficiency Rate
11	█ %
12	█ %
13	█ %
14	█ %
15	█ %
16	█ %
17	█ %
18	█ %
19	█ %
20	█ %
21	█ %
22	█ %

Generating Facility Guaranteed Construction Start Date: █

Generating Facility Guaranteed Commercial Operation Date: █

Generating Facility Commercial Operation Date Deadline: █

Storage Facility Guaranteed Construction Start Date: █

Storage Facility Guaranteed Commercial Operation Date: █

Storage Facility Commercial Operation Date Deadline: █

Guaranteed Generation Capacity: 3.96 MW

Guaranteed Storage Capacity: 4 MW for four (4) hour discharge

Storage Capacity Default Threshold: █ MW for four (4) hour discharge

Contract Price:

Generation Rate: \$ █ per MWh, escalating at █ % annually with such escalation effective on the first day of each Contract Year

Storage Rate: \$ █ per kW-month, escalating at █ % annually with such escalation effective on the first day of each Contract Year, *provided*, the amount shall be increased to \$ █/kW-month or its equivalent escalated value based on the current Contract Year, rate shall escalate at █ % annually on and after the RA Guarantee Date

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes associated with the Storage Facility
 - ☐ Full Capacity Deliverability Status
 - ☒ Energy Only Deliverability Status, subject to the provisions of Section 3.7

Scheduling Coordinator: Buyer or Buyer's Agent

Generating Facility Development Security: \$ [REDACTED]

Storage Facility Development Security: \$ [REDACTED]

Generating Facility Performance Security: \$ [REDACTED]

Storage Facility Performance Security: \$ [REDACTED]

Compliance Expenditure Cap: \$ [REDACTED]

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RENEWABLE PLUS STORAGE POWER PURCHASE AGREEMENT

PREAMBLE

This Renewable Plus Storage Power Purchase 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 a fully integrated solar photovoltaic plus battery energy storage facility (the “**Facility**,” 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:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.11.

“**Additional Products**” has the meaning set forth in Section 3.12.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the term “Affiliate” when used with respect to Seller shall not include any direct or indirect tax equity investor.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, and the Cover Sheet.

“Alternative Dispatches” has the meaning set forth in Section 4.6.

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

“Approved Forecast Vendor” means (x) any of AWS Truepower (a division of UL), Reuniwatt, SteadySun, CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.4(d).

“Approved Maintenance Hours” means up to fifty (50) hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.8(a).

“Anticipated Flexible Capacity” means the amount and category of Flexible Capacity identified on the Cover Sheet which Seller anticipates as of the Effective Date that the Facility will be qualified by the CAISO to provide to Buyer.

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

“Automated Dispatches” has the meaning set forth in Section 4.6.

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

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

“Average Monthly Price” means the average of the Day-Ahead Market LMPs at the Facility’s PNode in the applicable month.

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

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

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

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

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Generating Facility Energy or

Discharging Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced or discharged from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules, offers or bids the Facility, Generating Facility Energy, Discharging Energy, or Charging Energy or Ancillary Services or in which Buyer fails to schedule, offer or bid the Facility, Generating Facility Energy, Discharging Energy, or Charging Energy or Ancillary Services, including where the Buyer or the SC for the Facility:

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

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

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

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce delivery of Energy from the Facility by the amount, and for the period of time set forth in such instruction.

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

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

“Buyer’s Indemnified Parties” has the meaning set forth in Section 16.1(a).

“Buyer Remediation Review Period” has the meaning set forth in Section 6.5(e)(iii).

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.12(a).

“Buyer’s Written Request” has the meaning set forth in Section 3.12.

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

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

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

“CAISO Operating Order” means the “operating instructions” defined in Section 37.2.1.1 of the CAISO Tariff, as such provision may be modified or amended from time to time.

“CAISO RA Enhancement” means a change to the CAISO Tariff that (a) changes the basis for submission and assessment of supply plans from a value reflecting installed capacity (currently, Net Qualifying Capacity) to 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.

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

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.33 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

Attributes shall exclude Tax Credits or Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility

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

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to the period before the date that is one hundred eighty (180) days following the Generating Facility Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

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

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

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash or tax equity provider directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, or any trustee or agent or similar representative acting on their behalf or any assignee or transferee thereof) shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the Energy from the CAISO Grid, delivered to the Storage Facility pursuant to a Charging Notice or in connection with a Storage Capacity Test, as adjusted by CAISO for any applicable Electrical Losses. For the avoidance of doubt, all Charging Energy will be Grid Energy and will not be Generating Facility Energy. Buyer acknowledges that the Generating Facility is not designed to, and is not capable of, charging the Storage Facility with Generating Facility Energy.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level including in connection with a Storage Capacity Test, provided that any such operating instruction shall be in accordance with the Operating Restrictions

and the CAISO Tariff. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

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

“Commercial Operation Date Storage Capacity Test” means the initial Storage Capacity Test as described in Exhibit Q.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.11.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.11.

“Confidential Information” means, subject to Section 18.1, any non-public data, trade secrets, proprietary information, commercial information, financial information, or business information of a privileged or confidential nature regarding the Party disclosing such Confidential Information or the Facility; provided that such information is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information”.

“Contract Price” has the meaning set forth on the Cover Sheet and is each of the Generation Rate and the Storage Rate.

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

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Generating Facility Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Generating Facility Commercial Operation Date and the last Contract Year will end on the anniversary of the Storage Facility Commercial Operation Date and may be for a period 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 the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

“COVID-19” 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.

“CPM Soft Offer Cap” means the applicable cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or any successor to the applicable cap).

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

“CPUC System RA Penalty” means the applicable \$/kW-month System RA Penalty (without any multipliers or adders, e.g., the amount for “Tier 1”) for a deficiency that is either not replaced or is replaced after five (5) Business Days from the date of notification by the CPUC, as established in the Resource Adequacy Rulings and subsequently incorporated into the applicable annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against LSEs for RA deficiencies.

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

“Curtailment Order” means any of the following:

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

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

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

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

“Cycles” means the number of equivalent charge/discharge cycles of the Facility during a specified time period, which shall be deemed to be equal to the quotient of the numerator (a) the total cumulative amount of Facility Energy discharged from the Facility (expressed in MWh) divided by the denominator (b) four (4) multiplied by the weighted average Effective Capacity for such time period.

“Daily Expected Energy Amount” is equal to the MWh of Expected Energy for the first Contract Year applied to the proxy hourly renewable generation load profile for a solar resource located in the same region of California published by the CPUC in and applied to the specific days for which the Daily Expected Energy Amount is being calculated.

“Damage Payment” means the liquidated damages amount to be paid by the Seller, as the Defaulting Party, to Buyer as the Non-Defaulting Party after a Terminated Transaction due to a Seller Event of Default occurring prior to the Commercial Operation Date excluding an Event of Default under Sections 11.1(b)(ii), 11.1(b)(iii), 11.1(b)(iv), 11.1(b)(v) and 11.1(b)(viii), in a dollar amount that is equal to the Development Security.

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

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

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

“Deemed Delivered Energy” means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to (a) the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period) or (b) if there is no Real-Time Forecast available or Seller demonstrates to Buyer’s reasonable satisfaction that the Real-Time Forecast does not represent an accurate forecast of generation from the Generating Facility, to be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such during a Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during a time period where the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time, then the calculation of Deemed Delivered Energy during such period does not include any Generating Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Deemed Delivered RA” means for each hour of the Relevant Day in the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Storage Facility

would have delivered to the Delivery Point, but for a Force Majeure Event or other events as provided in Section 4.8(b).

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

“Deficient Month” has the meaning set forth in Section 4.12(e).

“Delivery Point” means the Facility PNode on the CAISO grid.

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

“Development Security” means the Generating Facility Development Security and/or the Storage Facility Development Security, as applicable.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Dispatch Notice” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by Buyer, Buyer’s SC or the CAISO, to Seller, directing the Facility to charge or discharge Energy at a specific MW rate to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Efficiency Rate” means the measured round-trip efficiency rate of the Storage Facility, as a percentage, calculated by dividing Discharging Energy by Charging Energy in accordance with Exhibit O, and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

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

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point), which is initially equal to the Installed Storage Capacity and which may be adjusted pursuant to Section 4.11 and Exhibit O, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect

to a Storage Commercial Operation Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Capacity Test).

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point associated with (i) delivery of Generating Facility Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

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

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

“Energy” means electrical energy, measured in kilowatt-hours or megawatt-hours or multiple units thereof.

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

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

its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Environmental Cost” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of Hazardous Substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such Hazardous Substances on the Site but excluding any such costs, charges and fees associated with Charging Energy or the Facility’s storage or discharge related thereto.

“Environmental Laws” has the meaning set forth in Section 16.3.

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

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

“Excused Event” has the meaning set forth in Exhibit P.

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

“Expected Generating Facility Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Generating Facility Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Storage Facility Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Storage Facility Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year in the quantity specified on the Cover Sheet, which amount will be adjusted proportionately to the reduction in Guaranteed Generation Capacity to Installed Generation Capacity pursuant to Section 5 of Exhibit B, if applicable and will be reduced proportionately for any Contract Year that is less than twelve (12) consecutive months.

“Facility” means the Generating Facility and the Storage Facility.

“Facility Meter” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, that will measure all Generating Facility Energy for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Facility 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 L.

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

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Forecasting Penalty” means for each hour as to which Seller is required to provide a notification to Buyer as required in Section 4.4(d) and does not provide such notification and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Generating Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Generating Facility Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Generating Facility Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the average absolute value of the Real-Time Price in such hour.

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

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

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

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

construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement and the present value of the payments required to be made during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Environmental Attributes and Capacity Attributes.

“Generating Facility” means the generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Generating Facility Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided that the “Generating Facility” does not include the Storage Facility, the Shared Facilities or any Interconnection Facilities (other than Seller’s Interconnection Facilities).

“Generating Facility Capacity Damages” has the meaning set forth in Section 5 of Exhibit B-1.

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

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

“Generating Facility Commercial Operation Date Deadline” has the meaning set forth on the Cover Sheet.

“Generating Facility Commercial Operation Delay Damages” means an amount equal to (a) the amount of Generating Facility Development Security that is remaining as of the Generating Facility Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B, divided by (b) the total number of days between the Generating

Facility Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B, and the Generating Facility Commercial Operation Date Deadline.

“Generating Facility Construction Start” has the meaning set forth in Exhibit B-1.

“Generating Facility Construction Start Date” has the meaning set forth in Exhibit B-1.

“Generating Facility Construction Start Delay Damages” means an amount equal to (a) the Generating Facility Development Security amount required hereunder, divided by (b) one hundred eighty (180). Seller shall not be obligated to pay aggregate Generating Facility Construction Start Delay Damages in excess of twenty percent (20%) of the Generating Facility Development Security amount.

“Generating Facility Development Cure Period” has the meaning set forth in Exhibit B-1.

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

“Generating Facility Energy” means all Energy produced by the Generating Facility, expressed in MWh, as measured at the Facility Meter, adjusted to exclude (a) Electrical Losses, and (b) Generating Facility Energy that serves Station Use.

“Generating Facility Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet.

“Generating Facility Guaranteed Construction Start Date” mean the date set forth on the Cover Sheet.

“Generating Facility Damage Payment” means the liquidated damages amount to be paid by the Seller, as the Defaulting Party, to Buyer as the Non-Defaulting Party after a Terminated Transaction due to an Event of Default by Seller under Section 11.1(b)(iii) in a dollar amount that is equal to the Generating Facility Development Security.

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

“Generation Rate” has the meaning set forth on the Cover Sheet.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“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*, “Governmental Authority” shall not in any event include any Party.

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

“Grid Energy” means energy used to charge the Storage Facility from the CAISO Grid.

“Guaranteed Capacity” means the sum of the Guaranteed Generation Capacity and the Guaranteed Storage Capacity, in MW.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility in each (full or partial) Contract Year of the Delivery Term on and after the Storage Facility Commercial Operation Date, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.9.

“Guaranteed Generation Capacity” means the total capacity (in MW) of the Generating Facility equal to the amount set forth on the Cover Sheet, as may be adjusted pursuant to Section 5 of Exhibit B.

“Guaranteed Storage Capacity” means the total capacity (in MW) of the Storage Facility equal to the amount set forth on the Cover Sheet, as may be adjusted pursuant to Section 5 of Exhibit B.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.10.

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

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

“Indemnified Party” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Indemnifying Party” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims,

demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the sum of (x) the Installed Generation Capacity and (y) the Installed Storage Capacity.

“Installed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Installed Generation Capacity” means the actual generating capacity of the Generating Facility, as measured in MW-AC at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Delay” means that the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Generating Facility Energy and Discharging Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of ___ MW.

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

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

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

“ITC” means the investment tax credit established pursuant to Section 48, or the clean electricity investment credit under Section 48E, of the Tax Code, or any substantially similar federal tax credits under Applicable Law that provides Seller with a tax credit based on investment in the Facility.

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated December 15, 2015, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500 et seq.

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity, tax credit, tax transfer or cash equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller 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 (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility and/or (iv) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or letters of credit in connection with the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. commercial bank or trust company or the U.S. branch of a foreign bank (in either case, which is not an Affiliate of either Party) with such bank (a) having assets of at least \$10 billion and a Credit Rating of at least (i) A3 from Moody’s and (ii) A- from S&P, or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

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

value of the payments required to be made during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Environmental Attributes, and Capacity Attributes, and in the case of Seller as the Non-Defaulting Party, [REDACTED]

[REDACTED]

“Lost Output” means the amount of Generating Facility Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, or Curtailment Period. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“Maximum Charging Capacity” means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

“Maximum Discharging Capacity” means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

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

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

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

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

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

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

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

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

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

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

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

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

“**Notification Deadline**” in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

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

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

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

“**Partial Early Termination Date**” has the meaning set forth in Section 11.2(b).

“**Partial Termination Payment**” has the meaning set forth in Section 11.3(a)(ii).

“**Partial Terminated Transaction**” has the meaning set forth in Section 11.2(b).

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

“**Performance Measurement Period**” has the meaning set forth in Section 4.9.

“**Performance Security**” means Generating Facility Performance Security and/or the Storage Facility Performance Security, as applicable.

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

- (A) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and
- (B) At least two (2) years of experience in the ownership and operations of power generation or energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.8(a).

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

“Portfolio” means the single portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

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

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

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

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

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

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

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

“[REDACTED]” shall have the meaning set forth in Exhibit C.

“[REDACTED]” shall have the meaning set forth in Exhibit C.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, CPUC General Order 167, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 or Section 45Y of the Tax Code or any substantially similar federal tax credits under Applicable Law that provides Seller with a tax credit based on energy production from the Facility.

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

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date on which Seller, after obtaining Full Capacity Deliverability Status for the Storage Facility, begins delivering Resource Adequacy Benefits to Buyer in accordance with Section 3.4. For avoidance of doubt, the RA Guarantee Date shall not occur prior to the calendar month in which the Net Qualifying Capacity of the Storage Facility is first able to be included in Buyer’s RA Compliance Showing.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month commencing with the Showing Month that contains the RA Guarantee Date, in which there is an RA Shortfall Amount.

“RA Shortfall Amount” means the amount equal to the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility, minus (ii) the sum of (A) the Net Qualifying Capacity of the Storage Facility that may be included in Buyer’s RA Compliance Showing, (B) Replacement RA delivered by Seller for such Showing Month by the Notification Deadline, and (C) any Deemed Delivered RA for such month.

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

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

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

“Recurring Certificate Transfers” has the meaning set forth in Section 4.12(a).

“Release” has the meaning set forth in Section 16.3.

“Relevant Day” means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.

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

“Remedial Action Plan” has the meaning in Section 2.5.

“Remediation Event” means the occurrence of any of the following with respect to the Facility or the Site: (a) an Exigent Circumstance (b) a Serious Incident; or (c) any actual condition related to the Facility or the Site with the potential to adversely impact the safe construction, operation, maintenance, or decommissioning of the Facility or the 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.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 45Y, 46, 48 and 48E of the Tax Code, as amended) or any substantially similar federal tax credits under applicable law that provides Seller with a tax credit based on energy production from the Facility; (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility and including any depreciation benefits; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to either (i) the applicable Shortfall Month in which an RA Deficiency Amount is due to Buyer, or (ii) the applicable Shortfall Month for which the Seller has elected to provide Buyer with Replacement RA, unless Buyer consents in writing to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

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

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 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, 21-06-029, 21-07-014, 22-06-050, 23-04-010, 23-06-029, 24-06-004 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 Contract Term.

“Resource Generation Capability” has the meaning set forth in Exhibit I.

“RTE Shortfall Payment” has the meaning set forth in Exhibit C.

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

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

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

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Requirements, California Senate Bill 38 (2023), and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC, including, but not limited to, any applicable regulations adopted by the California Department of Toxic Substances Control relating to the disposal of materials used in the Facility.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

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

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

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

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

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

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

“Seller Storage Facility Conditions Precedent” means the conditions precedent to Seller’s obligation to perform the terms and conditions of this Agreement as set forth in Section 2.6.

“Seller Storage Facility Conditions Precedent Deadline” shall mean the applicable date set forth for satisfaction or waiver of each of the Seller Storage Facility Conditions Precedent set forth in Section 2.6.

“Seller Initiated Test” has the meaning set forth in Section 4.4(f).

“Seller’s Indemnified Parties” has the meaning set forth in Section 16.1(b).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.12(a).

“Serious Incident” means a harmful event that occurs on the Site during the term arising out of, related to, or connected with the Facility 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, subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than two hundred fifty thousand dollars (\$250,000.00); (d) release of Hazardous Substances above the limits, or violating the requirements, established by permits, codes, standards, regulations, Laws, or Governmental Authorities; or (e) material violation of any applicable environmental permits or Laws.

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

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility to the Delivery Point, including the Interconnection Agreement itself, if applicable, that are used in common with third parties.

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

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Generating Facility Construction Start Date or Storage Facility Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real

property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer's approval of such updates in its sole discretion.

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

"State of Charge" or **"SOC"** means the ratio of (a) the level of charge of the Facility to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage.

"Station Use" means:

(a) The Energy that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"Storage Capacity" means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours (in MW), and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy but excluding all Renewable Energy Incentives.

"Storage Capacity Default Threshold" has the meaning set forth on the Cover Sheet.

"Storage Capacity Test" means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit O.

"Storage Facility" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities and any Interconnection Facilities (other than Seller's Interconnection Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"Storage Facility Capacity Damages" has the meaning set forth in Section 5 of Exhibit B-2.

"Storage Facility Commercial Operation" has the meaning set forth in Exhibit B.

"Storage Facility Commercial Operation Date" has the meaning set forth in Exhibit B.

“Storage Facility Commercial Operation Date Deadline” has the meaning set forth on the Cover Sheet.

“Storage Facility Commercial Operation Delay Damages” means an amount equal to (a) the amount of Storage Facility Development Security that is remaining as of the Storage Facility Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B-2, divided by (b) the total number of days between the Storage Facility Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B-2, and the Storage Facility Commercial Operation Date Deadline.

“Storage Facility Construction Start” has the meaning set forth in Exhibit B-2.

“Storage Facility Construction Start Date” has the meaning set forth in Exhibit B-2.

“Storage Facility Construction Start Delay Damages” means an amount equal to (a) the Storage Facility Development Security amount required hereunder divided by (b) one hundred eighty (180). Seller shall not be obligated to pay aggregate Storage Facility Construction Start Delay Damages in excess of twenty percent (20%) of the Storage Facility Development Security amount.

“Storage Facility Damage Payment” means the liquidated damages amount to be paid by the Seller, as the Defaulting Party, to Buyer as the Non-Defaulting Party after a Terminated Transaction due to an Event of Default by Seller under Section 11.1(b)(ii) in a dollar amount that is equal to the Storage Facility Development Security.

“Storage Facility Development Cure Period” has the meaning set forth in Exhibit B-2.

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

“Storage Facility Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with an accuracy class between 0.3 and 0.5, as selected by Seller and approved by Buyer, each acting reasonably), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, (i) the amount of Charging Energy delivered to the Storage Facility Metering Points, and (ii) the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit R.

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

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

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

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

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

“Tax Benefits” means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45, 45Y, 48 or 48E of Tax Code, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or the operation of, construction, investments in or ownership of the Facility (including any cash payment or grant).

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

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

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

“Termination Payment” has the meaning set forth in Section 11.3(a)(ii).

“Test Energy” means any Generating Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Generating Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller

in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Generating Facility Commercial Operation Date.

“Transformer Failure” means the first failure of all or part of the main power transformer that results in the Generating Facility being unable to generate or deliver Generating Facility Energy, or the first failure of all or part of the main power transformer that results in the Storage Facility being unable to discharge or deliver Discharging Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice. For avoidance of doubt, only the first such failure at the Generating Facility and the first such failure at the Storage Facility shall qualify as a “Transformer Failure.”

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Generating Facility Energy or Discharging Energy from the Delivery Point or delivering Charging Energy to the Delivery Point.

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

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

“Ultimate Parent” means Renewable Properties, LLC, a California limited liability company.

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

“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.

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.12(e).

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

(g) the terms “include” and “including” mean “include without limitation” and “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating

Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2: TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for one (1) year following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. Seller shall provide Notice to Buyer of the anticipated Generating Facility Commercial Operation Date or Storage Facility Commercial Operation Date at least forty-five (45) days in advance of such date, unless a different deadline is set forth below, with the required documentation demonstrating it has met all the conditions precedent set forth below for achieving Generating Facility Commercial Operation or Storage Facility Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to either approve or reject Seller's request for Generating Facility Commercial Operation or Storage Facility Commercial Operation. In the event Buyer rejects such request for Generating Facility Commercial Operation or Storage Facility Commercial Operation, as applicable, Buyer will provide reasonable detail regarding the basis for Buyer's rejects within such five (5) Business Day period. If Buyer fails to provide Notice of acceptance or rejection of Seller's request for Generating Facility Commercial Operation or Storage Facility Commercial Operation, as applicable, within such five (5) Business Day period, Buyer will be deemed to have accepted Seller's request for Generating Facility Commercial Operation or Storage Facility Commercial Operation, as applicable. Upon Buyer's approval of Seller's achievement of Generating Facility Commercial Operation or Storage Facility Commercial Operation, as applicable, Buyer shall provide Seller with written acknowledgement of the Generating Facility Commercial Operation Date or Storage Facility Commercial Operation Date, as applicable:

(a) Seller shall have provided to Buyer, by no earlier than ninety (90) days prior to the Commercial Operation Date, updated, correct, and complete copies of (A) Seller's (if Seller has its own financial statements) and Seller's Ultimate Parent's most recent annual report, audited

consolidated financial statements, and unaudited consolidated financial statements (the requirements of this clause (A) will be deemed have been filled if such financial statements are available online and Seller provides Buyer with the website link at which Buyer can access such financial statements); and (B) Seller's organizational documents to confirm Seller's and Seller's Affiliate's legal and financial relationship to and authority over the Facility (such as certifications of formation, certifications and articles of incorporation, charters, operating agreements, partnership agreements, bylaws, or similar documents) and any amendments thereto.

(b) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H-1 for the Generating Facility Commercial Operation Date and substantially in the form of Exhibit H-2 for the Storage Facility Commercial Operation Date and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed Generation Capacity on the Generating Facility Commercial Operation Date and substantially in the form of Exhibit I-2 setting forth the Storage Facility Installed Capacity and Efficiency Rate on the Storage Facility Commercial Operation Date;

(c) Seller has executed an Interconnection Agreement for the Generating Facility or Storage Facility, as applicable, with the Transmission Provider, which shall be in full force and effect, and has delivered a copy of such Interconnection Agreement to Buyer;

(d) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO for the Generating Facility or Storage Facility, as applicable, have been executed and are in full force and effect, and a copy of each such agreements have been delivered to Buyer;

(e) For the Storage Facility Commercial Operation Date only, Seller has obtained CAISO Certification for the Storage Facility and provided proof to Buyer;

(f) All applicable regulatory authorizations, approvals and permits for the operation of the Generating Facility or Storage Facility, as applicable, that are capable of being satisfied on the Generating Facility Commercial Operation Date or Storage Facility Commercial Operation Date, as applicable, have been obtained and all conditions precedent shall have been satisfied and shall be in full force and effect;

(g) Seller has Site Control and has provided proof to Buyer;

(h) For the Generating Facility Commercial Operation Date only, Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(i) For the Generating Facility Commercial Operation Date only, Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Generating Facility, QRE service agreements, and other appropriate documentation required to effect Generating Facility registration with WREGIS and

to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system;

(j) For the Generating Facility Commercial Operation Date only, Seller shall have submitted to Buyer a Facility Safety Plan for the Generating Facility;

(k) For the Storage Facility Commercial Operation Date only, Seller shall have submitted to Buyer a Facility Safety Plan for the Storage Facility;

(l) Seller shall have delivered to Buyer all insurance documents required under Article 17;

(m) Seller shall have submitted to Buyer a Metering Diagram in the form of Exhibit R;

(n) If any applicable Governmental Authority required Seller to develop a decommissioning plan as part of any permitting process for the Generating Facility or Storage Facility, as applicable, then Seller shall have provided such decommissioning plan to Buyer;

(o) Seller shall have delivered the Generating Facility Performance Security Storage Facility Performance Security, as applicable, to Buyer in accordance with Section 8.8; and

(p) Seller shall have paid Buyer for all invoiced amounts owing under this Agreement, if any, including any Generating Facility Construction Start Delay Damages and Generating Facility Commercial Operation Delay Damages, or any Storage Facility Construction Start Delay Damages and Storage Facility Commercial Operation Delay Damages, as applicable.

2.3 Generating Facility Progress Reporting. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Generating Facility Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Generating Facility Expected Construction Start Date until the Generating Facility Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled telephonic or video-conferenced meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions imposed on Seller by third parties) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Generating Facility, including the location of the Site, the Generating Facility layout, and the selection, procurement and installation of the equipment comprising the Generating Facility.

2.4 Storage Facility Progress Reporting. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Storage Facility Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Storage Facility Expected Construction Start Date until the Storage Facility Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled telephonic or video-conferenced meetings between representatives of Buyer

and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions imposed on Seller by third parties) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Storage Facility, including the location of the Site, the Storage Facility layout, and the selection, procurement and installation of the equipment comprising the Storage Facility.

2.5 Remedial Action Plan. If Seller misses a Milestone or anticipates that it will miss a Milestone by the Milestone date, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer a remedial action plan ("**Remedial Action Plan**") with the next Progress Report, which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the specific cause of the delay, Seller's detailed description of its proposed course of action to achieve the missed Milestone and all subsequent Milestones by the Generating Facility Expected Commercial Operation Date or Storage Facility Expected Commercial Operation Date, as applicable, as such date may be extended by Section 4 of Exhibit B; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve Generating Facility Commercial Operation or Storage Facility Commercial Operation by the Generating Facility Commercial Operation Date Deadline or Storage Facility Commercial Operation Date Deadline, as applicable, in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.6 Seller Storage Facility Conditions Precedent. Seller's obligations under this Agreement that relate solely to the Storage Facility are conditioned upon the occurrence of the following condition (or the waiver thereof by Seller in its sole discretion) (the "**Seller Storage Facility Conditions Precedent**") prior to the Seller Storage Facility Conditions Precedent Deadline, which Seller shall pursue diligently:

(a) Seller's execution of an Interconnection Agreement for the Guaranteed Storage Capacity of the Storage Facility in form and substance satisfactory to Seller in its sole discretion by 9/30/2026;

(b) Seller's obtaining all discretionary permits necessary for the development, construction, operation and maintenance of the Storage Facility on terms and conditions satisfactory to Seller in its sole discretion by 04/01/2026; and

Seller shall use commercially reasonable efforts to achieve the satisfaction of the Seller Conditions Precedent by the applicable Seller Condition Precedent Deadline. If the Seller Storage Facility Conditions Precedent are not satisfied or waived by Seller by the applicable Seller Condition Precedent Deadline, then the Parties shall promptly meet and confer to negotiate in good faith to establish a new Milestone schedule and new Seller Condition Precedent Deadlines. If by sixty (60) days after the missed Seller Condition Precedent Deadline, the Parties have not agreed on a new Milestone schedule and Seller Condition Precedent Deadline, then either Buyer or Seller may terminate the provisions of this Agreement that relate solely to the Storage Facility provided that

the terminating Party is not otherwise in breach of this Agreement. For avoidance of doubt, termination of provisions of this Agreement that relate solely to the Storage Facility pursuant to this Section 2.6 shall not trigger the default provisions contained herein or any liability under this Agreement. Upon termination of the provisions of this Agreement that relate solely to the Storage Facility pursuant to this Section 2.6, Buyer shall promptly return to Seller the Storage Facility Development Security, then held by Buyer, less any amounts drawn in accordance with this Agreement. For the avoidance of doubt, upon termination of the provisions of this Agreement that relate solely to the Storage Facility pursuant to this Section 2.6, this Agreement will continue in full force and effect for the Generating Facility and all provisions of this Agreement that relate solely to the Storage Facility shall be null and void and of no further force and effect; the Guaranteed Capacity and Installed Capacity will be reduced by the amount of the terminated capacity of the Storage Facility; the defined term "Facility" will mean only the Generating Facility; all other unaffected terms and conditions of this Agreement will continue, and the Parties shall enter into such amendments as may be required to achieve the foregoing, including any necessary corresponding changes The Parties may mutually agree to extend any or all of the Seller Storage Facility Conditions Precedent Deadlines. If neither Party provides Notice to partially terminate this Agreement pursuant to this Section 2.6 within ninety (90) days after the Seller Storage Facility Conditions Precedent Deadline, then the Parties shall meet and confer to negotiate in good faith to establish a new Milestone schedule to align with Seller's expected schedule. If the Parties are unable to agree upon an updated Milestone schedule within ninety (90) days of the initial date of such negotiations or such longer period as mutually agreed to by the Parties, then either Party may partially terminate this Agreement pursuant to this Section 2.6 by providing Notice to the other Party.

2.7 Seller Generating Facility Interconnection Cost Termination Right. If any interconnection study or the Interconnection Agreement, or in either case, any amendment thereto, for the Generating Facility tendered to Seller by the Transmission Provider or CAISO indicates that the maximum total cost of upgrades or other facilities the costs of which are the responsibility of Seller exceeds [REDACTED] dollars (\$ [REDACTED]), then Seller shall have the right in its sole discretion to terminate the provisions of this Agreement that relate solely to the Generating Facility by providing notice to Buyer no later than thirty (30) days after Seller's receipt of such study, Interconnection Agreement, or amendment thereto. For avoidance of doubt, termination of provisions of this Agreement that relate solely to the Generating Facility pursuant to this Section 2.7 shall not trigger the default provisions contained herein or any liability under this Agreement. Upon any such partial termination, Buyer shall promptly return to Seller any Generating Facility Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement. For the avoidance of doubt, in the event of any such partial termination this Agreement will continue in full force and effect for the Storage Facility and all provisions of this Agreement that relate solely to the Generating Facility shall be null and void and of no further force and effect; the Guaranteed Capacity and Installed Capacity will be reduced by the amount of the terminated capacity of the Generating Facility; the defined term "Facility" will mean only the Storage Facility; all other unaffected terms and conditions of this Agreement will continue, and the Parties shall enter into such amendments as may be required to achieve the foregoing, including any necessary corresponding changes

2.8 Seller Storage Facility Interconnection Cost Termination Right. If any interconnection study or the Interconnection Agreement, or in either case, any amendment thereto,

for the Storage Facility tendered to Seller by the Transmission Provider or CAISO indicates that the maximum total cost of upgrades or other facilities the costs of which are the responsibility of Seller exceeds [REDACTED] dollars (\$ [REDACTED]), then Seller shall have the right in its sole discretion to terminate the provisions of this Agreement that relate solely to the Storage Facility by providing notice to Buyer no later than thirty (30) days after Seller's receipt of such study, Interconnection Agreement, or amendment thereto. For avoidance of doubt, termination of provisions of this Agreement that relate solely to the Storage Facility pursuant to this Section 2.8 shall not trigger the default provisions contained herein or any liability under this Agreement. Upon any such partial termination, Buyer shall promptly return to Seller any Storage Facility Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement. For the avoidance of doubt, in the event of any such partial termination this Agreement will continue in full force and effect for the Generating Facility and all provisions of this Agreement that relate solely to the Storage Facility shall be null and void and of no further force and effect; the Guaranteed Capacity and Installed Capacity will be reduced by the amount of the terminated capacity of the Storage Facility; the defined term "Facility" will mean only the Generating Facility; all other unaffected terms and conditions of this Agreement will continue, and the Parties shall enter into such amendments as may be required to achieve the foregoing, including any necessary corresponding changes.

ARTICLE 3: PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility, and Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C; provided that Seller shall not be obligated to supply and deliver and Buyer is not obligated to purchase and receive any Storage Product until the Storage Facility Commercial Operation Date. At its sole discretion, but subject to Section 5.2, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Generating Facility Energy that is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 Imbalance Energy. Buyer and Seller recognize that in any given Settlement Period the amount of Generating Facility Energy or Discharging Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Environmental Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility to reduce Generating Facility Energy or to operate the Storage Facility inconsistent with the Operating Restrictions unless the Parties have agreed on all necessary terms and conditions relating to such alteration or changes in operation and Buyer has agreed in writing to reimburse Seller for all costs, losses, and liabilities associated with such alteration or changes in operation.

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

3.6 Test Energy. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, but in no case more than seventy-five (75) calendar days prior to the Expected Commercial Operation Date of the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Generating Facility generates Test Energy and any associated Products, Seller shall sell and Buyer shall purchase from Seller all Test Energy on an as-available basis. As compensation for such Test Energy, Buyer shall pay Seller an amount equal to fifty percent (50%) of the Generation Rate. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 Capacity Attributes. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. As between Buyer and Seller,

Seller shall not be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.11, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Storage Facility.

(b) On and after the RA Guarantee Date, and thereafter, throughout the Delivery Term and subject to Section 3.11, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. On and after the RA Guarantee Date, and thereafter, throughout the Delivery Term, and subject to Section 3.11, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits associated with or attributable to the Storage Facility to Buyer.

3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall provide Replacement RA, as set forth in Section 3.8(b). If Seller does not provide Replacement RA to Buyer in the amount of the RA Shortfall Amount, then Seller shall pay to Buyer, as liquidated damages, the RA Deficiency Amount, as set forth in Section 3.8(c). Seller's provision Replacement RA, or payment of the RA Deficiency Amount shall be the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) Replacement RA. By no later than the Notification Deadline for the applicable RA Shortfall Month, Seller shall provide Buyer with written Notice substantially in the form of Exhibit M specifying whether Seller will provide Replacement RA in the amount of the RA Shortfall Amount for the applicable RA Shortfall Month and, if Seller is providing Replacement RA, the applicable Replacement RA product information.

(c) RA Deficiency Amount Calculation. If Seller does not provide Replacement RA in the full amount of the RA Shortfall Amount by the Notification Deadline, then for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the sum of (A) the Net Qualifying Capacity of the Facility that may be included in Buyer's RA Compliance Showing, (B) any Replacement RA delivered by Seller for such Showing Month by the Notification Deadline, and (C) any Deemed Delivered RA for such month (the "RA Shortfall Amount"), multiplied by the sum of (i) the CPUC System RA Penalty for such month, plus (ii) the CPM Soft Offer Cap. For avoidance of doubt, if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, then the Net Qualifying Capacity shall be deemed to be zero (0) MW. For avoidance of doubt, the CPUC System RA Penalty and CPM Soft Offer Cap shall apply to such calculation regardless of whether such penalty has actually been incurred by Buyer or if Buyer successfully obtains a waiver or reduction of such penalty amount.

3.9 CEC Certification and Verification. Subject to Section 3.11 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not

limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 California Renewables Portfolio Standard.

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

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

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

(d) With respect to the immediately preceding paragraphs, (i) the references in Section 3.10(a) to "Project" have the same meaning as "Facility", (ii) the reference in Section 3.10(a) to "certified by the CEC" means the Generating Facility has received CEC Certification and Verification, (iii) the reference in Section 3.10(a)(ii) to "the Project's output" has the same meaning as "Generating Facility Energy", (iv) the reference in Section 3.10(a) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.11 below, and (v) the reference in Section 3.10(c) to "first delivery under the contract" has the same meaning as "first delivery of Generating Facility Energy under this Agreement".

3.11 Change in Law.

(a) The Parties acknowledge that an essential purpose of this Agreement is to both provide Resource Adequacy Benefits that satisfy the requirements of the Resource Adequacy Rulings, and to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard. Governmental Authorities, including the CEC, CPUC, CAISO, and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) require submission of any reports, data, or other information required by Governmental Authorities; or (iii) take any other actions that may be requested by Buyer to assure that the Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations in excess of Seller's known or reasonably expected costs (as of the Effective Date) with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed below (the "**Compliance Actions**") the maximum amount of out-of-pocket costs and expenses ("**Compliance Costs**") to be incurred by Seller under this Agreement shall be capped at the Compliance Expenditure Cap amount shown on the Cover Sheet over the Delivery Term in the aggregate ("**Compliance Expenditure Cap**"):

- (i) CEC Certification and CEC Verification;
- (ii) Environmental Attributes;
- (iii) WREGIS;
- (iv) Capacity Attributes;
- (v) Eligibility as an Eligible Renewable Energy Resource; and
- (vi) California Renewables Portfolio Standard qualification.

(c) Seller's internal administrative costs associated with obtaining, maintaining, conveying, or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap, so long as such costs are incurred in the normal course of business and do not result in a sustained and material increase in such internal costs. In no event will Compliance Actions require Seller to augment or increase the Guaranteed Capacity. If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance

Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Contract Term.

(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. For the avoidance of doubt, Seller will have no obligation to take any Compliance Actions that are not included in the Accepted Compliance Costs.

(f) Subject to the following sentence, to the extent that a change in Laws (including a CAISO RA Enhancement) occurring after the Effective Date results in a reduction of the Facility’s Net Qualifying Capacity and either (i) Seller has completed the actions required to comply with its obligations under this Agreement, up to the Compliance Expenditure Cap or any Accepted Compliance Costs or (ii) Buyer has waived Seller’s obligations to take any actions required to comply with such change in Laws in accordance with this Section 3.11, then the Net Qualifying Capacity of the Facility shall be automatically deemed to refer to the Net Qualifying Capacity of the Facility that the Facility could reasonably achieve if all such actions were completed based on the characteristics of the Facility, including the Operating Restrictions except as set forth below. The Parties agree that if (A) the CAISO implements the CAISO RA Enhancement and (B) the otherwise available Capacity Attributes are reduced solely due to Seller’s failure to operate the Facility in accordance with the requirements of this Agreement, then, notwithstanding this Section 3.11, Seller’s obligation to deliver the Qualifying Capacity will not be reduced on the basis of such reduction and the automatic adjustments described in the foregoing sentence shall not be implemented.

3.12 Additional Products.

(a) Over the Term, new or incremental opportunities may arise for the sale or transfer of additional products from the Facility that are not currently known to or contemplated by the Buyer or Seller, including capacity, reactive power, and ancillary services not included in the initial CAISO Certification for the Facility (collectively, “**Additional Products**”). To the extent that the sale or transfer of these Additional Products accruing during the Settlement Term becomes an option, either Party may notify the other regarding their availability. Buyer may

request in writing for Seller to use commercially reasonable efforts, at Buyer's cost, to monetize such Additional Products on behalf of Buyer ("**Buyer's Written Request**"); provided that (i) the creation, registration, sale or transfer of such Additional Products shall not (A) require Seller to make material modifications to the Facility (or the design thereof) or material upgrades or other material modifications to any interconnection or transmission facilities (other than those for which Buyer has agreed to fund), (B) require Seller to reduce the generation, charging or discharging of Energy from the Facility and delivery thereof to the interconnection point (or restrict Seller's flexibility in offering, bidding, planning and scheduling such energy), (C) interfere with qualification, offering, bidding, planning, scheduling or other disposition of Environmental Attributes; and (ii) the sale or transfer of such Additional Products is permitted by (and capable of being implemented pursuant to) Law.

ARTICLE 4: OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Generating Facility Energy or Discharging Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges, and penalties, if any, imposed in connection with the delivery of Generating Facility Energy and Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Buyer shall be responsible for all costs, charges, and penalties, if any, imposed in connection with the delivery of Charging Energy to the Storage Facility. The Facility Energy will be scheduled to the CAISO by Buyer or Buyer's SC in accordance with Exhibit D.

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

4.2 Interconnection. Seller shall be responsible for all costs of interconnecting the Facility to the point of interconnection pursuant to the Interconnection Agreement.

4.3 Title and Risk of Loss.

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

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

4.4 Forecasting. Seller shall provide the forecasts described below at Seller's sole expense. Seller's capacity forecasts shall include both Available Generating Capacity and Storage Capacity. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and Storage Capacity accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

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

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

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer's Scheduling Coordinator with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Generating Facility Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Generating Facility Energy. If Seller fails to provide Buyer's Scheduling Coordinator with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.4(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer. For the avoidance of doubt, receipt by the Scheduling Coordinator of a Day-Ahead Forecast in the form of the CAISO VER Forecast or a Day-Ahead Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.4(c).

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify the Scheduling Coordinator of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Generating Facility Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for

submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Generating Facility Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer or its Scheduling Coordinator of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify the Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.4(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour due to the failure of Seller to provide such notification, Seller shall be responsible for a Forecasting Penalty.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.11, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Curtailment.

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

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay

Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Generation Rate.

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

(d) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.5(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment pursuant to this Section 4.5(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.11.

4.6 Facility Operations.

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

(f) Buyer shall have the right to dispatch the Storage Facility seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement and subject to the Operating Restrictions and Sections 4.7(e) and (g). Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

(g) To the extent the Storage Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Storage Availability.

4.7 Charging Energy Management.

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, but subject to Section 4.7(b), Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver Charging Energy to the Storage Facility or Generating Facility Energy to

the Delivery Point. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with charging the Storage Facility.

(b) Charging Notices. During the Delivery Term, Buyer shall have the right to direct Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff and the provisions of Section 4.7(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority, or as reasonably determined to be necessary for maintenance or repairs consistent with Prudent Operating Practice. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay to Buyer all Energy costs associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. Buyer shall have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff and the provisions of Section 4.7(a). Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice. If at any time the sum of the Generating Facility Energy and the Discharging Energy would exceed the Interconnection Capacity Limit, the applicable Discharging Notice shall be deemed to be modified to reduce the amount of Discharging Energy so that the total Facility Energy does not exceed the Interconnection Capacity Limit.

(e) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Storage Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in this Section 4.7, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement

procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches or other instructions or direction from a Governmental Authority or Transmission Provider shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall have no liability for violation of this Section 4.7 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch or other instructions or direction from a Governmental Authority or Transmission Provider. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.11(c)).

(h) Pre-Commercial Operation Date Period, etc. Prior to the Storage Facility Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility; (iii) Buyer and Buyer's SC shall only charge and discharge the Storage Facility in connection with installation, commission, and testing, , and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account.

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

4.8 Outages. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Planned Outages.

(i) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than sixty (60) days prior to the first day of the applicable Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer the schedule of proposed Planned Outages in a form reasonably agreed to by Buyer ("Outage Schedule"). Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule

no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Seller shall use commercially reasonable efforts to notify Buyer of any change in the Planned Outage Projection as soon as practicable.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than sixty (60) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.11(a)(i). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO.

(iii) Except as scheduled by the Parties under Section 4.8(a), during the months of June through September, Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside of the months of June through September, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Unplanned Outages.

(i) Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of a Forced Facility Outage, or if Seller has knowledge that an Forced Facility Outage will occur, within twenty (20) minutes of determining that such Forced Facility Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Forced Facility Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

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

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

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

4.9 Guaranteed Energy Production. During the Delivery Term, Seller shall be required to deliver to Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term calculated on a rolling basis.

(“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Energy, as measured in MWh, equal to eighty percent (80%) of the total Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) any Lost Output during the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.10 Storage Performance.

(a) On and after the Storage Facility Commercial Operation Date, and thereafter during the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-seven percent (97%) (the “**Guaranteed Storage Availability**”), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) On and after the Storage Facility Commercial Operation Date, and thereafter during the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit O.

(c) Buyer’s sole remedies for Seller’s failure to achieve the Guaranteed Storage Availability and Guaranteed Efficiency Rate are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Storage Product payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iv) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the RTE Shortfall Payment, as set forth in Exhibit C.

4.11 Storage Capacity Tests.

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Such representative(s) shall not interfere with the Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller. Other than as may be agreed pursuant to Section 3.11, all other costs of any Storage Capacity Test shall be borne by Seller. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the

Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Effective Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement. If, pursuant to this Section 4.11, the Effective Storage Capacity is changed to a level below the Storage Capacity Default Threshold, such occurrence shall be an Event of Default pursuant to Section 11.1(b)(viii) except as otherwise provided therein.

(d) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

(e) Any testing of the Storage Facility requested by Buyer after the Commercial Operation Date Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Storage Facility Commercial Operation, any Storage Commercial Operation Capacity Tests, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a “**Seller Initiated Test**”.

(f) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto.

(g) No Dispatch Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. The Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Facility during such Seller Initiated Test.

(h) Testing Costs and Revenues. Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for all Charging Energy and other costs and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(i) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(j) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

(k) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Storage Contract Capacity; *provided*, for all purposes of this Agreement the amount of Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and (for the avoidance of doubt) (i) Buyer shall have no rights to instruct Seller to (A) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Storage Contract Capacity or the Storage Capacity or (B) charge the Facility to a level (in MWh) in excess of the lesser of the Storage Contract Capacity or Storage Capacity times four (4) hours, (ii) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, (iii) Seller shall not attempt to dispatch such excess Facility capacity to any third party (including CAISO) unless Seller installs and maintains separate metering and a separate resource ID for such excess capacity, and is able to deliver such excess capacity without use of the any dedicated interconnection capacity, and (iv) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

4.12 WREGIS. Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy purchased by Buyer hereunder are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.12(g), provided that Seller fulfills its obligations under Sections 4.12 (a) through (g) below. In addition:

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

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

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

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

(d) Due to the delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 notwithstanding that the WREGIS Certificates for such month may not have been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.12. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Generating Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Generating Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Environmental Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.12, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.12 after the Effective Date, the Parties promptly shall modify this Section 4.12 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

ARTICLE 5: TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other

for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the Effective Date or promptly upon request by Seller to evidence such exemption or exclusion. If Buyer does not provide such documentation, Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

5.3 Environmental Costs.

Except with respect to any costs, taxes, charges or obligations resulting from Charging Energy, which such costs, taxes, charges and obligations shall be the responsibility of Buyer, Seller shall be solely responsible for:

- (a) All Environmental Costs;
- (b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;
- (c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations, and
- (d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

ARTICLE 6: MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility.

(a) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(b) Seller shall make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement.

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

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 Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to charge or discharge the Facility up to the Interconnection Capacity Limit; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (v) shall provide that in the event of any discretionary allocation of curtailment of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

6.4 Decommissioning Facility and Other Costs. Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility 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 Facility 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 Facility Safety Plan.

(a) Generating Facility Safety Plan. At least forty-five (45) days prior to the Generating Facility Commercial Operation Date, Seller shall submit for Buyer's review a Facility

Safety Plan that addresses each of the topics listed in Exhibit L applicable to the Generating Facility, and which describes Seller's plans to comply with the Safety Requirements as of and following the Generating Facility Commercial Operation Date. Buyer shall provide written Notice to Seller of their approval or rejection of Seller's Facility Safety Plan for the Generating Facility within ten (10) Business Days after Buyer's receipt of Seller's Facility Safety Plan. Buyer may only reject Seller's Facility Safety Plan if it reasonably determines it does not comply with the Safety Requirements. In the event Buyer provides Notice to Seller that it rejects the Facility Safety Plan, 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(e). If Buyer does not timely provide Notice to Seller of its acceptance or rejection of the Facility Safety Plan, Buyer will be deemed to have accepted such Facility Safety Plan for the Generating Facility.

(b) Storage Facility Safety Plan. At least forty-five (45) days prior to the Storage Facility Commercial Operation Date, Seller shall submit for Buyer's review a Facility Safety Plan that addresses each of the topics listed in Exhibit L applicable to the Storage Facility, and which describes Seller's plans to comply with the Safety Requirements as of and following the Storage Facility Commercial Operation Date. Buyer shall provide written Notice to Seller of their approval or rejection of Seller's Facility Safety Plan for the Storage Facility within ten (10) Business Days after Buyer's receipt of Seller's Facility Safety Plan. Buyer may only reject Seller's Facility Safety Plan if it reasonably determines it does not comply with the Safety Requirements. In the event Buyer provides Notice to Seller that it rejects the Facility Safety Plan, 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(e). If Buyer does not timely provide Notice to Seller of its acceptance or rejection of the Facility Safety Plan, Buyer will be deemed to have accepted such Facility Safety Plan for the Storage Facility.

(c) Delivery Term. Throughout the Delivery Term, Seller shall update the Facility Safety Plans as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Facility 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 Facility Safety Plan, or portions thereof, and described its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice. Buyer shall provide written Notice to Seller of their approval or rejection of Seller's Facility Safety Plan within ten (10) Business Days after Buyer's receipt of Seller's Facility Safety Plan. Buyer may only reject Seller's Facility Safety Plan if it reasonably determines it does not comply with the Safety Requirements. If Buyer does not timely provide Notice to Seller of its acceptance or rejection of the Facility Safety Plan, Buyer will be deemed to have accepted such Facility Safety Plan.

(d) Reporting Serious Incidents. Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of the 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 inquiries directed to Buyer by Governmental Authorities that arise as a result of the Serious Incident.

(e) Remediation.

(i) Seller shall resolve any Remediation Event within the Remediation Period except due to the occurrence of a Force Majeure Event as described in Section 6.5(e)(iii) and the failure to so timely resolve such Remediation Event is a material breach of this Agreement. Within ten (10) Business 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 Facility or the Site, then Seller shall not deliver and Buyer will not accept, Product from the Facility until such Remediation Event is resolved in accordance with this Section 6.5.

(iii) Seller may request to extend the Remediation Period by up to ninety (90) days, which such request will be subject to Buyer's reasonable consent. Buyer shall not unreasonably withhold, condition or delay approval of such extension; provided that Buyer's consent to an extension of the Remediation Period shall be deemed unreasonably withheld if Seller is using commercially reasonable efforts to cure such Remediation Event, and demonstrates to Buyer's reasonable satisfaction that Seller will be able to resolve a Remediation Event in such extended Remediation Period. 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 or unless Seller is using commercially reasonable efforts to cure such Remediation Event, and demonstrates to Buyer's reasonable satisfaction that Seller will be able to resolve a Remediation Event in such extended Remediation Period, the Remediation Period will not continue for more than [REDACTED] ([REDACTED]) days from the first occurrence of the Remediation Event. If Buyer does not respond to a Seller request to extend the Remediation Period within fifteen (15) Business Days of Buyer's receipt of Seller's request ("**Buyer Remediation Review Period**"), then the Remediation Period shall be deemed to be extended by the period requested by Seller. 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. Notwithstanding the foregoing, the total number of days in any Remediation Period may not exceed [REDACTED] ([REDACTED]) days.

ARTICLE 7: METERING

7.1 Metering. Seller shall measure the amount of Generating Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use. Metering shall be consistent with the Metering Diagram in Exhibit R. The Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies

and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal outside of normal testing, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer (or Buyer's Scheduling Coordinator) shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility. Seller shall obtain and maintain a single CAISO Resource ID dedicated exclusively to the Storage Facility. Seller shall not obtain additional CAISO Resource IDs for the Generating Facility, the Storage Facility, or the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld.

7.2 Meter Verification. If Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter; provided that if Buyer requests a test more than once in any Contract Year, and the Facility Meter is accurate to the specification set forth herein, then Buyer will bear the costs of such test. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate, then it shall be promptly repaired or replaced. If the Facility Meter is inaccurate by more than one percent (1%) and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8: INVOICING AND PAYMENT; CREDIT

8.1 Invoicing. Seller shall deliver an invoice to Buyer for Product, Replacement Product, or Replacement RA no later than the fifteenth (15th) day of each month for the previous calendar month. Each invoice shall reflect (a) records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy delivered to the Storage Facility, the amount of Charging Energy delivered to the Storage Facility, and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, and the amount of Replacement Product, or Replacement RA delivered to Buyer (if any), and (ii) the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for the prior month, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with

all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. If Buyer owes Seller a [REDACTED] pursuant to Exhibit C, Seller may include the full amount of the [REDACTED] subject to the cap described in Exhibit C, on the next invoice that is issued at least thirty (30) days after Seller has delivered a compliant [REDACTED] Notice to Buyer, and Buyer shall pay such [REDACTED] in accordance with Section 8.2.

8.2 Payment. Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer's receipt of Seller's invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any

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

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

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) Business Days after the Effective Date. Seller shall have no obligation to replenish any amounts drawn from the Development Security by Buyer. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Generating Facility Performance Security or Storage Facility Performance Security, as applicable, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Generating Facility Development Security or Storage Facility Development Security, as applicable, to Seller, less the amounts drawn in accordance with this Agreement. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Development Security or change the form of Development Security to another form of Development Security authorized pursuant to the terms of this Agreement, from time to time upon reasonable prior written notice to Buyer.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Generating Facility Performance Security or Storage Facility Performance Security to Buyer on or before the Generating Facility Commercial Operation Date or Storage Facility Commercial Operation Date, as applicable. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other

damages, in each case of a determined amount, 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 not allocated to invoiced but unpaid amounts pursuant to this Section 8.8. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security authorized pursuant to the terms of this Agreement, from time to time upon reasonable prior written notice to Buyer.

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

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

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 Buyer's Financial Statements. From the Effective Date, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days after the end of each quarter and audited annual financial statements within one hundred eighty (180) days after the end of each fiscal year; provided, however, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been

prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

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 in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5:00 p.m., on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided on Exhibit N.

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 commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as an event otherwise satisfies the requirements of a “Force Majeure Event” as set forth above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; hail or icing outside the design parameters of the Facility; 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; insurrection; rebellion; violent demonstrations; or strikes, lock-outs, work stoppages or other labor difficulties caused or suffered by a Party or any third party except as set forth below; *provided*, 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 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) has occurred.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include the following:

(i) Economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement);

(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event;

(iii) The inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party;

(iv) A Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event;

(v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event;

(vi) A strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility;

(vii) Any equipment failure except if such equipment failure is caused by a Force Majeure Event;

(viii) Events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or

(ix) Any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Expected Construction Start Date or the Expected Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

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

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, 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 Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) additional months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12) month period despite exercising diligent efforts and (b) Seller provides to Buyer prior to the expiration of the original twelve (12) month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section 10.4(b)(i), (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month, and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer, or in otherwise resolving the Force Majeure Event. In addition, if the claiming Party is Seller and the Force Majeure Event affects only the Generating Facility or the Storage Facility, then Buyer's termination right pursuant to this Section 10.4 will be applicable only to the affected portion of the Facility (i.e. only the Generating Facility or the Storage Facility, whichever portion was affected by the Force Majeure Event) and this Agreement will continue in

full force and effect for the other portion of the Facility not affected by the Force Majeure Event and all provisions of this Agreement that relate solely to the portion of the Facility that is affected by such Force Majeure Event shall be null and void and of no further force and effect; the Guaranteed Capacity and Installed Capacity will be reduced by the amount of the terminated capacity of the Generating Facility or Storage Facility affected by such Force Majeure Event, as applicable; the defined term “Facility” will mean only the Generating Facility or Storage Facility, as applicable that is not terminated pursuant to this Section 10.4; all other unaffected terms and conditions of this Agreement will continue, and the Parties shall enter into such amendments as may be required to achieve the foregoing, including any necessary corresponding changes. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11: DEFAULTS; REMEDIES; TERMINATION

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1 or for which a sole remedy is otherwise expressly provided) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for qualifying Replacement Product;

(ii) the failure by Seller to achieve (A) achieve Storage Facility Construction Start on or before the Storage Facility Guaranteed Construction Start Date, or (B) Storage Facility Commercial Operation on or before the Storage Facility Commercial Operation Date Deadline;

(iii) the failure by Seller to achieve (A) achieve Generating Facility Construction Start on or before the Generating Facility Guaranteed Construction Start Date, or (B) Generating Facility Commercial Operation on or before the Generating Facility Commercial Operation Date Deadline;

(iv) if, in any single Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is less than sixty-five percent (65%) of the Expected Energy amount for such period, unless the cause of such shortfall was a Transformer Failure, and Seller (x) delivers to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the sixty-five percent (65%) threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed three hundred sixty-five (365) days and (y) complete such cure plan in all material respects as set forth therein, including within the timeframe set forth therein, and provided that for purposes of this Section 11.1(b)(iv), a Transformer Failure may only excuse a failure to achieve the required Expected Energy amount during the initial twelve (12) months of such Transformer Failure;

(v) if, in any two consecutive Contract Years after the Storage Facility Commercial Operation Date, the Monthly Storage Availability is not, on average, at least seventy-five percent (75%), unless the cause of such shortfall was a Transformer Failure, and Seller (x) delivers to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy-five percent (75%) threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed three hundred sixty-five (365) days and (y) complete such cure plan in all material respects as set forth therein, including within the timeframe set forth therein, and provided that for purposes of this Section 11.1(b)(v), a Transformer Failure may only excuse a failure to achieve the required average Monthly Storage Availability during the initial twelve (12) months of such Transformer Failure;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within ten (10) Business Days after Notice from Buyer, including the failure to

replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

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

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

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

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

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

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

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

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

(viii) failure by Seller to maintain an Effective Storage Capacity that is equal to or exceeds the Storage Capacity Default Threshold, unless the cause of such shortfall was a Transformer Failure, and Seller (x) delivers to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the Storage Capacity Default Threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed three hundred sixty-five (365) days and (y) complete such cure plan in all material respects as set forth therein, including within the timeframe set forth therein, and provided that for purposes of this Section 11.1(b)(viii), a Transformer Failure may only excuse a failure to achieve the required average Monthly Storage Availability during the initial twelve (12) months of such Transformer Failure.

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

(a) In the case of an Event of Default of Buyer or an Event of Default of Seller excluding an Event of Default under Sections 11.1(b)(ii), 11.1(b)(iii), 11.1(b)(iv), 11.1(b)(v) and 11.1(b)(viii) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) In the case of an Event of Default of Seller under Sections 11.1(b)(ii), 11.1(b)(iii), 11.1(b)(iv), 11.1(b)(v) and 11.1(b)(viii), to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as a partial early termination date of Agreement (“**Partial Early Termination Date**”) that terminates the provisions of this Agreement related to the Generating Facility in the case of an Event of Default of Seller under Sections 11.1(b)(iii) or 11.1(b)(iv) or terminates the provisions of this Agreement related to the Storage Facility in the case of an Event of Default of Seller under Sections 11.1(b)(ii), 11.1(b)(v) or 11.1(b)(viii) (the “**Partial Terminated Transaction**”). For the avoidance of doubt, this Agreement will continue in full force and effect for the other portion of the Facility not affected by Seller Event of Default and all provisions of this Agreement that relate solely to the portion of the Facility that is affected by such Event of Default shall be null and void and of no further force and effect; the Guaranteed Capacity and Installed Capacity will be reduced by the amount of the terminated capacity of the Generating Facility or Storage Facility affected by such Event of Default, as applicable; the defined term “Facility” will mean only the Generating Facility or Storage Facility, as applicable that is not terminated pursuant to this Section 11.2(b); all other unaffected terms and conditions of this Agreement will continue, and the Parties shall enter into such amendments as may be required to achieve the foregoing, including any necessary corresponding changes;

(c) 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 Storage Facility Commercial Operation Date, excluding an Event of Default under Section 11.1(b)(ii) and Section 11.1(b)(iii)), (ii) the Generating Facility Damage Payment in the case of an Event of Default by Seller under Section 11.1(b)(iii), (iii) the Storage Facility Damage Payment in the case of an Event of Default by Seller under Section 11.1(b)(ii), (iv) the Partial Termination Payment calculated in accordance with Section 11.3 below (in the case of an Event of Default of Seller under Sections 11.1(b)(iv), 11.1(b)(v) or 11.1(b)(viii), or (v) the Termination Payment, calculated in accordance with Section 11.3 below (in the case of any Event of Default by Buyer at any time or an Event of Default by Seller after the Storage Facility Commercial Operation Date);

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

(e) to suspend performance; and

(f) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment, Generating Facility Damage Payment, Storage Facility Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Generating Facility Damage Payment, Storage Facility Damage Payment, Damage Payment, Partial Termination Payment or Termination Payment.

(a) If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Generating Facility Damage Payment, Storage Facility Damage Payment, Damage Payment, Partial Termination Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(i) The Damage Payment, Generating Facility Damage Payment or Storage payment, as applicable, shall be calculated per the applicable definition for such term. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Storage Facility Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction or Partial Terminated Transaction for an Event of Default of Seller occurring after the Storage Facility Commercial Operation Date or for any Event of Default of Buyer or ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount; provided that in the case of a Partial Terminated Transaction, the Non-Defaulting Party's calculation of its Gains, Costs, Losses, Settlement Amount and Termination Payment shall be calculated solely based on the lost portion of the Product resulting from such Partial Terminated Transaction (i.e. either the termination of the portions of this Agreement addressing the Generating Facility or Storage Facility, as applicable) ("**Partial Termination Payment**"). The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Partial Termination Transaction or Terminated Transaction, as applicable, as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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 (i) the actual damages that the Non-Defaulting Party would incur in connection with a Partially Terminated Transaction or Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Partial Termination Payment or Termination Payment, as applicable, described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Partial Termination Payment or Termination

Payment, as applicable, described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Partial Terminated Transaction or Terminated Transaction, as applicable, 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 Partial Terminated Transaction or Terminated Transaction, as applicable, as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Partial Termination Payment, Termination Payment, Generating Facility Damage Payment, Storage Facility Damage Payment or Damage Payment. As soon as practicable after a Partial Terminated Transaction or Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Partial Termination Payment or Termination Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Generating Facility Damage Payment, Storage Facility Damage Payment, Damage Payment, Partial Termination Payment or Termination Payment, as applicable, and whether the Partial Termination Payment or Termination Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Generating Facility Damage Payment, Storage Facility Damage Payment, Damage Payment, Partial Termination Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated by Buyer prior to the Generating Facility Commercial Operation Date for the Generating Facility or prior to the Storage Facility Commercial Operation Date for the Storage Facility due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of [REDACTED] following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price unless the Seller Event of Default is pursuant to Sections 11.1(b)(ii)

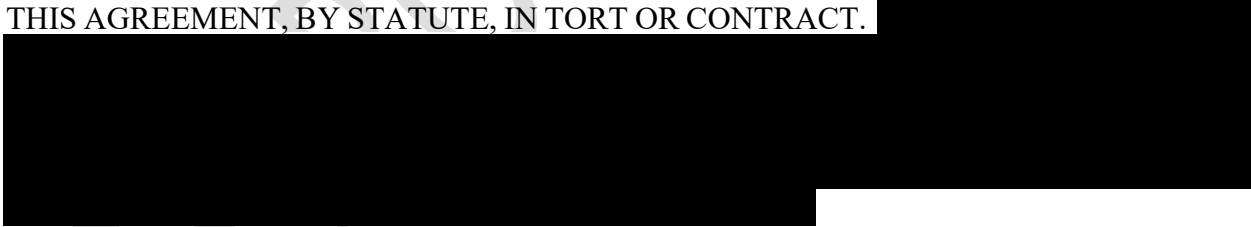
or 11.1(b)(iii) and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then excluding price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12: LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.



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

ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.9, 4.10, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13: REPRESENTATIONS AND WARRANTIES; COVENANTS

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

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

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

will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

(e) Seller or its Affiliate shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

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

(g) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Expected Commercial Operation Date.

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

(a) Buyer is a joint powers authority, 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.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions

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

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

(e) The law of the State of California authorizes suits based on contract against Buyer, and Buyer agrees that it will not assert any immunity on the grounds of sovereignty or similar grounds (including sovereign immunity from suit or liability) that Buyer may have as a governmental entity against such lawsuits relating to Buyer's contractual obligations under this Agreement. Notwithstanding the foregoing, any claims against Buyer shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.) as applicable. Buyer does not waive any immunities or defenses it may have to lawsuits relating to allegations of injuries arising out of Buyer's acts or omissions under this Agreement.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California, and as such any claims against Buyer shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.).

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

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

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

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

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

(a) Seller agrees to install and maintain permanent signage during the Delivery Term at the Site displaying Buyer's logo, Seller's logo, and the name of the Facility. The sign shall be located on property frontage with visibility to the most populous roadway, subject to any local ordinance restrictions. The sign shall be large enough to be visible and legible from such roadway. No lighting is required. Buyer shall provide a design file for the sign. Location and final

specifications for signage, including design and materials, are subject to Buyer's approval, not to be unreasonably withheld. Seller shall construct and maintain the sign at Seller's sole expense, and Seller shall be responsible for obtaining any required permits or approvals. The sign shall be installed within 30 days of the Commercial Operation Date.

ARTICLE 14: ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the other Party's reasonable and documented expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement without the consent of Buyer as collateral for any financing or refinancing of the Facility.

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

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

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

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements), or

(ii) Not assume this Agreement;

(f) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement as a condition of the sale or transfer subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(g) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(e), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or its designee, or (ii) if Lender or a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee such designee shall be approved by Buyer, not to be unreasonably withheld.

(h) If requested by Lender, Buyer will make all payments due to Seller under this Agreement to an account designated by Lender in writing; and

(i) Lender shall not have any liability or obligation under this Agreement as a result of exercising its rights under the Collateral Assignment Agreement, and Lender shall not be obligated or required to perform any of Seller's obligations under this Agreement, except if this Agreement is transferred to Lender pursuant to subsection (b) above or Lender is a counterparty to a replacement agreement entered into pursuant to subsection (h) above.

14.3 Permitted Assignment by Seller. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) and (c) to any Permitted Transferee; if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least twenty (20) Business Days before the date of such proposed assignment or Change of Control; and

(iii) Except in the case of a Change of Control, Seller has provided Buyer a written agreement or certificate signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee. Upon execution of the final agreement assigning Seller's interests in this Agreement, Seller shall promptly deliver a signed copy of such document to Buyer.

Notwithstanding the foregoing, neither the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller subsequent to such foreclosure or transfer or assignment in lieu of foreclosure to a Permitted Transferee) shall require Buyer's consent. Except as expressly provided above, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until the required Notice has been provided and the agreement or certificates required under Section 14.3(iii), if applicable, by the assignee have been received.

14.4 Portfolio Financing. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 Buyer Financing Assignment. Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory and do not adversely affect Seller or its arrangements with Lenders in any material respect and *further provided*, that (a) the assignee has a Credit Rating equal to or greater than that of Buyer as of the Effective Date, or if Buyer has no Credit Rating, then a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, or (b) Seller, at Seller's sole discretion, provides written consent approving of the assignee.

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. [STC 17: Non-modifiable]

The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of San Francisco.

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

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

ARTICLE 16: INDEMNIFICATION

16.1 Indemnification.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, (iii) negligent or tortious acts, errors, or

omissions by Seller or its Affiliates, or (iv) intentional acts or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and (i) its owners (direct and indirect) Affiliates, (ii) contractors, and (iii) the respective directors, officers, attorneys, advisors, consultants, employees, representatives and agents of Seller and the Persons described in clauses (i) and (ii) (collectively, the “**Seller’s Indemnified Parties**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer’s breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), or (ii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents in the performance of this Agreement that causes personal injury or death to Persons or damage to the property of any third party that is not an Affiliate of Seller.

(c) Seller shall indemnify, defend, and hold harmless Buyer’s Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement.

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an 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 the Indemnifying Party and satisfactory to the Indemnified Party; *provided*, 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*, 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 Facility 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 Substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

ARTICLE 17: INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, 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 and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not 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 statutory amounts, with employer's liability limits of not

less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(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 and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

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

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(g) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) 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.

(j) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to 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(f).

(k) Evidence of Insurance. On or before the Construction Start Date, and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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

ARTICLE 18: CONFIDENTIAL INFORMATION

18.1 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, to keep Confidential Information confidential, except as required by Law, including without limitation the California Public Records Act (Government Code §§ 7920.000 et seq, "CPRA"). 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 through no act or omission of the receiving Party, (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 Confidential Information as follows:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders including in the case of Seller, its Lenders and potential 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 Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) 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.

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

(e) 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 Buyer's officers, employees, and agents (collectively, the "Indemnitees") from and against all suits, claims, and causes of action brought against any of the 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 any of the 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 any of the Indemnitees, through and including any appellate proceedings. Seller's obligations to all of the Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by any of the Indemnitees, as well as all damages or liability of any nature.

(f) 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: MISCELLANEOUS

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

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

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

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

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

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

18.7 Service Contract. The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the Tax Code, as amended.

18.8 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.

18.9 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.

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

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

18.12 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, contractors or advisors of Buyer or its constituent members, in connection with this Agreement.

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

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

[Signatures on following page]

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

RPCA SOLAR 5, LLC

By: _____
Name: _____
Title: _____

**REDWOOD COAST ENERGY
AUTHORITY**

By: _____
Name: _____
Title: _____

APPROVAL DRAFT

EXHIBIT A: FACILITY DESCRIPTION

Project Name: Hatchery Road Solar

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 3.96 MW-AC collocated with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 4 MW AC / 16 MWh located in Humboldt County, California at the Site depicted in the attached Site diagram.

Site includes all or some of the following APNs: 313-091-020 and 313-091-019

Project Physical Address: 1617 Hatchery Road, Blue Lake, CA 95521

Latitude and Longitude: 40.859118, -123.993086

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

Point of Interconnection: [REDACTED]

Zone (e.g. NP-15): NP-15

P-node: TBD

CAISO Resource ID: TBD

Local Capacity Area (if any, as of the Effective Date): Humboldt

SITE DIAGRAM

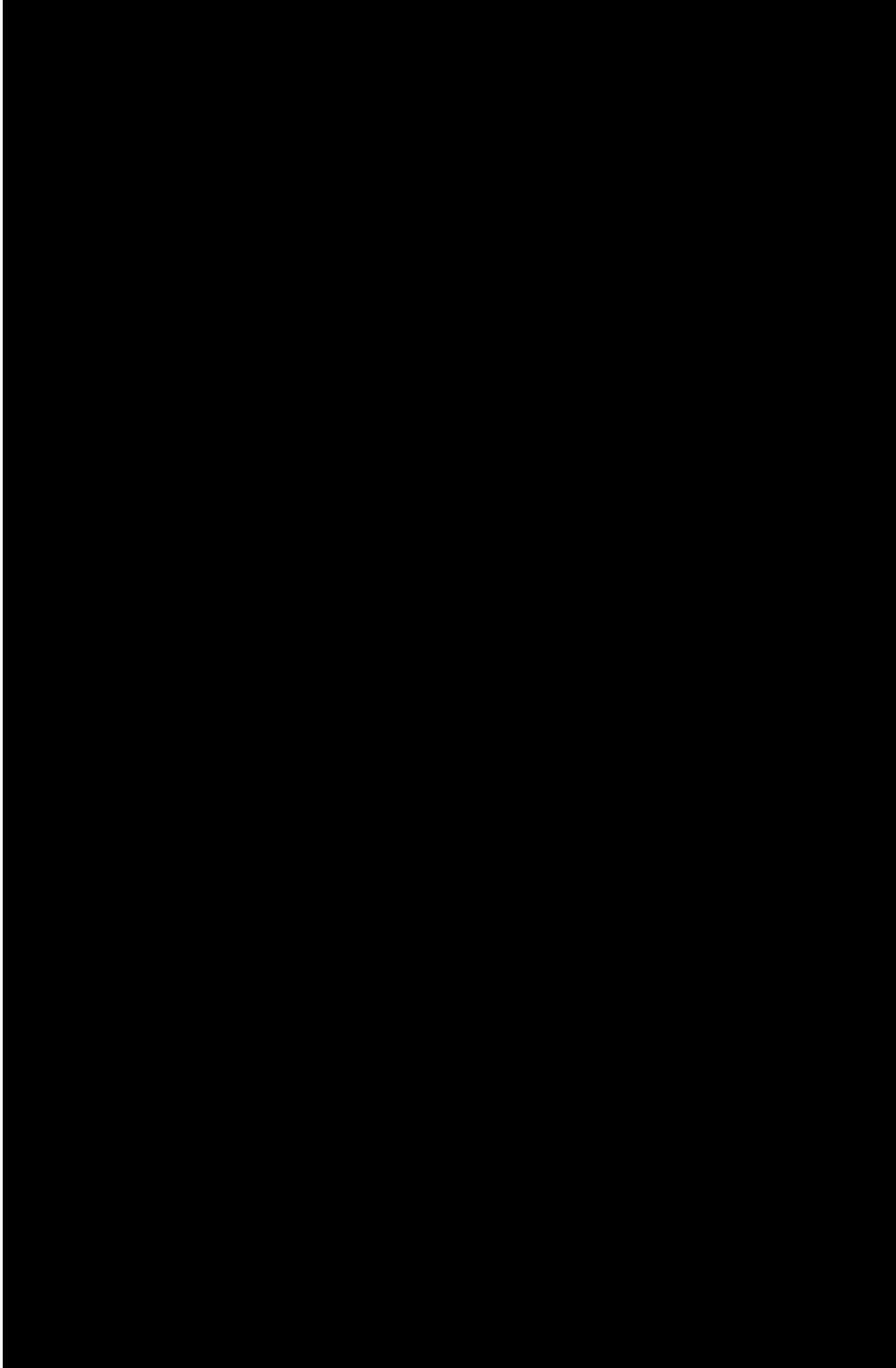


EXHIBIT B-1: GENERATING FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Generating Facility.

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 Generating Facility Construction Start Delay Damages or Generating Facility Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.

b. "**Construction Start**" will occur following Seller's execution of an EPC Contract related to the Generating Facility and issuance of a full notice to proceed with the construction of the Generating Facility that authorizes the contractor to mobilize to the Site and begin physical construction at the Site. The date of Generating Facility Construction Start will be evidenced by Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Generating Facility Construction Start Date**."

c. If Generating Facility Construction Start is not achieved by the Generating Facility Expected Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1, Seller has the option in its sole discretion to extend the Generating Facility Expected Construction Start Date by paying Generating Facility Construction Start Delay Damages to Buyer on account of such delay, not to exceed the Generating Facility Guaranteed Construction Start Date. Seller will send Notice to Buyer no later than the Generating Facility Expected Construction Start Date of its election to extend the Generating Facility Expected Construction Start Date by paying Generating Facility Construction Start Delay Damages or not to extend the Generating Facility Expected Construction Start Date. If Seller fails to provide Notice to Buyer of its intent to pay Generating Facility Construction Start Delay Damages, Seller will be deemed to have elected not to extend the Generating Facility Expected Construction Start Date, and the Generating Facility Guaranteed Construction Start Date will be deemed to have occurred. If Seller elects to pay Generating Facility Construction Start Delay Damages, then Generating Facility Construction Start Delay Damages shall be payable for each day for which Generating Facility Construction Start has not begun by the Generating Facility Expected Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1. Generating Facility Construction Start Delay Damages shall be payable to Buyer by Seller until the earlier of (i) the date Seller reaches Generating Facility Construction Start of the Facility, or (ii) one hundred eighty (180). On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Generating Facility 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 Generating Facility Construction Start Delay Damages set forth in such invoice. Seller shall not be obligated to pay aggregate Generating Facility Construction Start Delay Damages in excess of twenty percent (20%) the Generating Facility Development Security amount. The Parties agree that Buyer's receipt of Generating Facility 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. Alternatively, Seller may provide notice to Buyer prior to the Generating Facility Expected Construction Start Date of its election to not to extend the Generating Facility Expected Construction Start Date. If Seller elects to not extend the Generating Facility Expected Construction Start Date, and if Generating Facility Construction Start has not occurred by the Generating Facility Guaranteed Construction Start Date, then such occurrence is an Event of Default pursuant to Section 11.1(b)(iii).

d. Additionally, if Seller achieves Generating Facility Commercial Operation on or before the Generating Facility Expected Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Generating Facility Commercial Operation Delay Damages, but as such date may be extended pursuant to Section 4 of this Exhibit B-1), then Buyer shall refund to Seller 95% all Generating Facility Construction Start Delay Damages paid by Seller and not previously refunded by Buyer.

2. **Commercial Operation of the Generating Facility.** **"Generating Facility Commercial Operation"** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H-1 (the **"Generating Facility COD Certificate"**). The **"Generating Facility Commercial Operation Date"** shall be the date identified in the Generating Facility COD Certificate as the "Generating Facility Commercial Operation Date".

a. Seller shall cause Generating Facility Commercial Operation for the Generating Facility to occur by the Generating Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1. Seller shall notify Buyer at least forty-five (45) days before the anticipated Generating Facility Commercial Operation Date.

b. If Seller does not achieve Generating Facility Commercial Operation by the Generating Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1, Seller has the option in its sole discretion to either:

(i) Pay Generating Facility Commercial Operation Delay Damages for each day following the Generating Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1, until the Generating Facility Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate Generating Facility Commercial Operation Delay Damages in excess of the Generating Facility Development Security amount required hereunder; or

(ii) Provide Buyer with a quantity of Replacement Product in an amount equal to the Daily Expected Energy Amount for each day following the Generating Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-1, until the Generating Facility Commercial Operation Date, and the delivery of such Replacement Product shall extend the Generating Facility Expected Commercial Operation Date.

(iii) Provide Notice to Buyer of Seller's election to not to extend the Generating Facility Expected Commercial Operation Date. If Seller elects to not extend the Generating Facility Expected Commercial Operation Date, and if Generating Facility Commercial

Operation has not occurred by the Generating Facility Commercial Operation Date Deadline, then such occurrence an Event of Default pursuant to Section 11.1(b)(iii).

If Seller expects not to achieve Generating Facility Commercial Operation by the Generating Facility Expected Commercial Operation Date, Seller will send Notice to Buyer no later than sixty (60) days prior to the Generating Facility Expected Commercial Operation Date of its election (i) to pay Generating Facility Commercial Operation Delay Damages, (ii) to deliver Replacement Product, or (iii) not to extend the Expected Commercial Operation Date. Seller shall not owe Buyer any Generating Facility Commercial Operation Delay Damages for any day during a month where Seller has provided Replacement Product to Buyer in an amount equal to the Daily Expected Energy Amount. For any day for which Seller provides less Replacement Product than the Daily Expected Energy Amount, Seller's obligation to pay Generating Facility Commercial Operation Delay Damages for such day will be pro-rated by the percentage of Replacement Product to the Daily Expected Energy Amount for the applicable day. However, the Replacement Product provided by Seller to Buyer pursuant to this Section 2(b) of Exhibit B-1, shall not reduce or otherwise alter the Generating Facility Damage Payment that is owed to Buyer by Seller if Buyer declares an Event of Default under Section 11.1(b)(iii), and further, the value of any such Replacement Product does not reduce or otherwise count towards the cap on Seller's liability that is described in Section 6 of Exhibit B-1. For the avoidance of doubt, the Delivery Term shall not commence with Seller's provision of Replacement Product, and shall only commence upon the Generating Facility Commercial Operation Date.

c. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Generating Facility Commercial Operation Delay Damages, if any, accrued during the prior month. If Seller provides Buyer with Replacement Product pursuant to Section 2(b) of this Exhibit B-1, Seller shall issue an invoice and Buyer shall pay for such Replacement Product at 50% of the Contract Price in accordance with Section 8.1. The Parties agree that Buyer's receipt of Generating Facility Commercial Operation Delay Damages or Replacement Product shall be Buyer's sole and exclusive remedy for Seller's delay in achieving the Generating Facility Commercial Operation Date on or before the Generating Facility Expected Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(iii) and receive a Generating Facility Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 in the event that such delay exceeds the Generating Facility Commercial Operation Date Deadline.

3. **Termination for Failure to Achieve Commercial Operation.** If the Generating Facility has not achieved Generating Facility Commercial Operation on or before the Generating Facility Commercial Operation Date Deadline, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iii) and 11.2.

4. **Extension of the Expected Milestone Dates.** The Generating Facility Expected Construction Start Date and the Generating Facility Expected Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the "**Generating Facility Development Cure Period**") for the duration of delays arising out of the following circumstances to the extent the following circumstances are not the

result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. a Force Majeure Event occurs; or
- b. 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 Generating Facility and to permit Seller and the Generating Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller;
- c. the Interconnection Facilities or Reliability Network Upgrades are not or are reasonably likely not to be complete and ready for the Generating Facility to receive approval for Initial Synchronization and to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Generating Facility Expected Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Generating Facility Energy at the Delivery Point by the Generating Facility Expected Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions of the Generating Facility Expected Construction Start Date granted under this Section 4 of this Exhibit B shall not exceed the Generating Facility Guaranteed Construction Start Date, for any reason, including a Force Majeure Event, and the cumulative extensions of the Generating Facility Expected Commercial Operation Date granted under this Section 4 of this Exhibit B-1 shall not exceed the Generating Facility Guaranteed Commercial Operation Date, for any reason, including a Force Majeure Event. Notwithstanding the foregoing, 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. Seller shall provide prompt written Notice to Buyer of a delay, and in no case more than thirty (30) days after Seller became aware of such delay. Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions. Buyer shall provide written Notice to Seller of their approval or rejection of Seller's extension request within ten (10) Business Days after Buyer's receipt of Seller's Notice.

5. **Failure to Reach Guaranteed Generation Capacity.** If, at Generating Facility Commercial Operation, the Installed Generation Capacity is less than one hundred percent (100%) of the Guaranteed Generation Capacity, Seller shall have ninety (90) days after the Generating Facility Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Generation Capacity is equal to (but not greater than) the Guaranteed Generation Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Generation Capacity. If Seller fails to construct the Guaranteed Generation Capacity by such date, Seller shall pay "**Generating Facility Capacity Damages**" to Buyer, in an amount equal to [REDACTED] dollars (\$ [REDACTED]) for each MW that the Guaranteed Generation Capacity exceeds the Installed Generation Capacity, and the Guaranteed Capacity and Guaranteed Generation Capacity and other applicable portions of the

Agreement, including Expected Energy, shall be adjusted accordingly. Generating Facility Capacity Damages shall not be offset or reduced by the payment of Generating Facility Development Security, Generating Facility Performance Security, Generating Facility Construction Start Delay Damages, Generating Facility Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Generating Facility Development Security.** If Seller fails to timely pay any Generating Facility Construction Start Delay Damages or Generating Facility Commercial Operation Delay Damages, Buyer may draw upon the Generating Facility Development Security to satisfy Seller's payment obligation thereof.

7. **Cap on Seller Liability Prior to Commercial Operation Date.** Notwithstanding anything in this Agreement to the contrary, unless and until the Generating Facility has achieved Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons, including liability for payment of Generating Facility Construction Start Delay Damages, Generating Facility Commercial Operation Delay Damages and the Generating Facility Damage Payment, shall not exceed a total equal to one hundred percent (100%) of the Generating Facility Development Security amount stated on the Cover Sheet.

EXHIBIT B-2: STORAGE FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Storage Facility.

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 Storage Facility Construction Start Delay Damages or Storage Facility Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.

b. **"Construction Start"** will occur following Seller's execution of an EPC Contract related to the Storage Facility and issuance of a full notice to proceed with the construction of the Storage Facility that authorizes the contractor to mobilize to the Site and begin physical construction at the Site. The date of Storage Facility Construction Start will be evidenced by Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **"Storage Facility Construction Start Date."**

c. If Storage Facility Construction Start is not achieved by the Storage Facility Expected Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2, Seller has the option in its sole discretion to extend the Storage Facility Expected Construction Start Date by paying Storage Facility Construction Start Delay Damages to Buyer on account of such delay, not to exceed the Storage Facility Guaranteed Construction Start Date. Seller will send Notice to Buyer no later than the Storage Facility Expected Construction Start Date of its election to extend the Storage Facility Expected Construction Start Date by paying Storage Facility Construction Start Delay Damages or not to extend the Storage Facility Expected Construction Start Date. If Seller fails to provide Notice to Buyer of its intent to pay Storage Facility Construction Start Delay Damages, Seller will be deemed to have elected not to extend the Storage Facility Expected Construction Start Date, and the Storage Facility Guaranteed Construction Start Date will be deemed to have occurred. If Seller elects to pay Storage Facility Construction Start Delay Damages, then Storage Facility Construction Start Delay Damages shall be payable for each day for which Storage Facility Construction Start has not begun by the Storage Facility Expected Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2. Storage Facility Construction Start Delay Damages shall be payable to Buyer by Seller until the earlier of (i) the date Seller reaches Storage Facility Construction Start of the Facility, or (ii) number of days based on Seller's reasonable expectation for the duration of the project construction period. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Storage Facility 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 Storage Facility Construction Start Delay Damages set forth in such invoice. Seller shall not be obligated to pay aggregate Storage Facility Construction Start Delay Damages in excess of twenty percent (20%) the Storage Facility Development Security amount. The Parties agree that Buyer's receipt of Storage Facility 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.

Alternatively, Seller may provide notice to Buyer prior to the Storage Facility Expected Construction Start Date of its election to not to extend the Storage Facility Expected Construction Start Date. If Seller elects to not extend the Storage Facility Expected Construction Start Date, and if Storage Facility Construction Start has not occurred by the Storage Facility Guaranteed Construction Start Date, then such occurrence is an Event of Default pursuant to Section 11.1(b)(iii).

d. Additionally, if Seller achieves Storage Facility Commercial Operation on or before the Storage Facility Expected Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Storage Facility Commercial Operation Delay Damages, but as such date may be extended pursuant to Section 4 of this Exhibit B-2), then Buyer shall refund to Seller 95% all Storage Facility Construction Start Delay Damages paid by Seller and not previously refunded by Buyer.

2. **Commercial Operation of the Storage Facility.** "**Storage Facility Commercial Operation**" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H-2 (the "**Storage Facility COD Certificate**"). The "**Storage Facility Commercial Operation Date**" shall be the date identified in the Storage Facility COD Certificate as the "Storage Facility Commercial Operation Date".

a. Seller shall cause Storage Facility Commercial Operation for the Storage Facility to occur by the Storage Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2. Seller shall notify Buyer at least forty-five (45) days before the anticipated Storage Facility Commercial Operation Date.

d. If Seller does not achieve Storage Facility Commercial Operation by the Storage Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2, Seller has the option in its sole discretion to either:

(i) Pay Storage Facility Commercial Operation Delay Damages for each day following the Storage Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2, until the Storage Facility Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate Storage Facility Commercial Operation Delay Damages in excess of the Storage Facility Development Security amount required hereunder; or

(ii) Provide Buyer with a quantity of Replacement Product in an amount equal to the Daily Expected Energy Amount for each day following the Storage Facility Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B-2, until the Storage Facility Commercial Operation Date, and the delivery of such Replacement Product shall extend the Storage Facility Expected Commercial Operation Date.

b. Provide Notice to Buyer of Seller's election to not to extend the Storage Facility Expected Commercial Operation Date. If Seller elects to not extend the Storage Facility Expected Commercial Operation Date, and if Storage Facility Commercial Operation has not occurred by the Storage Facility Commercial Operation Date Deadline, then such occurrence an

Event of Default pursuant to Section 11.1(b)(iii).

If Seller expects not to achieve Storage Facility Commercial Operation by the Storage Facility Expected Commercial Operation Date, Seller will send Notice to Buyer no later than sixty (60) days prior to the Storage Facility Expected Commercial Operation Date of its election (i) to pay Storage Facility Commercial Operation Delay Damages, (ii) to deliver Replacement Product, or (iii) not to extend the Expected Commercial Operation Date. Seller shall not owe Buyer any Storage Facility Commercial Operation Delay Damages for any day during a month where Seller has provided Replacement Product to Buyer in an amount equal to the Daily Expected Energy Amount. For any day for which Seller provides less Replacement Product than the Daily Expected Energy Amount, Seller's obligation to pay Storage Facility Commercial Operation Delay Damages for such day will be pro-rated by the percentage of Replacement Product to the Daily Expected Energy Amount for the applicable day. However, the Replacement Product provided by Seller to Buyer pursuant to this Section 2(b) of Exhibit B-2, shall not reduce or otherwise alter the Storage Facility Damage Payment that is owed to Buyer by Seller if Buyer declares an Event of Default under Section 11.1(b)(iii), and further, the value of any such Replacement Product does not reduce or otherwise count towards the cap on Seller's liability that is described in Section 6 of Exhibit B-2. For the avoidance of doubt, the Delivery Term shall not commence with Seller's provision of Replacement Product, and shall only commence upon the Storage Facility Commercial Operation Date.

c. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Storage Facility Commercial Operation Delay Damages, if any, accrued during the prior month. If Seller provides Buyer with Replacement Product pursuant to Section 2(b) of this Exhibit B-2, Seller shall issue an invoice and Buyer shall pay for such Replacement Product at 50% of the Contract Price in accordance with Section 8.1. The Parties agree that Buyer's receipt of Storage Facility Commercial Operation Delay Damages or Replacement Product shall be Buyer's sole and exclusive remedy for Seller's delay in achieving the Storage Facility Commercial Operation Date on or before the Storage Facility Expected Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.1(b)(iii) and receive a Storage Facility Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 in the event that such delay exceeds the Storage Facility Commercial Operation Date Deadline.

3. **Termination for Failure to Achieve Storage Facility Commercial Operation.** If the Storage Facility has not achieved Storage Facility Commercial Operation on or before the Storage Facility Commercial Operation Date Deadline, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Expected Milestone Dates.** The Storage Facility Expected Construction Start Date and the Storage Facility Expected Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the "**Storage Facility Development Cure Period**") for the duration of delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

e. a Force Majeure Event occurs; or

f. 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 Storage Facility and to permit Seller and the Storage Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller;

g. the Interconnection Facilities or Reliability Network Upgrades are not or reasonably likely not to be complete and ready for the Storage Facility to receive approval for Initial Synchronization and to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Storage Facility Expected Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

h. Buyer has not made all necessary arrangements to receive the Storage Facility Energy at the Delivery Point by the Storage Facility Expected Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions of the Storage Facility Expected Construction Start Date granted under this Section 4 of this Exhibit B-2 shall not exceed the Storage Facility Guaranteed Construction Start Date, for any reason, including a Force Majeure Event, and the cumulative extensions of the Storage Facility Expected Commercial Operation Date granted under this Section 4 of this Exhibit B-2 shall not exceed the Storage Facility Guaranteed Commercial Operation Date, for any reason, including a Force Majeure Event. Notwithstanding the foregoing, 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. Seller shall provide prompt written Notice to Buyer of a delay, and in no case more than thirty (30) days after Seller became aware of such delay. Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions. Buyer shall provide written Notice to Seller of their approval or rejection of Seller's extension request within ten (10) Business Days after Buyer's receipt of Seller's Notice.

5. **Failure to Reach Guaranteed Storage Capacity.** If, at Storage Facility Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Storage Facility Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Facility Capacity Damages**" to Buyer, in an amount equal to [REDACTED] dollars (\$ [REDACTED]) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Capacity and Guaranteed Storage Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Storage Facility Capacity Damages shall not be offset or reduced by the payment of Storage Facility Development Security, Storage Facility Performance Security, Storage Facility

Construction Start Delay Damages, Storage Facility Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Storage Facility Development Security.** If Seller fails to timely pay any Storage Facility Construction Start Delay Damages or Storage Facility Commercial Operation Delay Damages, Buyer may draw upon the Storage Facility Development Security to satisfy Seller's payment obligation thereof.

7. **Cap on Seller Liability Prior to Storage Facility Commercial Operation Date.** Notwithstanding anything in this Agreement to the contrary, unless and until the Storage Facility has achieved Storage Facility Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons, including liability for payment of Storage Facility Construction Start Delay Damages, Storage Facility Commercial Operation Delay Damages and the Storage Facility Damage Payment, shall not exceed a total equal to one hundred percent (100%) of the Storage Facility Development Security amount stated on the Cover Sheet.

EXHIBIT C: COMPENSATION

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

(a) Generation Payment. Buyer shall pay Seller the Generation Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries in excess of 115%. If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Generating Facility Energy (but not Deemed Delivered Energy, for which no additional compensation shall be paid), if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Generation Rate or (ii) the Day-Ahead price for the applicable Settlement Interval; provided that if there is a Negative LMP during such Settlement Interval, then the price applicable to all such additional MWh of Facility Energy in such Settlement Interval shall be zero dollars (\$0).

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

(d) Storage Product Payment. All Storage Product shall be paid at the Storage Rate x the current Effective Storage Capacity x the Availability Adjustment x 1000. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(i) Availability Adjustment. The "Availability Adjustment" or "AA" is calculated as follows:

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

$$AA = 100\%$$

(B) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:

$$AA = 100\% - [(97\% - \text{Monthly Storage Availability}) \times 2]$$

(C) If the Monthly Storage Availability is less than 70%, then:

$$AA = 0$$

(e) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month after the Storage Facility Commercial Operation Date and thereafter during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, *by* (iii) the Average Monthly Price (the “**RTE Shortfall Payment**”), which amount shall be credited by Seller against amounts owed by Buyer in the applicable monthly invoice.

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

(g) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks and obtain all benefits, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes [REDACTED]

[REDACTED] Seller shall have exclusive rights to all Tax Credits and Incentives. The obligations of the Parties hereunder, including those obligations regarding the purchase and price for and Seller’s obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

(h) [REDACTED] The Parties agree that, for any Contract Year, [REDACTED]

[REDACTED]

EXHIBIT D: SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and Facility Energy at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute, real time or other market basis that may develop after the Effective Date, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility. Seller, as owner of the Facility, shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Seller as owner of the Facility. Seller shall ensure that Buyer (as SC) has all necessary data access or reporting, as applicable, to the extent necessary to satisfy any applicable CAISO requirements.

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

(b) CAISO Costs and Revenues.

(i) Except as otherwise set forth herein, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Facility Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO Dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Test Energy or Facility Energy scheduled or delivered from the Delivery Point; *provided*, Seller shall assume all liability and reimburse Buyer for any and all costs

or charges (i) incurred by Buyer because of Seller's default, breach or other failure to perform as required by this Agreement, (ii) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account, except to the extent any such Non-Availability Charges are incurred solely due to Buyer or Buyer's SC's unexcused failure to perform its duties as Scheduling Coordinator for the Facility, including a failure to perform its must offer requirements under Section 40.6 of the CAISO Tariff, in which case, such Non-Availability Charges shall be the responsibility of Buyer and for Buyer's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

(e) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the

designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(f) Master Data File and Resource Data Template. Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC's Master Resource Database and CAISO's Master File. Seller shall provide the data to Buyer and Buyer's SC that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement and Buyer shall promptly provide such data to CAISO by the deadline for submission to CAISO. Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least ten (10) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least ten (10) Business Days prior to submission to the CAISO or CPUC as applicable.

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

EXHIBIT E: PROGRESS REPORTING FORM

Each Progress Report must include the following items, describing incremental progress or changes from the previous Progress Report:

1. Executive summary of progress made during the Progress Report period.
2. Table showing current expectation for achieving each of the Milestones relative to the Milestone dates on the Cover Sheet:

Milestone	Contract Milestone Date	Actual/Forecasted Milestone Date
Evidence of Site Control	As of Effective Date	
Conditional Use Permit obtained		
Phase I Interconnection Study results (or equivalent) obtained		
Phase II Interconnection Study results (or equivalent) obtained		
Interconnection Agreement executed		
Major equipment procured		
Federal and state discretionary permits issued		
Expected Construction Start Date		
Initial Synchronization		
Network Upgrades completed		
Full Capacity Deliverability Status obtained		
Expected Commercial Operation Date		

3. Gantt chart schedule showing progress on major steps to achieving each of the Milestones.
4. Status and summary of activities during the Progress Report period and forecast of expected activities scheduled for the next Progress Report period, including the following:
 - a. Project financing;
 - b. Property acquisition;
 - c. Government Approvals, including environmental review process, use permit, building permit, and any other necessary permits; include public hearing dates and attendance information;
 - d. Interconnection work, including next interconnection milestone and date;
 - e. Equipment procurement and supply agreements;
 - f. Construction, including the EPC contract and any OSHA labor hour reports; and
 - g. Startup and commissioning.
5. Remedial Action Plan (if required per Section 2.5).

6. Description of any planned material changes to the Facility or the site that Buyer has not otherwise been made aware of by Seller.
7. Project Viability Scores for CPUC Filings (select one from each of the following):
 - a. Viability Reasonableness
 - 4 – Interconnection studies complete and agreement signed consistent with reported COD; permitting application complete;
 - 3 – Interconnection Phase II study complete; permitting application approved; these support reported COD;
 - 2 – Interconnection Phase II study in progress; permitting application in progress; LSE has plan that supports reported COD; or
 - 1 – Interconnection Phase II study not begun.
 - b. Technical Feasibility
 - 3 – Project-specific independent engineering assessment is complete and supports the delivery profile (capacity and/or production) and Project uses commercialized technology;
 - 2 – Project will use a commercialized technology solution that is currently in use at a minimum of two operating facilities of similar or larger size; or
 - 1 – Project uses neither commercialized technology nor has project specific engineering assessment.
 - c. Financing and Site Control
 - 5 – All financing secured;
 - 4 – Partial financing secured;
 - 3 – Seeking financing;
 - 2 – Project has site control but not yet seeking financing;
 - 1 – Project does not yet have site control; or
 - N/A – No financing required.
8. Photos, in sufficient quantity and of appropriate detail, in order to document interconnection, construction and startup progress.
9. Upon commencement of Test Energy deliveries, a report on Facility performance including performance projections for the next twelve (12) months.
10. A summary of Seller's efforts to comply with workforce and prevailing wage requirements.
11. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1: FORM OF AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

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

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

EXHIBIT F-2: FORM OF AVAILABLE GENERATING CAPACITY

[Available Generating Capacity, MWh Per Hour] – [Insert Month]

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

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

EXHIBIT G: GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.9, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

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

where:

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

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

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

D = the Generation Rate for the Contract Year, in \$/MWh

The Parties agree that in the above calculation of Guaranteed Energy Production Damages, if the result of “(C-D)” is less than \$■/MWh, then “(C-D)” will be replaced with \$■/MWh. The Parties also agree that in the above calculation of Guaranteed Energy Production Damages, if the result of “(C-D)” is more than \$■/MWh, the “(C-D)” will be replaced with \$■/MWh.

“Adjusted Energy Production” shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“Replacement Environmental Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Environmental Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the same period for which the Replacement Environmental Attributes are being provided. To establish the value of Replacement Environmental Attributes, Buyer shall provide Seller with at least one independently-prepared estimate of the value of Replacement Environmental Attributes based, if available, on the most recently available actual contract and sales information. Seller may provide an alternative estimate based on actual contract and sales information.

“Replacement Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), that would have been generated by the Facility during the same period for which the Replacement Energy is being provided.

“Replacement Product” means (a) Replacement Energy, and (b) all Replacement Environmental Attributes.

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

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

APPROVAL DRAFT

EXHIBIT H-1: FORM OF GENERATING FACILITY COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Generating Facility Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Redwood Coast Energy Authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between _____ ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Generating Facility is fully operational, reliable and interconnected, and is fully integrated and synchronized with the Transmission System.
2. The Generating Facility has met all Interconnection Agreement requirements and is capable of delivering Generating Facility Energy to the CAISO Balancing Authority.
3. The Installed Generation Capacity is no less than ninety-five percent (95%) of the Guaranteed Generation Capacity.
4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Generation Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider] on _____[DATE]_____.
6. Documentation supporting full unrestricted release for Commercial Operation was provided by [Name of Transmission Provider] on _____[DATE]_____.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT H-2: FORM OF STORAGE FACILITY COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Storage Facility Commercial Operation is delivered by _____[*licensed professional engineer*] ("**Engineer**") to Redwood Coast Energy Authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between _____ ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Storage Facility is fully operational, reliable and interconnected, and is fully integrated and synchronized with the Transmission System.
2. The Storage Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The Installed Storage Capacity is no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. The Storage Facility is fully capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider] on _____[DATE]_____.
6. Documentation supporting full unrestricted release for Commercial Operation has been provided by [Name of Transmission Provider] on _____[DATE]_____.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1: FORM OF INSTALLED GENERATION CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Generation Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Redwood Coast Energy Authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [_____] ("**Agreement**") by and between [_____] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generation Capacity**");

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2: FORM OF INSTALLED STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Storage Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Redwood Coast Energy Authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [_____] ("**Agreement**") by and between [_____] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.11 and Exhibit O (the "**Installed Storage Capacity**"); and

(b) As of the date of the performance test, the Storage Facility is capable of delivering Discharging Energy to the Delivery Point.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J: FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred on _____ (the "**Construction Start Date**"), and a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto; and

2. The precise Site on which the Facility is located is within the boundaries of the following APNs (such description shall amend the description of the Site in Exhibit A):
_____.

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

[]

[]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of [] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase 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 _____, 202_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, marked thereon Letter of Credit No. [XXXXXXXX] accompanied by the following documents:

1. the original of this Letter of Credit and its amendments, if any;
2. Your 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.

We will return the original of this Letter of Credit back to the Beneficiary after our endorsement on this Letter of Credit of our payment of each draft, provided there is balance undrawn under the Letter of Credit.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service to the above address that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice; provided that in no event shall the Letter of Credit be extended beyond the final expiration date referenced in the paragraph below. No presentation made under this Letter of Credit after such expiry date will be honored.

The final expiration date of this Letter of Credit is [XXXXXXXXXX]. Upon this final expiration date, this Letter of Credit shall automatically become null and void whether or not the original of this Letter of Credit has been returned to us for cancellation and presentation made under this Letter of Credit after such date will not 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. If, for any of the reasons specified in Article 36 of the UCP, the Issuer's place for presentation of the Letter of Credit is closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of [____] 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 [____] by wire transfer in immediately available funds to the following account:

[Specify account information]

[____]

Name and Title of Authorized Representative

Date _____

EXHIBIT L: FACILITY SAFETY PLAN AND DOCUMENTATION

Facility Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related codes, standards, and regulations (CSR) which govern the design, construction, operation, maintenance, and decommissioning of the Facility 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 (CPUC General Order 167, American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), as applicable, including Seller's compliance with the National Fire Protection Association's 855 standard and any other relevant fire codes.

Part Two: Facility Design and Description

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

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

Provide a safety review report for each product class and a list of major facility 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 Substances expected to be on Site.

Part Three: Facility Safety Management

Include a hazard mitigation analysis (HMA) that identifies and describes any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Facility. Describe the Seller's applicable site-specific safety plans, risk mitigation, safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,

- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,
- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

Part Four: Emergency Response Plan

Provide a community risk analysis that describes the likelihood and potential impacts to the surrounding community of a fire that could result from operation of the Facility.

Provide Seller's emergency response and emergency action plan for battery energy storage facilities in compliance with California Senate Bill 38 that has been submitted to the local authority having jurisdiction over the Facility's discretionary permit.

Part Five: GO 167 Compliance Documents

Provide copies of all applicable documents required by GO 167 for the Facility or for Seller, including but not limited to the required Logbook, GO 167 Compliance Document, GO 167 Maintenance Plan, and GO 167 Operation Plan. Within five (5) Business Days of receipt, provide a copy of all audit documents provided by the CPUC Safety and Enforcement Division. Seller shall promptly inform Buyer of any fines for violations or sanctions imposed by the CPUC for noncompliance with GO 167.

EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [_____] (“**Seller**”) to [_____] (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information

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

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT N: NOTICES

Seller	Buyer
All Notices: RPCA Solar 5, LLC Street: 44 Montgomery St., Ste. 3150 City: San Francisco, CA 94104 Attn: Aaron Halimi Phone: [REDACTED] Email: [REDACTED]	All Notices: Redwood Coast Energy Authority Street: 633 3 rd St. City: Eureka, CA 95501 Attn: Richard Engel Phone: [REDACTED] Email: [REDACTED] With cc to [REDACTED] and [REDACTED]
Reference Numbers: Duns: N/A Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices & Payments: Attn: Matthew Gasparovich, Dir. of Asset Mgmt Phone: [REDACTED] Email: [REDACTED]	Invoices & Payments: Attn: Accounting Phone: 707-269-1700, ext. [REDACTED] Email: [REDACTED]
Scheduling: Attn: Matthew Gasparovich, Dir. of Asset Mgmt Phone: [REDACTED] Email: [REDACTED]	Scheduling: Attn: The Energy Authority as RCEA's SC Day Ahead Desk Phone: [REDACTED] Real Time Desk Phone: [REDACTED] Email: [REDACTED]
Wire Transfer: BNK: J.P. Morgan Chase N.A. Account Name: Renewable Properties, LLC ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: Umpqua Bank ABA: [REDACTED] ACCT: [REDACTED]
Credit and Collections: Attn: Jenea Smith, Controller Phone: [REDACTED] Email: [REDACTED]	Credit and Collections: Attn: Lori Biondini Phone: [REDACTED] Email: [REDACTED]
With additional Notices of an Event of Default to: Attn: Matthew Gasparovich, Dir. of Asset Mgmt Phone: [REDACTED] Email: [REDACTED]	With additional Notices of an Event of Default Attn: Lori Biondini, Dir. of Business Planning and Finance Phone: [REDACTED] Email: [REDACTED]
Emergency Contact: Attn: Matthew Gasparovich, Dir. of Asset Mgmt Phone: [REDACTED] Email: [REDACTED]	Emergency Contact: Attn: Jocelyn Gwynn, Senior Power Resources Manager Phone: [REDACTED] Email: [REDACTED]

EXHIBIT O: STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY MEASUREMENTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date (“**Commercial Operation Date Storage Capacity Test**”). Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and the initial Actual Round-Trip Efficiency hereunder based on the actual capacity and capabilities of the Storage Facility determined during such Commercial Operation Date Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days before the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity or Efficiency Rate have varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days’ prior Notice to Buyer.

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.11(c) of the Agreement and Part II(I) below, the actual capacity and efficiency rate determined pursuant to a Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Product payment and all other purposes under this Agreement, except that if the actual capacity determined pursuant to a Storage Capacity Test exceeds the Guaranteed Storage Capacity, then the new Effective Storage Capacity shall be equal to the Guaranteed Storage Capacity.

Storage Capacity Test Procedures

PART I. GENERAL

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

B. Conditions Prior to Testing.

1. EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer

SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

2. Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA System data.

3. Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

C. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

4. Electrical output at maximum discharging level (MW) for four (4) continuous hours; and

5. Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

D. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

1. Time;

2. The amount of Discharging Energy to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);

3. Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and

4. Storage Level (MWh).

E. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
3. Ambient air temperature (°F).

F. Test Showing. Each SCT shall record and report the following datapoints:

1. That the SCT successfully started;
2. The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
3. The maximum sustained charging level for five (5) consecutive hours pursuant to A(2) above;
4. Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
5. Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
6. Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;
7. Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

G. Test Conditions.

1. General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

2. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a SCT [(including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy)] **[For PV technologies only]**, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

3. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be

calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- H. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer, the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- I. Test Report. Within five (5) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

1. A record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test;

2. The level of Effective Storage Capacity, Charging Capacity, Discharging Capacity and Stored Energy Level determined by the SCT, including supporting calculations; and

3. Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

- J. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Storage Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each

update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

K. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

1. The total amount of Discharged Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Date Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.11(c) of the Agreement.

2. The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the RTE Shortfall Payment, if applicable, in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity**

• Procedure:

- 1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- 2) Record the initial value of the Storage Facility SOC.
- 3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
- 4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- 5) Record and store the Charging Energy.
- 6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the lesser of (i) the Storage Facility's maximum discharging level and (ii) the Guaranteed Storage Capacity, and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained

discharging level is at least 2% less than the lesser of (i) the maximum discharging level and (ii) the Guaranteed Storage Capacity.

- 7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- 8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- 9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC. Record and store the additional Discharging Energy, if applicable.

- **Test Results**

The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

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

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.

- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - 1) Record the Storage Facility active power level at the Storage Facility Meter.
 - 2) Command the Storage Facility to follow a simulated CAISO RIG signal of -Pmax at .95 power factor for ten (10) minutes.
 - 3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

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

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - 1) Record the Storage Facility reactive power level at the Facility Meter.

- 2) Command the Storage Facility to follow 2 MVAR for ten (10) minutes.
 - 3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

APPROVAL DRAFT

EXHIBIT P: STORAGE AVAILABILITY

Monthly Storage Availability

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

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

where:

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

MNTHHRS_m is the total number of hours for the month;

UNAVAILHRS_m , is the total number of hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “Excused Event”): Approved Maintenance Hours, Buyer Dispatched Tests, a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Buyer Default, Curtailment Orders, System Emergencies, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

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

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

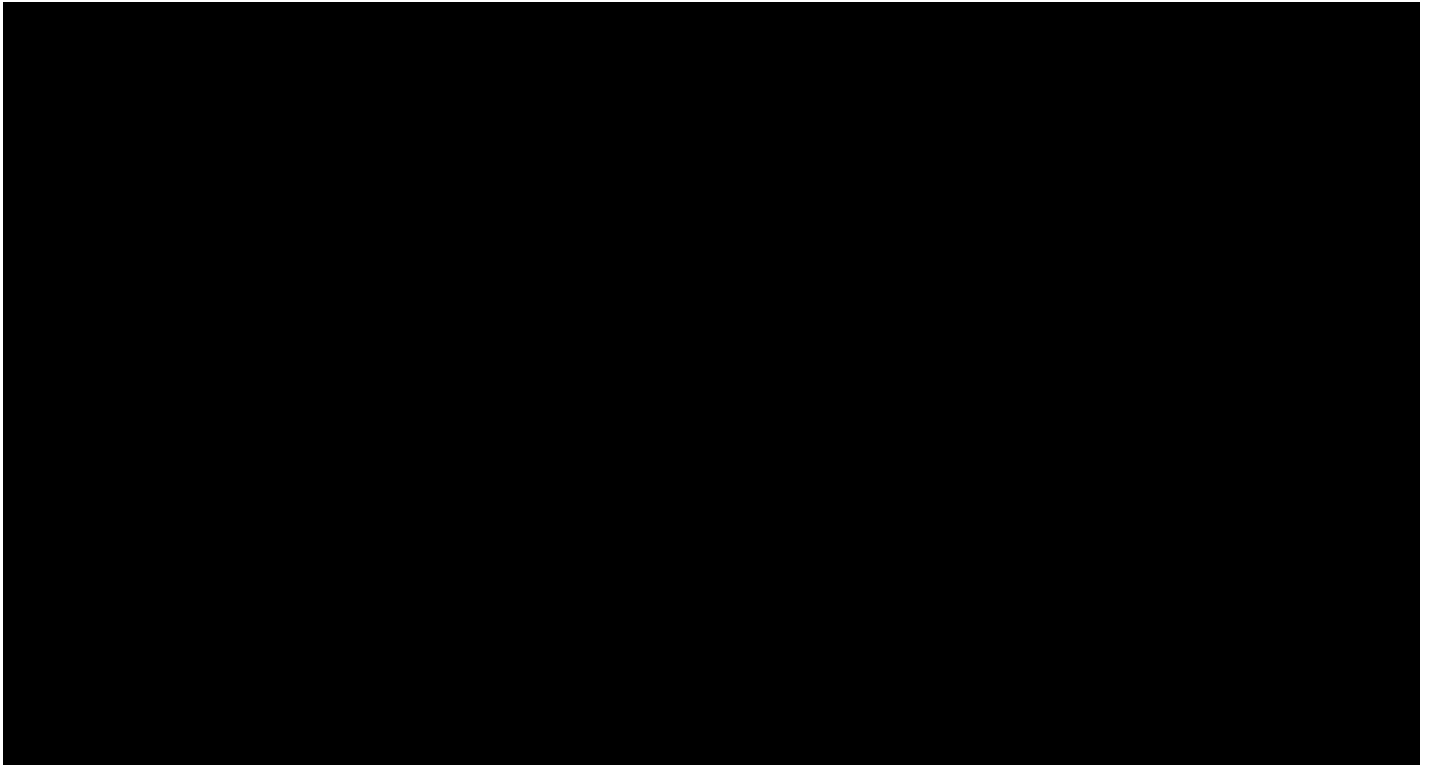
EXHIBIT Q: OPERATING RESTRICTIONS

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

File Update Date:	08/25/2025
Technology:	Battery Energy Storage
Storage Unit Name:	Hatchery Energy Storage
A. Contract Capacity	
Guaranteed Capacity (MW):	4
Effective Capacity (MW):	4
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV)	12
Maximum State of Charge (SOC) during Charging	100%
Minimum State of Charge (SOC) during Discharging	0%
Maximum Storage Level (MWh):	16 MWh
Minimum Storage Level (MWh):	0 MWh
Maximum Charging Capacity (MW):	The charge restriction scheme as detailed in the Interconnection Agreement and dynamically by the PG&E Distributed Energy Management System. The charging limitations and any other general operating requirements in the Interconnection Agreement are Operating Restrictions and subject to refinement prior to PTO approval for operation.
Maximum Discharging Capacity (MW):	The discharge restriction scheme as detailed in the Interconnection Agreement and dynamically by the PG&E Distributed Energy Management System. The charging limitations and any other general operating requirements in the Interconnection Agreement are Operating Restrictions and subject to refinement prior to PTO approval for operation.
Maximum energy throughput (Discharged MWh/year):	5,840
C. Daily/Monthly/Annual Cycles	
Maximum daily Cycles:	2
Maximum monthly Cycles:	45
Maximum annual Cycles:	365

D. Charge and Discharge Rates		
Mode	Maximum (MW)	Ramp Rate (MW/s)
Energy (Charge)	4	0.1
Energy (Discharge)	4	0.1
E. Ancillary Services		
Frequency regulation is included:	Yes	
Spinning reserve is included:	Yes	
Non-spinning reserve is included:	Yes	
Regulation up is included:	Yes	
Regulation down is included:	Yes	
Black start is included:	No	
Voltage support is included:	Yes	
F. Other Restrictions		
The charging and discharging capacity is limited to the available charging or discharging capacity at the interconnected distribution feeder Blue Lake 1101 and substation Blue Lake, according to the battery charge restriction scheme implemented and managed by the PTO under the Interconnection Agreement. If this Operating Limit is exceeded, the battery is subject to a Curtailment Order from the PTO, which may be implemented via a direct transfer trip device owned by the PTO at the facility.		

EXHIBIT R: METERING DIAGRAM



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