

Supplemental Materials

For November 24, 2025
RCEA Board of Directors Meeting

ENERGY STORAGE SERVICE AGREEMENT

FLYCATCHER 1

COVER SHEET

Seller: California Condor LLC, a California limited liability company

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

Description of Facility: A 3 MW / 12 MWh lithium iron phosphate battery energy storage facility.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	09/15/2025
Conditional Use Permit obtained	04/15/2026
Phase II Interconnection Study results (or equivalent) obtained	9/5/2025
Interconnection Agreement executed	01/15/2026
Major equipment procured	01/30/2026
Federal and state discretionary permits issued	06/15/2026
Expected Construction Start Date	09/15/2026
Guaranteed Construction Start Date	11/15/2026
Initial Synchronization	01/15/2027
Network Upgrades completed	9/30/2026
Full Capacity Deliverability Status obtained	06/01/2027
Expected Commercial Operation Date	04/01/2027
Guaranteed Commercial Operation Date	06/31/2027
Commercial Operation Date Deadline	09/30/2027

Delivery Term: 20 Contract Years

Guaranteed Capacity: 2.96 MW of Installed Capacity at four (4) hours of continuous discharge

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	94.0%
2	93.7%

3	93.5%
4	93.2%
5	92.9%
6	92.7%
7	92.4%
8	92.1%
9	91.9%
10	91.6%
11	91.3%
12	91.1%
13	90.8%
14	90.5%
15	90.3%

Contract Price: \$ [REDACTED]/kW-mo. with [REDACTED]% escalation, subject to adjustment pursuant to Section 3.5(f) and pursuant to Exhibit C.

Product:

- ☒ Facility Energy
- ☒ Installed Capacity and Effective Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes
 - ☒ Full Capacity Deliverability Status
 - ☐ Energy Only

Anticipated Flexible Capacity: Amount: 2.96 MW; Flex Category: 3

Scheduling Coordinator: Buyer or Buyer's agent

Security Amount:

Development Security: (a) \$ [REDACTED]
[REDACTED] and (b) \$ [REDACTED].

Performance Security: \$ [REDACTED].

Compliance Expenditure Cap: \$74,000

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	21
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	22
2.1 Contract Term	22
2.2 Conditions Precedent	22
2.3 Development; Construction; Progress Reports.	23
2.4 Remedial Action Plan	24
2.5 Pre-Commercial Operation Actions.....	24
2.6 First Refusal on Storage Expansion Project.....	24
ARTICLE 3 PURCHASE AND SALE.....	25
3.1 Product	25
3.2 Facility Energy.....	25
3.3 Capacity Attributes.	25
3.4 Ancillary Services; Environmental Attributes	25
3.5 Resource Adequacy Failure	26
3.6 Buyer’s Re-Sale of Product	27
3.7 Change in Law	27
3.8 Additional Products	Error! Bookmark not defined.
ARTICLE 4 OBLIGATIONS AND DELIVERIES.....	29
4.1 Delivery.....	29
4.2 Interconnection.	29
4.3 Performance Guarantees	29
4.4 Facility Testing.	30
4.5 Testing Costs and Revenues.	31
4.6 Facility Operations.....	31
4.7 Dispatch Notices.	32
4.8 Facility Unavailability to Receive Dispatch Notices.	32
4.9 Energy Management.	32
4.10 Capacity Availability Notice.....	34
4.11 Outages	34
ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS	36
5.1 Allocation of Taxes and Charges.....	36
5.2 Cooperation.....	36
5.3 Environmental Costs.....	36
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY	37
6.1 Maintenance of the Facility.	37
6.2 Maintenance of Health and Safety.....	37
6.3 Shared Facilities.....	37
6.4 Decommissioning Facility and Other Costs	37

6.5	Facility Safety Plan.....	38
ARTICLE 7	METERING.....	39
7.1	Metering.....	39
7.2	Meter Verification.....	39
ARTICLE 8	INVOICING AND PAYMENT; CREDIT.....	39
8.1	Invoicing.....	39
8.2	Payment.....	40
8.3	Books and Records.....	40
8.4	Payment Adjustments; Billing Errors.....	40
8.5	Billing Disputes.....	41
8.6	Netting of Payments.....	41
8.7	Seller's Development Security.....	41
8.8	Seller's Performance Security.....	41
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	42
8.10	Buyer's Financial Statements.....	42
ARTICLE 9	NOTICES.....	43
9.1	Addresses for the Delivery of Notices.....	43
9.2	Acceptable Means of Delivering Notice.....	43
ARTICLE 10	FORCE MAJEURE.....	43
10.1	Definition.....	43
10.2	No Liability If a Force Majeure Event Occurs.....	44
10.3	Notice.....	45
10.4	Termination Following Force Majeure Event.....	45
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION.....	45
11.1	Events of Default.....	45
11.2	Remedies; Declaration of Early Termination Date.....	47
11.3	Damage Payment; Termination Payment.....	48
11.4	Notice of Payment of Termination Payment or Damage Payment.....	49
11.5	Disputes With Respect to Termination Payment or Damage Payment.....	49
11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	49
11.7	Rights And Remedies Are Cumulative.....	50
11.8	Mitigation.....	50
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	50
12.1	No Consequential Damages.....	50
12.2	Waiver and Exclusion of Other Damages.....	50
ARTICLE 13	REPRESENTATIONS AND WARRANTIES; COVENANTS.....	51
13.1	Seller's Representations and Warranties.....	51
13.2	Buyer's Representations and Warranties.....	52
13.3	General Covenants.....	53

ARTICLE 14 ASSIGNMENT	53
14.1 General Prohibition on Assignments.	53
14.2 Collateral Assignment.....	53
14.3 Permitted Assignment by Seller.....	55
14.4 Portfolio Financing.	55
14.5 Buyer Financing Assignment.....	56
ARTICLE 15 DISPUTE RESOLUTION	56
15.1 Governing Law.	56
15.2 Dispute Resolution.....	56
15.3 Attorneys’ Fees.	56
ARTICLE 16 INDEMNIFICATION	56
16.1 Indemnification.	56
16.2 Claims.	57
ARTICLE 17 INSURANCE	58
17.1 Insurance	58
ARTICLE 18 CONFIDENTIAL INFORMATION	60
18.1 Confidential Information.	60
18.2 Press Releases	61
ARTICLE 19 MISCELLANEOUS	62
19.1 Entire Agreement; Integration; Exhibits.....	62
19.2 Amendments.	62
19.3 No Waiver.....	62
19.4 No Agency, Partnership, Joint Venture or Lease.....	62
19.5 Severability.	62
19.6 Mobile-Sierra.	62
19.7 Service Contract.....	63
19.8 Counterparts.....	63
19.9 Electronic Delivery.	63
19.10 Binding Effect.....	63
19.11 No Recourse to Members of Buyer.	63
19.12 Forward Contract.	63
19.13 Change in Electric Market Design.....	63
19.14 Further Assurances.....	64

Exhibits:

EXHIBIT A: FACILITY DESCRIPTION

EXHIBIT B: FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

EXHIBIT C: COMPENSATION

EXHIBIT D: SCHEDULING COORDINATOR RESPONSIBILITIES

EXHIBIT E: PROGRESS REPORTING FORM

EXHIBIT F: FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

EXHIBIT G: FORM OF DAILY AVAILABILITY NOTICE

EXHIBIT H: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

EXHIBIT I: FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

EXHIBIT J: FORM OF CONSTRUCTION START DATE CERTIFICATE

EXHIBIT K: FORM OF LETTER OF CREDIT

EXHIBIT L: FACILITY SAFETY PLAN AND DOCUMENTATION

EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

EXHIBIT N: NOTICES

EXHIBIT O: CAPACITY AND EFFICIENCY RATE TESTS

EXHIBIT P: FACILITY AVAILABILITY CALCULATION

EXHIBIT Q: OPERATING RESTRICTIONS

EXHIBIT R: METERING DIAGRAM

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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 the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Additional Annual Cycle**” means all Cycles in a given Contract Year in excess of maximum annual Cycles set forth in Exhibit Q.

“**Additional Products**” has the meaning set forth in Section 3.8.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (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.

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

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that

the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.

“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.

“Approved Maintenance Hours” means up to fifty (50) hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.11.

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

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

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

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

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“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.

“Battery Charging Factor” means the percentage SOC of the Facility after the first five (5) hours of the charging phase of the applicable Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Facility after the first four (4) hours of the discharging phase of the applicable Capacity Test.

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

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

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

“Buyer Dispatched Test” has the meaning in Section 4.4(f).

“Buyer Purchased Replacement RA” has the meaning in Section 3.5(c).

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

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

“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 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, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.33 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 charge, discharge 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 Replacement Price” means the price actually paid for any Buyer Purchased Replacement RA pursuant to Section 3.5 hereof, plus costs reasonably incurred by Buyer in purchasing such Buyer Purchased Replacement RA.

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

“Capacity Test” or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, Efficiency Rate or any other test conducted pursuant to Exhibit O.

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

“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*, 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 Ultimate Parent, any intermediate entity or Seller pledged to or owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller and may be freely transferred by such Lender (including tax equity provider) without being deemed a Change of Control.

“Charging Energy” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, *provided*, any such instruction shall be in accordance with the Operating Restrictions.

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

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

“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 of the same to Buyer substantially in the form of Exhibit H.

“Commercial Operation Capacity Test” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Commercial Operation Date” or **“COD”** means the date on which the Facility has achieved Commercial Operation as is identified in the COD Certificate as the Commercial Operation Date.

“Commercial Operation Date Deadline” has the meaning set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Commercial Operation Delay Damages” means an amount equal to (a) the amount of Development Security that is remaining as of the 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 Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B, and the Commercial Operation Date Deadline.

“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.

“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”.

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

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

“Construction Start Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) the total number of days between the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date. Seller shall not be obligated to pay aggregate Construction Start Delay Damages in excess of twenty percent (20%) of the Development Security amount.

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

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

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

“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.

“CPM Price” has the meaning set forth in Section 3.5(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“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.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

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

(b) a curtailment ordered by the 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.

“**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 Delay Damages**” means Construction Start Delay Damages and Commercial Operation Delay Damages.

“**Damage Payment**” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

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

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

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

“**Delivery Point**” means the Facility Pnode on the CAISO grid.

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

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

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

“**Discharging Energy**” means the Energy delivered from the Facility to the Delivery Point as measured by the Facility Meter at the Facility Metering Point.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, any such operating instruction and subsequent updates shall be in accordance with the Operating Restrictions. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, *provided*, any such instruction shall be in accordance with the Operating Restrictions.

“**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 the CAISO, Buyer or Buyer’s SC, 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.

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the 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 Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

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

“Effective Flexible Capacity” or **“EFC”** means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Efficiency Rate” means the rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Facility Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Efficiency Rate Adjustment” has the meaning set forth in Exhibit C.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

“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 Management System” or **“EMS”** means the Facility’s energy management system.

“Environmental Attributes” shall mean any and all attributes under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future to the Facility and its displacement of conventional energy generation.

“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.

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

“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 Construction Start Date” means the date set forth on the Cover Sheet.

“Expected Commercial Operation Date” means the date set forth on the Cover Sheet.

“Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“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, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Facility Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The 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 Metering Point” means the location(s) of the Facility Meter shown in Exhibit R.

“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.

“**Flexible Capacity**” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“**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.

“**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 receiving Charging Energy or making 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.

“**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), calculated at a reasonable discount rate acceptable to both Parties, resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a 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.

“**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.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Availability**” has the meaning set forth in Section 4.3(a).

“Guaranteed Capacity” means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet, as may be adjusted pursuant to Section 5 of Exhibit B.

“Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Guaranteed Construction Start Date” means the date set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, 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 MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” 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 lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate

substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

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

“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 Capacity Limit” means the maximum instantaneous amount of Facility Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 2.96 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.

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

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

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

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

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 25, 2016, 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.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“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 (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or

refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

“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.

“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), calculated at a reasonable discount rate acceptable to both Parties or, if the Parties fail to reach an agreement within 30 days, the higher of (a) the then current 52-week high Wall Street Journal Prime Rate plus 2%, or (b) 6%, resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a 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]

“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)).

"Master File" has the meaning set forth in the CAISO Tariff.

"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 Capacity Availability" has the meaning set forth in Exhibit P.

"Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

"Moody's" means Moody's Investors Service, Inc., or its successor.

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

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

"NERC" means the North American Electric Reliability Corporation.

"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-Buyer Dispatch" means a dispatch by Seller pursuant to a Seller Initiated Test.

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

"Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (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 restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

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

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

“Performance Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet, as such amount may be reduced pursuant to Section 8.8.

“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 [REDACTED] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of 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 4.11(a).

“PMAx” means the applicable CAISO-certified maximum operating level of the Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Facility.

“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 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.

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4(b).

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

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

“Prudent 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 energy storage facilities 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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, 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.

“Participating Transmission Owner” or **“PTO”** has the meaning set forth in the CAISO Tariff.

“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 3.5(b).

“RA Guarantee Date” means the date on which Seller, after obtaining Full Capacity Deliverability Status for the Facility, begins delivering Resource Adequacy Benefits to Buyer in accordance with Section 3.3. For avoidance of doubt, the RA Guarantee Date shall not occur prior to the calendar month in which the Net Qualifying Capacity of the Facility is first able to be included in Buyer’s RA Compliance Showing.

“RA Shortfall Month” means any month, commencing with the month that contains the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was either (i) not published by the Notification Deadline for such Showing Month, or (ii) was less than the Qualifying Capacity of the Facility for such month.

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

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

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

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

“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; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Facility’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 6.5, in its sole discretion, that the Seller, the Facility Safety Plan, and/or Seller Attestation, as applicable, is not consistent with the Safety Requirements; or (g) 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.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“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 Flexible Capacity, and 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 Resource” shall have the meaning used in Resource Adequacy Rulings.

“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.

“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 material or environmental harm.

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

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Requirements, California Senate Bill 38, 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”** has a corollary meaning.

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

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

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

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

“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).

“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 one hundred thousand dollars (\$100,000.00); (d) release of Hazardous Substances above the limits, or violating the requirements, established by permits, codes, standards, regulations, Laws, or Governmental Authorities; or (e) environmental impacts exceeding those authorized by permits or Law.

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

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

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

“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 Facility Energy to the Delivery Point, including the Interconnection Facilities and 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 the 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 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 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 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. The Expected Station Use is MWh per Contract Year.

“Storage Expansion Project” has the meaning set forth in Section 2.6.

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

“Subsequent Purchaser” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

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

“Tax Credits” means any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, 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.

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

“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 Facility Energy from 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 Ignite Ventures, Inc., dba Ignite.Energy, a California corporation.

“Unplanned Outage” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

“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.

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 or including (as applicable) 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*, 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 Commercial Operations Date; Conditions Precedent. Seller shall provide Notice to Buyer of the 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 Commercial Operation. Following Buyer’s receipt of such Notice, Buyer shall have five (5) Business Days to either approve Seller’s request for Commercial Operation or request additions or revisions to the conditions precedent documentation. Upon Buyer’s approval of Seller’s achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(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 most recent annual report, audited consolidated financial statements, and unaudited consolidated 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) By no later than the Commercial Operation Date, Seller shall have delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(c) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect, and has delivered to Buyer a copy of the Interconnection Agreement;

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

(e) By no later than the Commercial Operation Date, Seller has obtained CAISO Certification for the Facility and provided proof to Buyer;

(f) By no later than the Commercial Operation Date, all applicable regulatory authorizations, approvals and permits for the operation of the Facility that are required for Commercial Operation have been obtained and all required conditions thereof have been satisfied and shall be in full force and effect, including a decommissioning plan as part of any permitting process for the Facility, if applicable;

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

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

(i) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(j) Seller has paid Buyer for all invoiced amounts owing under this Agreement, if any, including Construction Start Delay Damages and Commercial Operation Delay Damages;

(k) Seller shall have submitted to Buyer a Facility Safety Plan in the form of Exhibit L.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall

provide to Buyer a Progress Report and agrees to regularly scheduled 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 directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone or anticipates it will miss a Milestone, 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 cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Expected Commercial Operation Date, 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 the Expected Commercial Operation Date, as such date may be extended by Section 4 of Exhibit B 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.

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

2.6 **First Refusal on Storage Expansion Project.** In consideration for Buyer entering into this Agreement, Seller hereby grants Buyer an irrevocable right of first refusal during the Contract Term to procure storage product from any new storage capacity that either Seller or any Seller Affiliate installs or constructs (a) at the Site, or (b) on real property located within one (1) mile of the Site, or (c) on any real property regardless of location if such new storage capacity will utilize any Shared Facilities (each project satisfying conditions (a)-(c) shall be considered a "Storage Expansion Project"). During the Contract Term, neither Seller nor Seller's Affiliates shall enter into any agreement to sell storage product from a Storage Expansion Project without first offering to sell product from such Storage Expansion Project to Buyer on terms and conditions that Seller intends to offer to third parties. Should Buyer fail to accept the terms and conditions offered by Seller within ten (10) Business Days after having received an offer notice from Seller, Seller shall be free to offer any storage product from such new storage capacity to third parties on substantially similar terms and conditions as it was offered to 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 2.6.

ARTICLE 3 PURCHASE AND SALE

3.1 **Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

3.2 **Facility Energy.** Except for Facility Energy resulting from a Non-Buyer Dispatch, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.7, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.7, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.4 Ancillary Services; Environmental Attributes

(a) **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility's

initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

(b) Environmental Attributes. Buyer shall have the exclusive rights to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

3.5 Resource Adequacy Failure

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall provide Replacement RA, as set forth in Section 3.5(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, compensation for any Buyer Purchased Replacement RA, as set forth in Section 3.5(c) and/or the RA Deficiency Amount, as set forth in Section 3.5(d). 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) Buyer Purchased Replacement RA. If Seller does not provide Replacement RA in the full amount of the RA Shortfall Amount by the Notification Deadline, Buyer may, but shall not be required to, purchase Replacement RA in an amount up to the Shortfall Amount not provided by Seller for the applicable Shortfall Month ("**Buyer Purchased Replacement RA**"), by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Buyer Purchased Replacement RA. If Buyer purchases any Buyer Purchased Replacement RA, Seller shall pay to Buyer an amount equal to the quantity of Buyer Purchased Replacement RA for the applicable RA Shortfall Month multiplied by the Capacity Replacement Price.

(d) **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 Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer, minus (iii) any Replacement RA that was included in the Showing Month for Buyer, (iv) minus any Buyer Purchased Replacement RA that was included in the Showing Month for Buyer (the “**RA Shortfall Amount**”), multiplied by the sum of the applicable CPUC Resource Adequacy penalty amounts established by Decision 20-06-031, as modified by any subsequent CPUC decisions, plus any applicable penalty amount or charges imposed by the CAISO for a failure to meet the applicable Resource Adequacy Requirements.

(e) For avoidance of doubt, if the Net Qualifying Capacity has neither been published by nor 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.

(f) **Energy Only Contract Price Adjustment.** Prior to the occurrence of the RA Guarantee Date, the provisions of Section 3.5(a)-(d) are suspended and the Contract Price shall be reduced to fifty percent (50%) of the Contract Price on the Cover Sheet for the applicable Contract Year. Upon the occurrence of the RA Guarantee Date, the Contract Price shall be increased to the original Contract Price and the requirements of Sections 3.5(a)-(d) shall apply to all such months occurring after (i) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved FCDS, and (ii) Buyer is able to show the Facility on its RA Showing.

3.6 **Buyer’s Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, provided, that Buyer reimburses Seller for all associated costs and expenses incurred by Seller. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Change in Law**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide Resource Adequacy Benefits that satisfy the requirements of the Resource Adequacy Rulings. 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 definition of Environmental Attributes and Capacity Attributes, including amendments to this Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) require submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring (including a CAISO RA Enhancement) after the Effective Date has increased Seller's 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) Environmental Attributes;

(ii) Capacity Attributes;

(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. 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.

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

(f) 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 3.7, 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. 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 3.7, Seller's obligation to deliver the applicable 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.

3.8 **Additional Products**

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, which are independent of the Product and do not interfere with the sale of Product under this Agreement (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 shall notify the other upon becoming aware of such Additional Products, and the Parties shall negotiate in good faith how to monetize such Additional Products and split any net revenue from such monetization; provided that (i) the creation, registration, sale or transfer of such Additional Products shall not 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); 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.** 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 Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 **Interconnection.** Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.

4.3 **Performance Guarantees**

- (a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than ninety-eight percent (98%) (the “**Guaranteed Availability**”), which Monthly Capacity Availability shall be calculated in accordance with Exhibit P.
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit Q. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the “**Performance Guarantees**”.
- (c) Buyer’s remedies for Seller’s failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the Efficiency Rate Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C.

4.4 **Facility Testing.**

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.

(c) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity or Efficiency Rate, as applicable, then the actual capacity or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(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).

(f) Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation), any 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**”.

(g) 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 (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(h) 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.

4.5 **Testing Costs and Revenues.**

(a) 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.

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

(c) 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.

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 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 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.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the 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. 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).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the 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 Capacity Availability.

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery 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 Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge and (ii) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility.

(d) Discharging Notices. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), subject to the requirements and limitations set forth in this Agreement, by causing Discharging Notices to be issued. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the 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 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 Facility other than as permitted hereunder or as expressly addressed in this Section 4.9, 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 after lapse of the applicable cure period set forth in Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the 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 Facility as set forth in Section 4.9(c)).

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility; *provided*, prior to the Commercial Operation Date, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility.

(i) **Curtailments.** Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order 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 Dispatch Notices during any Curtailment Order consistent with the operational procedures.

(j) **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) Station Use may not be supplied from Charging Energy or Facility Energy, and (iii) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.10 **Capacity Availability Notice.**

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

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **Outages**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall

submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. 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.

(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.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.11(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.

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

(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.

ARTICLE 5

TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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). For sake of further clarity, sales taxes, ad valorem taxes, or similar taxes imposed on the sale of Product to third parties shall be borne by Buyer. 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 date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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.** 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 promptly 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 (and, at a minimum, the Performance Guarantees).

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 Facility 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.

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) **Prior to Delivery Term.** At least forty-five (45) days prior to the Commercial Operation Date, Seller shall submit for Buyer's review a **Facility Safety Plan**, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Commercial Operation Date and (B) Seller's consideration of the Facility Safety Plan items in **Exhibit L**. In the event Buyer provides Notice to Seller that the Facility Safety Plan is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and Seller shall revise the Facility Safety Plan to address the inconsistencies identified by Buyer.

(b) **Delivery Term.** Throughout the Delivery Term, Seller shall update the safeguards and the Facility Safety Plan 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 demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(c) **Reporting Serious Incidents.** Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

(d) **Remediation.**

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

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

Seller's failure to resolve a Remediation Event, other than due to the occurrence of a Force Majeure Event as described in this Section 6.5(d)(iv), by obtaining Buyer's written acceptance of the Attestation within the Remediation Period is a material breach of this Agreement; provided that that Seller may request to extend the Remediation Period by up to ninety (90) days. Buyer shall not unreasonably withhold approval of such extension. Seller may request an additional extension

of the Remediation Period of up to ninety (90) days, which Buyer may approve in its sole discretion. Except as the result of a Force Majeure Event, the Remediation Period will not continue for more than two-hundred and seventy (270) days from the first occurrence of the Remediation Event. The number of days of the Buyer Remediation Review Period shall not be included in calculating the number of days of the Remediation Period. The Commercial Operation Date shall not occur during a Remediation Period. If Seller provides Notice to Buyer, in compliance with Section 10.3, demonstrating that a Remediation Event is a Force Majeure Event, and that Seller's ability to resolve the Remediation Event is prevented by the Force Majeure Event, then the Remediation Period shall be extended on a day-for-day basis until Seller is no longer prevented from resolving the Remediation Event by the Force Majeure Event. This Section does not limit, reduce, or otherwise modify any rights of remedies of Buyer under any other provisions of this Agreement.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and 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 Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. 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, 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 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.

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. 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, it shall be promptly repaired or replaced. If a 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 use commercially reasonable efforts to deliver an invoice to Buyer for 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 Charging Energy and the amount of Facility Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) 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.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments 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 (30) days of Buyer's receipt of Seller's invoices; *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.

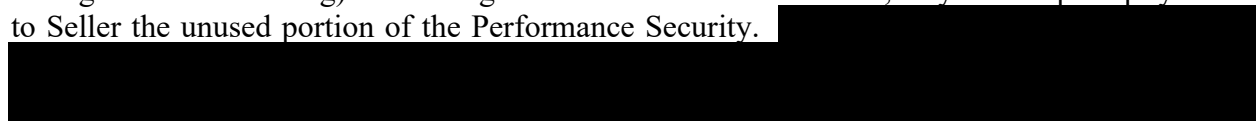
8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction 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.

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 during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B 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 and increase the Development Security within ten (10) Business Days after the Conditional Use Permit for the Facility has been issued. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. 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 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.



[REDACTED]

(a) [REDACTED]

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 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 electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, 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.

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 the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide;

sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in 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 (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 caused by a Force Majeure Event.

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. 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 that is subject to the Event of Default (the "**Defaulting Party**"), 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; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, and (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive

remedies for which are set forth in Exhibit C and Exhibit P), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) 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 discharged by the Facility;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date and exhaustion of the maximum Construction Start Delay Damages, or (B) achieve Commercial Operation on or before the Commercial Operation Date Deadline;

(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability calculations for such Contract Year is not equal to at least seventy percent (70%) of the Guaranteed Availability, and Seller fails to (x) deliver to Buyer within twenty (20) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) multiplied by the Installed Capacity 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 one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) 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;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in

each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (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.

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

- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;
- (b) in case of a Terminated Transaction, to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or

Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

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

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. 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 Commercial Operation Date caused by Seller's 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) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) Seller's Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, plus (ii) without duplication of any costs or expenses covered by preceding clause, all actual, documented and verifiable Costs that have been actually incurred, or become payable, by Seller between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4 arising out of the termination of this Agreement, less (B) the fair market value (determined in a commercially reasonable manner) of (i) all Seller's assets relating to the Facility, individually, or (ii) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date**. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**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. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect

or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a 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 Termination Payment or Damage 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 Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage 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 Termination Payment or Damage 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 Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage 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 Termination Payment or Damage 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 Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may:

(a) sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years 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), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, nor

(b) 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 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; 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 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 Project or the delivery of materials necessary to complete the Project, 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) 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.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below 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 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 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) five (5) 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 and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided 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, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, that such sale or transfer will not require Buyer's consent if the entity meets the definition of a Permitted Transferee; and

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 shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 Permitted Assignment by Seller. Any assignment or transfer of this Agreement by Seller will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, that Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least thirty (30) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement 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.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

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.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party 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 its Affiliates, directors, officers, attorneys, employees, representatives and agents (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) a violation of applicable Laws by Buyer or (iii) 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.

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 Five Million Dollars (\$5,000,000) 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, 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

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

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

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

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

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

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

Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.8 **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.

19.9 **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.

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

19.11 **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 officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.12 **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.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set

forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

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

California Condor LLC,
a California limited liability company
[SELLER]

By: _____
Name: _____
Title: _____

Redwood Coast Energy Authority, a
California joint powers authority

By: _____
Name: _____
Title: _____

APPROVAL DRAFT

EXHIBIT A: FACILITY DESCRIPTION

Project Name: Flycatcher 1

Facility Description: Facility will consist of three (3) Tesla Megapack 2 XL units, each rated at 1,320 kVA / 979.2 kW, totaling 3,916.8 kWh of storage capacity for a total of 2.94 MW / 11.75 MWh, operating at 480 VAC and including integrated packaged inverters and batteries.

APN: 401-121-011

Project Physical Address: 97 Bay Street, Humboldt County, Samoa, CA 95564

Latitude and Longitude: 40.799912, -124.203283

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

Point of Interconnection: Fairhaven Substation

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

Transmission Access Charge Area: NGBA

P-node: Fairhavn_7_B1 or Fairhavn_6_N001

CAISO Resource ID: TBD

Anticipated Flexible Capacity Resource Category (as of the Effective Date): Category 3 (but can respond to Category 1 or Category 2 needs as well)

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

Additional Information:

EXHIBIT B: FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the 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 Construction Start Delay Damages or Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.
 - b. **"Construction Start"** will occur following Seller's execution of an EPC Contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility that authorizes the contractor to mobilize to the Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **"Construction Start Date."**
 - c. If Construction Start is not achieved by the Guaranteed Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B. Construction Start Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in such invoice. Seller shall not be obligated to pay aggregate Construction Start Delay Damages in excess of twenty percent (20%) the Development Security amount. The Parties agree that Buyer's receipt of Construction Start Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
2. **Commercial Operation of the Facility.** **"Commercial Operation"** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **"COD Certificate"**). The **"Commercial Operation Date"** shall be the date identified in the COD Certificate as the Commercial Operation Date.
 - a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4

of this Exhibit B. Seller shall notify Buyer at least forty-five (45) days before the anticipated Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, ninety-five percent (95%) of all Construction Start Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Start Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, Seller shall either: (i) pay Commercial Operation Delay Damages for each day following the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, until the Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate cumulative Commercial Operation Delay Damages and Construction Delay Damages in excess of the Development Security amount required hereunder; or (ii) provide Buyer with a quantity of Replacement RA in any amount up to the expected Qualifying Capacity the Facility would have been able to provide with respect to such Showing Month, for each month following the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, until the Commercial Operation Date. Seller shall not owe Buyer any Commercial Operation Delay Damages for any day during a month where Seller has provided Replacement RA to Buyer in an amount equal to the expected Qualifying Capacity of the Facility. For any Showing Month in which Seller delivers a Replacement RA Amount that is less than the full expected Qualifying Capacity of the Facility, Seller's obligation to pay Commercial Operation Delay Damages for such month will be pro-rated by the percentage of Replacement RA delivered to Buyer for such month to the Qualifying Capacity of the Facility for such month. However, the Replacement RA provided by Seller to Buyer pursuant to this Section 2(b) of Exhibit B, shall not reduce or otherwise alter the Damage Payment that is owed to Buyer by Seller if Buyer declares an Event of Default under Section 11.1(b)(ii), and further, the value of any such Replacement RA does not reduce or otherwise count towards the cap on Seller's liability that is described in Section 7 of Exhibit B. For the avoidance of doubt, the Delivery Term shall not commence with Seller's provision of Replacement RA, and shall only commence once Seller provides Buyer with Product from the Facility.
- d. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. If Seller provides Buyer with Replacement RA pursuant to Section 2(b) of Exhibit B, Seller shall issue an invoice and Buyer shall pay for such Replacement RA at 50% of the Contract Price in accordance with Section 8.1. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages or Replacement RA shall be Buyer's sole and exclusive remedy for Seller's delay in achieving the Commercial Operation Date on or before the 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)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 in the event that such delay exceeds the Commercial Operation Date Deadline.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the 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 Guaranteed Construction Start Date, and the Expected Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of 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 Facility and to permit Seller and the 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 complete and ready for the 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 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 Facility Energy at the Delivery Point by the Expected Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions of the Guaranteed Construction Start Date granted under Section 4 of this Exhibit B shall not exceed ninety (90) days, for any reason, and the cumulative extensions of the Expected Commercial Operation Date granted under subpart b or c of Section 4 of this Exhibit B shall not exceed the Guaranteed Commercial Operation Date, for any reason. 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 Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall

have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

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

7. **Cap on Seller Liability Prior to Commercial Operation Date.** Seller’s aggregate liability prior to the Commercial Operation Date for any Damage Payment, Construction Start Delay Damages and Commercial Operation Delay Damages shall be capped at an amount equal to one hundred percent (100%) of the Development Security amount.

EXHIBIT C: COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment x 1000. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a 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 Capacity and/or Efficiency Rate are applicable.

(b) Availability Adjustment. The “**Availability Adjustment**” (or “**AA**”) is calculated as follows:

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

$$AA = 100\%$$

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

$$AA = 100\% - \text{Monthly Capacity Availability}$$

- (iii) If the Monthly Capacity Availability is less 70%, but greater than or equal to 50%, then:

- (iv) $AA = 100\% - (\text{Monthly Capacity Availability} \times 2)$

- (v) If the Monthly Capacity Availability is less than 50%, then:

$$AA = 0$$

(c) Efficiency Rate Adjustment. The “**Efficiency Rate Adjustment**” is calculated as follows:

- (i) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

$$\text{Efficiency Rate Adjustment} = 100\%$$

- (ii) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

$$\text{Efficiency Rate Adjustment} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

- (iii) If the Efficiency Rate is less than 75%, but greater than or equal to 50%, then:

$$\text{Efficiency Rate Adjustment} = 100\% - (\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate})$$

- (iv) If the Efficiency Rate is less than 50%, then:

$$\text{Efficiency Rate Adjustment} = 0$$

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

(e) Additional Annual Cycle Payment. Within thirty (30) days after the end of each Calendar Year, Buyer shall pay Seller an amount equal to the sum of:

(i) the product of (A) the number of Additional Annual Cycles during that Contract Year up to 45 Additional Annual Cycles, multiplied by (B) the amount of \$[REDACTED]/Cycle, plus

(ii) the product of (A) the number of Additional Annual Cycles during that Contract Year in excess of 45 up to 80 Additional Annual Cycles, multiplied by (B) the amount of \$[REDACTED]/Cycle.

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

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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.

(c) CAISO Costs and Revenues. 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 Product Scheduled or delivered from the Delivery Point; *provided, however*, 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. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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.

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

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

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

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

provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

APPROVAL DRAFT

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. Gantt chart schedule showing progress on major steps to achieving each of the Milestones.
3. 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.
4. Remedial Action Plan (if required per Section 2.4).
5. Description of any planned material changes to the Facility or the site that Buyer has not otherwise been made aware of by Seller.
6. 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.
7. Photos, in sufficient quantity and of appropriate detail, in order to document interconnection, construction and startup progress.
 8. Upon commencement of Test Energy deliveries, a report on Facility performance including performance projections for the next twelve (12) months.
 9. A summary of Seller's efforts to comply with workforce and prevailing wage requirements.
 10. Any other documentation reasonably requested by Buyer.

EXHIBIT F: FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Typical Month]

Hour	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
0	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
4	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
5	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
18	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
19	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
20	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
21	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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.

APPROVAL DRAFT

EXHIBIT G: FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Comments
	(MW)			
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				
0:00				

Comments: _____

EXHIBIT H: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Facility Energy to, the CAISO Balancing Authority.
3. Seller has provided Buyer Maximum Import Capability (MIC) rights for full RA Product, if applicable.
4. The commissioning of the equipment has been completed in accordance with the manufacturers' specifications.
5. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____[DATE]_____.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.
9. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT I: FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("**Certification**") of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] ("**Engineer**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between [SELLER ENTITY] 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 that a Capacity and Efficiency Rate Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, (iii) a Battery Discharging Factor of __%, and (iv) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

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 ENTITY] ("**Seller**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

(such description shall amend the description of the Site in Exhibit A of the Agreement.)

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

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. [XXXXXXX] (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. [XXXXXXX] 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 (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 materials 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

Include 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.

Include 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.

EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Redwood Coast Energy Authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 3.5 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: Attn: Street: City: Attn: Phone: Email:	All Notices: Attn: Street: City: Attn: Phone: Email:
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: Federal Tax ID Number:
Invoices & Payments: Attn: Phone: Email:	Invoices & Payments: Attn: Phone: Email:
Scheduling: Attn: Phone: Email:	Scheduling: Attn: Phone: Email:
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Email:	Credit and Collections: Attn: Phone: Email:
With additional Notices of an Event of Default to: Attn: Phone: Email:	With additional Notices of an Event of Default to: Attn: Phone: Email:

EXHIBIT O: CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

- A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).
- B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the 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 then-current Effective Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each 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 Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.

- (a) 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.
- (b) 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.
- (c) 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.

- A. 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.
 - 1. Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
 - 2. Electrical input at maximum charging level at the 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 Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - 1. Time;
 - 2. The amount of Facility Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
 - 3. Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
 - 4. Storage Level (MWh).
- C. Site Conditions. During each CT, 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 Facility; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT 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 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 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 Facility Meter, to go from 0% SOC to 100% SOC;
7. Amount of Facility Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

1. General. At all times during a CT, the 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 Facility.

2. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT 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 CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in

its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
2. 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; and
3. Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor.

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

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing 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 Capacity Tests based on the then current design of the Facility ("**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

1. The total amount of Facility 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 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 Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

2. The total amount of Facility 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 Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

- Procedure:

1. System Starting State: The Facility will be in the on-line state at 0% SOC.
2. Record the initial value of the SOC.
3. Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.
4. Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
5. Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
6. Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
7. Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

8. Record and store the Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.

9. If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.

10. Record and store the Facility Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

- Test Results:

1. The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

2. The total amount of Facility Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

1. Record the Facility active power level at the Facility Meter.
2. Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
3. Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 1. Record the Facility active power level at the Facility Meter.
 2. Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 3. Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 1. Record the Facility reactive power level at the Facility Meter.
 2. Command the Facility to follow 1.48 MW for ten (10) minutes.
 3. Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:

1. Record the Facility reactive power level at the Facility Meter.
 2. Command the Facility to follow 1.48 MW for ten (10) minutes.
 3. Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

APPROVAL DRAFT

EXHIBIT P: FACILITY AVAILABILITY CALCULATION

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

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

Where:

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

MONTHRS_m is the total number of hours for the month;

UNAVAILHRS_m is the total number of hours, or partial hours, in the month during which the Facility was unavailable to charge and/or discharge Energy and/or provide Ancillary Services, in whole or in part, for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): Approved Maintenance Hours, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, and Buyer breach or default. 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 Facility for less than a full hour or that results in unavailability of less than all of Effective Capacity will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Facility is unavailable, but for less than the full amount of the Effective Capacity, the UNAVAILHRS_m for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Effective Capacity.

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

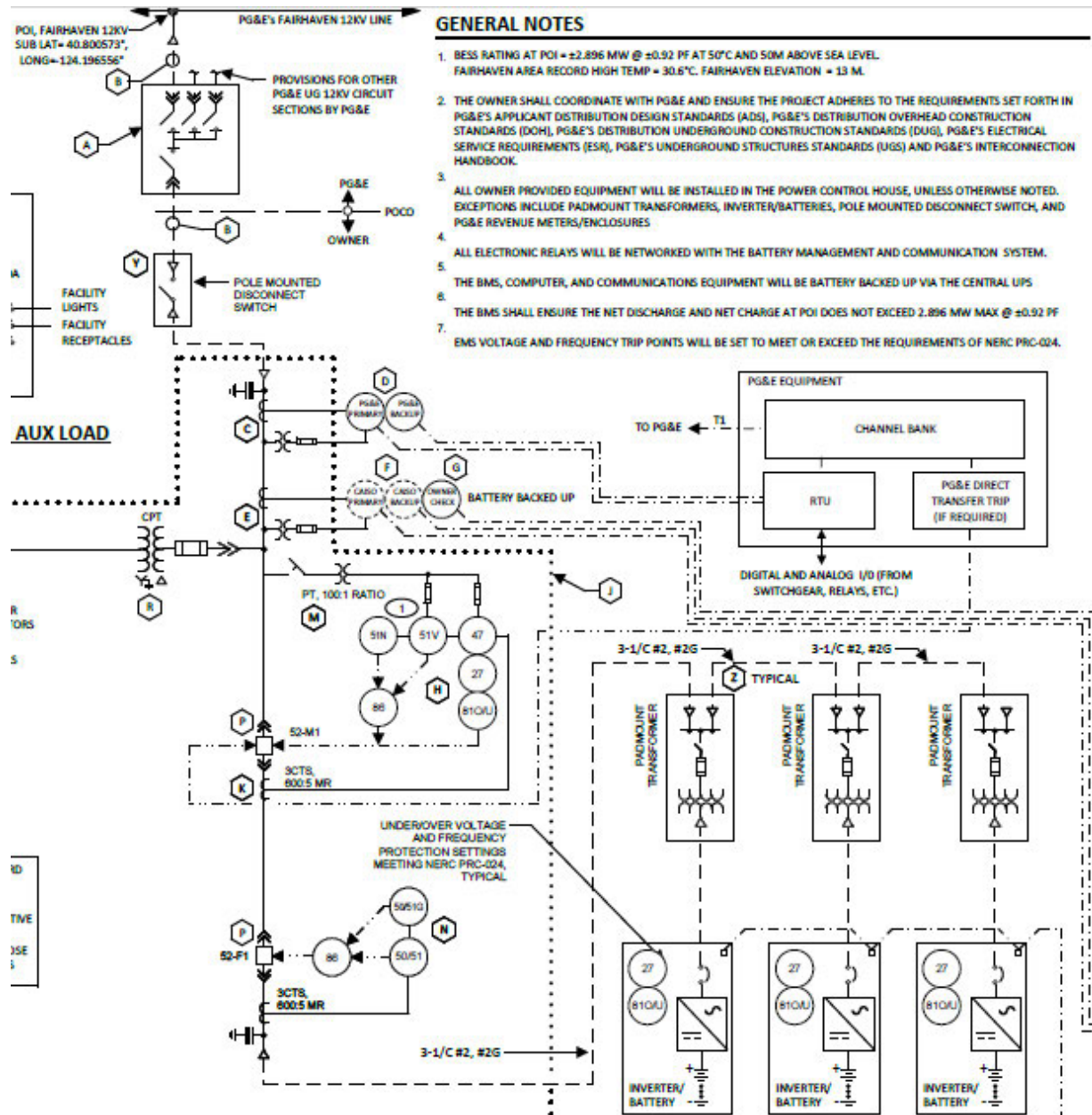
If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time Buyer is required to schedule or bid the Facility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

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 Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, Operating Restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]		
Technology:	Battery Energy Storage System (BESS)		
Storage Unit Name:	Flycatcher 1		
A. Contract Capacity			
Guaranteed Capacity (MW):	2.96 MW		
Effective Capacity (MW):	2.96 MW		
B. Total Unit Dispatchable Range Information			
Interconnect Voltage (kV)	12 kV		
Maximum State of Charge (SOC) during Charging	100%		
Minimum State of Charge (SOC) during Discharging	0%		
Maximum Storage Level (MWh):	11.84 MWh		
Minimum Storage Level (MWh):	0 MWh		
Maximum Charging Capacity (MW):	2.96 MW		
Maximum Discharging Capacity (MW):	2.96 MW		
Maximum energy throughput (BET) (Discharged MWh/year):	3840 MWh/year		
C. Daily/Monthly/Annual Cycles			
Maximum daily Cycles:	2		
Maximum monthly Cycles:	60		
Maximum annual Cycles Covered by Contract Price:	320		
Maximum Additional Annual Cycles	80		
Maximum Delivery Term Cycles (20 years)	8000		
D. Charge and Discharge Rates			
Mode	Maximum (MW)	Ramp Rate (MW/s) Description	
Energy (Charge)	1.9	[Charging mode]	
Energy (Discharge)	1.9	[Discharging mode]	
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:	Yes		
Voltage support is included:	Yes		

EXHIBIT R: METERING DIAGRAM



ENERGY STORAGE SERVICE AGREEMENT

FLYCATCHER 2

COVER SHEET

Seller: California Condor LLC, a California limited liability company

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

Description of Facility: A 3 MW / 12 MWh lithium iron phosphate battery energy storage facility.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Conditional Use Permit obtained	04/15/2026
Phase II Interconnection Study results (or equivalent) obtained	9/5/2025
Interconnection Agreement executed	01/15/2026
Major equipment procured	01/30/2026
Federal and state discretionary permits issued	06/15/2026
Expected Construction Start Date	09/15/2026
Guaranteed Construction Start Date	11/15/2026
Initial Synchronization	01/15/2027
Network Upgrades completed	9/30/2026
Full Capacity Deliverability Status obtained	06/01/2027
Expected Commercial Operation Date	04/01/2027
Guaranteed Commercial Operation Date	06/31/2027
Commercial Operation Date Deadline	09/30/2027

Delivery Term: 20 Contract Years

Guaranteed Capacity: 2.96 MW of Installed Capacity at four (4) hours of continuous discharge

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	94.0%
2	93.7%

3	93.5%
4	93.2%
5	92.9%
6	92.7%
7	92.4%
8	92.1%
9	91.9%
10	91.6%
11	91.3%
12	91.1%
13	90.8%
14	90.5%
15	90.3%

Contract Price: \$ [REDACTED]/kW-mo. with [REDACTED]% escalation, subject to adjustment pursuant to Section 3.5(f) and pursuant to Exhibit C.

Product:

- ☒ Facility Energy
- ☒ Installed Capacity and Effective Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes
 - ☒ Full Capacity Deliverability Status
 - ☐ Energy Only

Anticipated Flexible Capacity: Amount: 2.96 MW; Flex Category: 3

Scheduling Coordinator: Buyer or Buyer's agent

Security Amount:

Development Security: (a) \$ [REDACTED]
[REDACTED] and (b) \$ [REDACTED].

Performance Security: \$ [REDACTED].

Compliance Expenditure Cap: \$74,000

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	21
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	22
2.1 Contract Term	22
2.2 Conditions Precedent	22
2.3 Development; Construction; Progress Reports.	23
2.4 Remedial Action Plan	24
2.5 Pre-Commercial Operation Actions.....	24
2.6 First Refusal on Storage Expansion Project.....	24
ARTICLE 3 PURCHASE AND SALE.....	25
3.1 Product	25
3.2 Facility Energy.....	25
3.3 Capacity Attributes.	25
3.4 Ancillary Services; Environmental Attributes	25
3.5 Resource Adequacy Failure	26
3.6 Buyer’s Re-Sale of Product	27
3.7 Change in Law	27
3.8 Additional Products	Error! Bookmark not defined.
ARTICLE 4 OBLIGATIONS AND DELIVERIES.....	29
4.1 Delivery.....	29
4.2 Interconnection.	29
4.3 Performance Guarantees	29
4.4 Facility Testing.	30
4.5 Testing Costs and Revenues.	31
4.6 Facility Operations.....	31
4.7 Dispatch Notices.	32
4.8 Facility Unavailability to Receive Dispatch Notices.	32
4.9 Energy Management.	32
4.10 Capacity Availability Notice.....	34
4.11 Outages	34
ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS	36
5.1 Allocation of Taxes and Charges.....	36
5.2 Cooperation.....	36
5.3 Environmental Costs.....	36
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY	37
6.1 Maintenance of the Facility.	37
6.2 Maintenance of Health and Safety.....	37
6.3 Shared Facilities.....	37
6.4 Decommissioning Facility and Other Costs	37

6.5	Facility Safety Plan.....	38
ARTICLE 7	METERING.....	39
7.1	Metering.....	39
7.2	Meter Verification.....	39
ARTICLE 8	INVOICING AND PAYMENT; CREDIT.....	39
8.1	Invoicing.....	39
8.2	Payment.....	40
8.3	Books and Records.....	40
8.4	Payment Adjustments; Billing Errors.....	40
8.5	Billing Disputes.....	41
8.6	Netting of Payments.....	41
8.7	Seller's Development Security.....	41
8.8	Seller's Performance Security.....	41
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	42
8.10	Buyer's Financial Statements.....	42
ARTICLE 9	NOTICES.....	43
9.1	Addresses for the Delivery of Notices.....	43
9.2	Acceptable Means of Delivering Notice.....	43
ARTICLE 10	FORCE MAJEURE.....	43
10.1	Definition.....	43
10.2	No Liability If a Force Majeure Event Occurs.....	44
10.3	Notice.....	45
10.4	Termination Following Force Majeure Event.....	45
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION.....	45
11.1	Events of Default.....	45
11.2	Remedies; Declaration of Early Termination Date.....	47
11.3	Damage Payment; Termination Payment.....	48
11.4	Notice of Payment of Termination Payment or Damage Payment.....	49
11.5	Disputes With Respect to Termination Payment or Damage Payment.....	49
11.6	Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	49
11.7	Rights And Remedies Are Cumulative.....	50
11.8	Mitigation.....	50
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	50
12.1	No Consequential Damages.....	50
12.2	Waiver and Exclusion of Other Damages.....	50
ARTICLE 13	REPRESENTATIONS AND WARRANTIES; COVENANTS.....	51
13.1	Seller's Representations and Warranties.....	51
13.2	Buyer's Representations and Warranties.....	52
13.3	General Covenants.....	53

ARTICLE 14 ASSIGNMENT	53
14.1 General Prohibition on Assignments.	53
14.2 Collateral Assignment.....	53
14.3 Permitted Assignment by Seller.....	55
14.4 Portfolio Financing.	55
14.5 Buyer Financing Assignment.....	56
ARTICLE 15 DISPUTE RESOLUTION	56
15.1 Governing Law.	56
15.2 Dispute Resolution.....	56
15.3 Attorneys’ Fees.	56
ARTICLE 16 INDEMNIFICATION	56
16.1 Indemnification.	56
16.2 Claims.	57
ARTICLE 17 INSURANCE	58
17.1 Insurance	58
ARTICLE 18 CONFIDENTIAL INFORMATION	60
18.1 Confidential Information.	60
18.2 Press Releases	61
ARTICLE 19 MISCELLANEOUS	62
19.1 Entire Agreement; Integration; Exhibits.....	62
19.2 Amendments.	62
19.3 No Waiver.....	62
19.4 No Agency, Partnership, Joint Venture or Lease.....	62
19.5 Severability.	62
19.6 Mobile-Sierra.	62
19.7 Service Contract.....	63
19.8 Counterparts.....	63
19.9 Electronic Delivery.	63
19.10 Binding Effect.....	63
19.11 No Recourse to Members of Buyer.	63
19.12 Forward Contract.	63
19.13 Change in Electric Market Design.....	63
19.14 Further Assurances.....	64

Exhibits:

EXHIBIT A: FACILITY DESCRIPTION

EXHIBIT B: FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

EXHIBIT C: COMPENSATION

EXHIBIT D: SCHEDULING COORDINATOR RESPONSIBILITIES

EXHIBIT E: PROGRESS REPORTING FORM

EXHIBIT F: FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

EXHIBIT G: FORM OF DAILY AVAILABILITY NOTICE

EXHIBIT H: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

EXHIBIT I: FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

EXHIBIT J: FORM OF CONSTRUCTION START DATE CERTIFICATE

EXHIBIT K: FORM OF LETTER OF CREDIT

EXHIBIT L: FACILITY SAFETY PLAN AND DOCUMENTATION

EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

EXHIBIT N: NOTICES

EXHIBIT O: CAPACITY AND EFFICIENCY RATE TESTS

EXHIBIT P: FACILITY AVAILABILITY CALCULATION

EXHIBIT Q: OPERATING RESTRICTIONS

EXHIBIT R: METERING DIAGRAM

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service 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 the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Additional Annual Cycle**” means all Cycles in a given Contract Year in excess of maximum annual Cycles set forth in Exhibit Q.

“**Additional Products**” has the meaning set forth in Section 3.8.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (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.

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

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that

the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.

“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.

“Approved Maintenance Hours” means up to fifty (50) hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.11.

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

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

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

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

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“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.

“Battery Charging Factor” means the percentage SOC of the Facility after the first five (5) hours of the charging phase of the applicable Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Facility after the first four (4) hours of the discharging phase of the applicable Capacity Test.

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

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

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

“Buyer Dispatched Test” has the meaning in Section 4.4(f).

“Buyer Purchased Replacement RA” has the meaning in Section 3.5(c).

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

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

“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 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, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.33 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 charge, discharge 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 Replacement Price” means the price actually paid for any Buyer Purchased Replacement RA pursuant to Section 3.5 hereof, plus costs reasonably incurred by Buyer in purchasing such Buyer Purchased Replacement RA.

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

“Capacity Test” or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, Efficiency Rate or any other test conducted pursuant to Exhibit O.

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

“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*, 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 Ultimate Parent, any intermediate entity or Seller pledged to or owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller and may be freely transferred by such Lender (including tax equity provider) without being deemed a Change of Control.

“Charging Energy” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, *provided*, any such instruction shall be in accordance with the Operating Restrictions.

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

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

“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 of the same to Buyer substantially in the form of Exhibit H.

“Commercial Operation Capacity Test” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Commercial Operation Date” or **“COD”** means the date on which the Facility has achieved Commercial Operation as is identified in the COD Certificate as the Commercial Operation Date.

“Commercial Operation Date Deadline” has the meaning set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Commercial Operation Delay Damages” means an amount equal to (a) the amount of Development Security that is remaining as of the 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 Expected Commercial Operation Date, as such date has been extended pursuant to Section 3 of Exhibit B, and the Commercial Operation Date Deadline.

“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.

“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”.

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

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

“Construction Start Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) the total number of days between the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date. Seller shall not be obligated to pay aggregate Construction Start Delay Damages in excess of twenty percent (20%) of the Development Security amount.

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

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

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

“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.

“CPM Price” has the meaning set forth in Section 3.5(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“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.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

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

(b) a curtailment ordered by the 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.

“**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 Delay Damages**” means Construction Start Delay Damages and Commercial Operation Delay Damages.

“**Damage Payment**” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

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

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

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

“**Delivery Point**” means the Facility Pnode on the CAISO grid.

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

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

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

“**Discharging Energy**” means the Energy delivered from the Facility to the Delivery Point as measured by the Facility Meter at the Facility Metering Point.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, any such operating instruction and subsequent updates shall be in accordance with the Operating Restrictions. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, *provided*, any such instruction shall be in accordance with the Operating Restrictions.

“**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 the CAISO, Buyer or Buyer’s SC, 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.

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the 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 Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

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

“Effective Flexible Capacity” or **“EFC”** means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Efficiency Rate” means the rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Facility Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Efficiency Rate Adjustment” has the meaning set forth in Exhibit C.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

“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 Management System” or **“EMS”** means the Facility’s energy management system.

“Environmental Attributes” shall mean any and all attributes under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future to the Facility and its displacement of conventional energy generation.

“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.

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

“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 Construction Start Date” means the date set forth on the Cover Sheet.

“Expected Commercial Operation Date” means the date set forth on the Cover Sheet.

“Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“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, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Facility Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The 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 Metering Point” means the location(s) of the Facility Meter shown in Exhibit R.

“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.

“**Flexible Capacity**” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“**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.

“**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 receiving Charging Energy or making 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.

“**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), calculated at a reasonable discount rate acceptable to both Parties, resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a 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.

“**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.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Availability**” has the meaning set forth in Section 4.3(a).

“Guaranteed Capacity” means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet, as may be adjusted pursuant to Section 5 of Exhibit B.

“Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Guaranteed Construction Start Date” means the date set forth on the Cover Sheet as such date may be extended by up to ninety (90) days in accordance with Article 10 (*Force Majeure*).

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, 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 MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” 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 lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate

substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

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

“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 Capacity Limit” means the maximum instantaneous amount of Facility Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 2.96 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.

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

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

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

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

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 25, 2016, 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.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“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 (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or

refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

“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.

“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), calculated at a reasonable discount rate acceptable to both Parties or, if the Parties fail to reach an agreement within 30 days, the higher of (a) the then current 52-week high Wall Street Journal Prime Rate plus 2%, or (b) 6%, resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a 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].

“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)).

"Master File" has the meaning set forth in the CAISO Tariff.

"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 Capacity Availability" has the meaning set forth in Exhibit P.

"Monthly Capacity Payment" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

"Moody's" means Moody's Investors Service, Inc., or its successor.

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

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

"NERC" means the North American Electric Reliability Corporation.

"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-Buyer Dispatch" means a dispatch by Seller pursuant to a Seller Initiated Test.

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

"Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (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 restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

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

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

“Performance Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet, as such amount may be reduced pursuant to Section 8.8.

“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 [REDACTED] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of 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 4.11(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Facility.

“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 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.

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4(b).

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

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

“Prudent 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 energy storage facilities 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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, 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.

“Participating Transmission Owner” or **“PTO”** has the meaning set forth in the CAISO Tariff.

“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 3.5(b).

“RA Guarantee Date” means the date on which Seller, after obtaining Full Capacity Deliverability Status for the Facility, begins delivering Resource Adequacy Benefits to Buyer in accordance with Section 3.3. For avoidance of doubt, the RA Guarantee Date shall not occur prior to the calendar month in which the Net Qualifying Capacity of the Facility is first able to be included in Buyer’s RA Compliance Showing.

“RA Shortfall Month” means any month, commencing with the month that contains the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was either (i) not published by the Notification Deadline for such Showing Month, or (ii) was less than the Qualifying Capacity of the Facility for such month.

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

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

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

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

“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; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Facility’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 6.5, in its sole discretion, that the Seller, the Facility Safety Plan, and/or Seller Attestation, as applicable, is not consistent with the Safety Requirements; or (g) 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.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“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 Flexible Capacity, and 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 Resource” shall have the meaning used in Resource Adequacy Rulings.

“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.

“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 material or environmental harm.

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

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Requirements, California Senate Bill 38, 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”** has a corollary meaning.

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

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

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

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

“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).

“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 one hundred thousand dollars (\$100,000.00); (d) release of Hazardous Substances above the limits, or violating the requirements, established by permits, codes, standards, regulations, Laws, or Governmental Authorities; or (e) environmental impacts exceeding those authorized by permits or Law.

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

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

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

“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 Facility Energy to the Delivery Point, including the Interconnection Facilities and 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 the 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 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 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 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. The Expected Station Use is [] MWh per Contract Year.

“Storage Expansion Project” has the meaning set forth in Section 2.6.

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

“Subsequent Purchaser” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

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

“Tax Credits” means any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, 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.

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

“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 Facility Energy from 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 Ignite Ventures, Inc., dba Ignite.Energy, a California corporation.

“Unplanned Outage” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

“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.

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 or including (as applicable) 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*, 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 Commercial Operations Date; Conditions Precedent. Seller shall provide Notice to Buyer of the 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 Commercial Operation. Following Buyer’s receipt of such Notice, Buyer shall have five (5) Business Days to either approve Seller’s request for Commercial Operation or request additions or revisions to the conditions precedent documentation. Upon Buyer’s approval of Seller’s achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(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 most recent annual report, audited consolidated financial statements, and unaudited consolidated 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) By no later than the Commercial Operation Date, Seller shall have delivered to Buyer (i) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(c) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect, and has delivered to Buyer a copy of the Interconnection Agreement;

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

(e) By no later than the Commercial Operation Date, Seller has obtained CAISO Certification for the Facility and provided proof to Buyer;

(f) By no later than the Commercial Operation Date, all applicable regulatory authorizations, approvals and permits for the operation of the Facility that are required for Commercial Operation have been obtained and all required conditions thereof have been satisfied and shall be in full force and effect, including a decommissioning plan as part of any permitting process for the Facility, if applicable;

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

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

(i) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(j) Seller has paid Buyer for all invoiced amounts owing under this Agreement, if any, including Construction Start Delay Damages and Commercial Operation Delay Damages;

(k) Seller shall have submitted to Buyer a Facility Safety Plan in the form of Exhibit L.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall

provide to Buyer a Progress Report and agrees to regularly scheduled 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 directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone or anticipates it will miss a Milestone, 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 cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Expected Commercial Operation Date, 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 the Expected Commercial Operation Date, as such date may be extended by Section 4 of Exhibit B 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.

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

2.6 **First Refusal on Storage Expansion Project.** In consideration for Buyer entering into this Agreement, Seller hereby grants Buyer an irrevocable right of first refusal during the Contract Term to procure storage product from any new storage capacity that either Seller or any Seller Affiliate installs or constructs (a) at the Site, or (b) on real property located within one (1) mile of the Site, or (c) on any real property regardless of location if such new storage capacity will utilize any Shared Facilities (each project satisfying conditions (a)-(c) shall be considered a "Storage Expansion Project"). During the Contract Term, neither Seller nor Seller's Affiliates shall enter into any agreement to sell storage product from a Storage Expansion Project without first offering to sell product from such Storage Expansion Project to Buyer on terms and conditions that Seller intends to offer to third parties. Should Buyer fail to accept the terms and conditions offered by Seller within ten (10) Business Days after having received an offer notice from Seller, Seller shall be free to offer any storage product from such new storage capacity to third parties on substantially similar terms and conditions as it was offered to 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 2.6.

ARTICLE 3 PURCHASE AND SALE

3.1 **Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

3.2 **Facility Energy.** Except for Facility Energy resulting from a Non-Buyer Dispatch, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.7, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.7, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term and subject to Section 3.7, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.4 Ancillary Services; Environmental Attributes

(a) **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility's

initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

(b) Environmental Attributes. Buyer shall have the exclusive rights to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

3.5 Resource Adequacy Failure

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall provide Replacement RA, as set forth in Section 3.5(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, compensation for any Buyer Purchased Replacement RA, as set forth in Section 3.5(c) and/or the RA Deficiency Amount, as set forth in Section 3.5(d). 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) Buyer Purchased Replacement RA. If Seller does not provide Replacement RA in the full amount of the RA Shortfall Amount by the Notification Deadline, Buyer may, but shall not be required to, purchase Replacement RA in an amount up to the Shortfall Amount not provided by Seller for the applicable Shortfall Month ("**Buyer Purchased Replacement RA**"), by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Buyer Purchased Replacement RA. If Buyer purchases any Buyer Purchased Replacement RA, Seller shall pay to Buyer an amount equal to the quantity of Buyer Purchased Replacement RA for the applicable RA Shortfall Month multiplied by the Capacity Replacement Price.

(d) **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 Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer, minus (iii) any Replacement RA that was included in the Showing Month for Buyer, (iv) minus any Buyer Purchased Replacement RA that was included in the Showing Month for Buyer (the “**RA Shortfall Amount**”), multiplied by the sum of the applicable CPUC Resource Adequacy penalty amounts established by Decision 20-06-031, as modified by any subsequent CPUC decisions, plus any applicable penalty amount or charges imposed by the CAISO for a failure to meet the applicable Resource Adequacy Requirements.

(e) For avoidance of doubt, if the Net Qualifying Capacity has neither been published by nor 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.

(f) **Energy Only Contract Price Adjustment.** Prior to the occurrence of the RA Guarantee Date, the provisions of Section 3.5(a)-(d) are suspended and the Contract Price shall be reduced to fifty percent (50%) of the Contract Price on the Cover Sheet for the applicable Contract Year. Upon the occurrence of the RA Guarantee Date, the Contract Price shall be increased to the original Contract Price and the requirements of Sections 3.5(a)-(d) shall apply to all such months occurring after (i) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved FCDS, and (ii) Buyer is able to show the Facility on its RA Showing.

3.6 **Buyer’s Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, provided, that Buyer reimburses Seller for all associated costs and expenses incurred by Seller. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Change in Law**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide Resource Adequacy Benefits that satisfy the requirements of the Resource Adequacy Rulings. 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 definition of Environmental Attributes and Capacity Attributes, including amendments to this Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) require submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring (including a CAISO RA Enhancement) after the Effective Date has increased Seller's 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) Environmental Attributes;

(ii) Capacity Attributes;

(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. 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.

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

(f) 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 3.7, 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. 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 3.7, Seller's obligation to deliver the applicable 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.

3.8 **Additional Products**

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, which are independent of the Product and do not interfere with the sale of Product under this Agreement (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 shall notify the other upon becoming aware of such Additional Products, and the Parties shall negotiate in good faith how to monetize such Additional Products and split any net revenue from such monetization; provided that (i) the creation, registration, sale or transfer of such Additional Products shall not 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); 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.** 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 Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 **Interconnection.** Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.

4.3 **Performance Guarantees**

- (a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than ninety-eight percent (98%) (the “**Guaranteed Availability**”), which Monthly Capacity Availability shall be calculated in accordance with Exhibit P.
- (b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit Q. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the “**Performance Guarantees**”.
- (c) Buyer’s remedies for Seller’s failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the Efficiency Rate Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C.

4.4 **Facility Testing.**

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.

(c) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity or Efficiency Rate, as applicable, then the actual capacity or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(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).

(f) Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation), any 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**”.

(g) 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 (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(h) 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.

4.5 **Testing Costs and Revenues.**

(a) 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.

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

(c) 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.

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 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 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.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the 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. 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).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the 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 Capacity Availability.

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery 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 Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge and (ii) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility.

(d) Discharging Notices. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), subject to the requirements and limitations set forth in this Agreement, by causing Discharging Notices to be issued. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the 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 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 Facility other than as permitted hereunder or as expressly addressed in this Section 4.9, 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 after lapse of the applicable cure period set forth in Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the 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 Facility as set forth in Section 4.9(c)).

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility; *provided*, prior to the Commercial Operation Date, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order 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 Dispatch Notices during any Curtailment Order consistent with the operational procedures.

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) Station Use may not be supplied from Charging Energy or Facility Energy, and (iii) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.10 Capacity Availability Notice.

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

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 Outages

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall

submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. 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.

(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.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.11(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.

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

(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.

ARTICLE 5

TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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). For sake of further clarity, sales taxes, ad valorem taxes, or similar taxes imposed on the sale of Product to third parties shall be borne by Buyer. 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 date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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.** 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 promptly 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 (and, at a minimum, the Performance Guarantees).

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 Facility 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.

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) **Prior to Delivery Term.** At least forty-five (45) days prior to the Commercial Operation Date, Seller shall submit for Buyer's review a **Facility Safety Plan**, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Commercial Operation Date and (B) Seller's consideration of the Facility Safety Plan items in **Exhibit L**. In the event Buyer provides Notice to Seller that the Facility Safety Plan is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and Seller shall revise the Facility Safety Plan to address the inconsistencies identified by Buyer.

(b) **Delivery Term.** Throughout the Delivery Term, Seller shall update the safeguards and the Facility Safety Plan 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 demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(c) **Reporting Serious Incidents.** Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

(d) **Remediation.**

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

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

Seller's failure to resolve a Remediation Event, other than due to the occurrence of a Force Majeure Event as described in this Section 6.5(d)(iv), by obtaining Buyer's written acceptance of the Attestation within the Remediation Period is a material breach of this Agreement; provided that that Seller may request to extend the Remediation Period by up to ninety (90) days. Buyer shall not unreasonably withhold approval of such extension. Seller may request an additional extension

of the Remediation Period of up to ninety (90) days, which Buyer may approve in its sole discretion. Except as the result of a Force Majeure Event, the Remediation Period will not continue for more than two-hundred and seventy (270) days from the first occurrence of the Remediation Event. The number of days of the Buyer Remediation Review Period shall not be included in calculating the number of days of the Remediation Period. The Commercial Operation Date shall not occur during a Remediation Period. If Seller provides Notice to Buyer, in compliance with Section 10.3, demonstrating that a Remediation Event is a Force Majeure Event, and that Seller's ability to resolve the Remediation Event is prevented by the Force Majeure Event, then the Remediation Period shall be extended on a day-for-day basis until Seller is no longer prevented from resolving the Remediation Event by the Force Majeure Event. This Section does not limit, reduce, or otherwise modify any rights of remedies of Buyer under any other provisions of this Agreement.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and 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 Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. 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, 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 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.

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. 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, it shall be promptly repaired or replaced. If a 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 use commercially reasonable efforts to deliver an invoice to Buyer for 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 Charging Energy and the amount of Facility Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) 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.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments 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 (30) days of Buyer's receipt of Seller's invoices; *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.

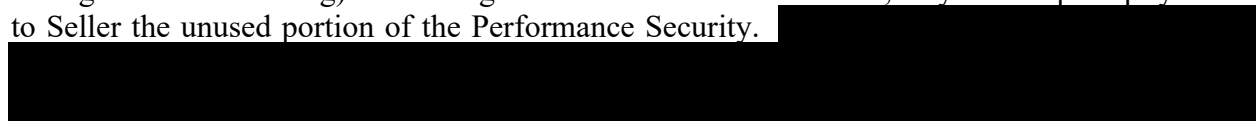
8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction 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.

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 during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B 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 and increase the Development Security within ten (10) Business Days after the Conditional Use Permit for the Facility has been issued. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. 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 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.



[REDACTED]

(a) [REDACTED]

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 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 electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, 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.

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 the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide;

sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in 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 (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 caused by a Force Majeure Event.

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. 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 that is subject to the Event of Default (the "**Defaulting Party**"), 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; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, and (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive

remedies for which are set forth in Exhibit C and Exhibit P), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) 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 discharged by the Facility;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date and exhaustion of the maximum Construction Start Delay Damages, or (B) achieve Commercial Operation on or before the Commercial Operation Date Deadline;

(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability calculations for such Contract Year is not equal to at least seventy percent (70%) of the Guaranteed Availability, and Seller fails to (x) deliver to Buyer within twenty (20) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) multiplied by the Installed Capacity 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 one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) 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;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in

each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

- (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;
- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (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.

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

- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;
- (b) in case of a Terminated Transaction, to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; and
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or

Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

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

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. 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 Commercial Operation Date caused by Seller's 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) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) Seller's Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, plus (ii) without duplication of any costs or expenses covered by preceding clause, all actual, documented and verifiable Costs that have been actually incurred, or become payable, by Seller between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4 arising out of the termination of this Agreement, less (B) the fair market value (determined in a commercially reasonable manner) of (i) all Seller's assets relating to the Facility, individually, or (ii) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date**. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**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. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect

or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a 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 Termination Payment or Damage 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 Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage 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 Termination Payment or Damage 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 Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage 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 Termination Payment or Damage 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 Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may:

(a) sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years 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), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, nor

(b) 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 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; 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 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 Project or the delivery of materials necessary to complete the Project, 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) 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.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below 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 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 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) five (5) 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 and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided 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, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, that such sale or transfer will not require Buyer's consent if the entity meets the definition of a Permitted Transferee; and

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 shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Any assignment or transfer of this Agreement by Seller will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, that Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least thirty (30) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement 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.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

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.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party 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 its Affiliates, directors, officers, attorneys, employees, representatives and agents (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) a violation of applicable Laws by Buyer or (iii) 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.

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 Five Million Dollars (\$5,000,000) 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, 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

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

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

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

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

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

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

Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.8 **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.

19.9 **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.

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

19.11 **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 officers, directors, advisors, contractors, consultants or employees of Buyer or its constituent members, in connection with this Agreement.

19.12 **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.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set

forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

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

California Condor LLC,
a California limited liability company
[SELLER]

Redwood Coast Energy Authority, a
California joint powers authority

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

APPROVAL DRAFT

EXHIBIT A: FACILITY DESCRIPTION

Project Name: Flycatcher 2

Facility Description: Facility will consist of three (3) Tesla Megapack 2 XL units, each rated at 1,320 kVA / 979.2 kW, totaling 3,916.8 kWh of storage capacity for a total of 2.94 MW / 11.75 MWh, operating at 480 VAC and including integrated packaged inverters and batteries.

APN: 401-121-011

Project Physical Address: 97 Bay Street, Humboldt County, Samoa, CA 95564

Latitude and Longitude: 40.799912, -124.203283

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

Point of Interconnection: Fairhaven Substation

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

Transmission Access Charge Area: NGBA

P-node: Fairhavn_7_B1 or Fairhavn_6_N001

CAISO Resource ID: TBD

Anticipated Flexible Capacity Resource Category (as of the Effective Date): Category 3 (but can respond to Category 1 or Category 2 needs as well)

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

Additional Information:

EXHIBIT B: FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the 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 Construction Start Delay Damages or Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.
 - b. **"Construction Start"** will occur following Seller's execution of an EPC Contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility that authorizes the contractor to mobilize to the Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **"Construction Start Date."**
 - c. If Construction Start is not achieved by the Guaranteed Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date, as such date may be extended pursuant to Section 4 of this Exhibit B. Construction Start Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in such invoice. Seller shall not be obligated to pay aggregate Construction Start Delay Damages in excess of twenty percent (20%) the Development Security amount. The Parties agree that Buyer's receipt of Construction Start Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
2. **Commercial Operation of the Facility.** **"Commercial Operation"** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **"COD Certificate"**). The **"Commercial Operation Date"** shall be the date identified in the COD Certificate as the Commercial Operation Date.
 - a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4

of this Exhibit B. Seller shall notify Buyer at least forty-five (45) days before the anticipated Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, ninety-five percent (95%) of all Construction Start Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Start Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, Seller shall either: (i) pay Commercial Operation Delay Damages for each day following the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, until the Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate cumulative Commercial Operation Delay Damages and Construction Delay Damages in excess of the Development Security amount required hereunder; or (ii) provide Buyer with a quantity of Replacement RA in any amount up to the expected Qualifying Capacity the Facility would have been able to provide with respect to such Showing Month, for each month following the Expected Commercial Operation Date, as such date may be extended pursuant to Section 4 of this Exhibit B, until the Commercial Operation Date. Seller shall not owe Buyer any Commercial Operation Delay Damages for any day during a month where Seller has provided Replacement RA to Buyer in an amount equal to the expected Qualifying Capacity of the Facility. For any Showing Month in which Seller delivers a Replacement RA Amount that is less than the full expected Qualifying Capacity of the Facility, Seller's obligation to pay Commercial Operation Delay Damages for such month will be pro-rated by the percentage of Replacement RA delivered to Buyer for such month to the Qualifying Capacity of the Facility for such month. However, the Replacement RA provided by Seller to Buyer pursuant to this Section 2(b) of Exhibit B, shall not reduce or otherwise alter the Damage Payment that is owed to Buyer by Seller if Buyer declares an Event of Default under Section 11.1(b)(ii), and further, the value of any such Replacement RA does not reduce or otherwise count towards the cap on Seller's liability that is described in Section 7 of Exhibit B. For the avoidance of doubt, the Delivery Term shall not commence with Seller's provision of Replacement RA, and shall only commence once Seller provides Buyer with Product from the Facility.
- d. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. If Seller provides Buyer with Replacement RA pursuant to Section 2(b) of Exhibit B, Seller shall issue an invoice and Buyer shall pay for such Replacement RA at 50% of the Contract Price in accordance with Section 8.1. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages or Replacement RA shall be Buyer's sole and exclusive remedy for Seller's delay in achieving the Commercial Operation Date on or before the 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)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2 in the event that such delay exceeds the Commercial Operation Date Deadline.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the 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 Guaranteed Construction Start Date, and the Expected Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of 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 Facility and to permit Seller and the 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 complete and ready for the 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 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 Facility Energy at the Delivery Point by the Expected Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions of the Guaranteed Construction Start Date granted under Section 4 of this Exhibit B shall not exceed ninety (90) days, for any reason, and the cumulative extensions of the Expected Commercial Operation Date granted under subpart b or c of Section 4 of this Exhibit B shall not exceed the Guaranteed Commercial Operation Date, for any reason. 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 Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall

have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

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

7. **Cap on Seller Liability Prior to Commercial Operation Date.** Seller’s aggregate liability prior to the Commercial Operation Date for any Damage Payment, Construction Start Delay Damages and Commercial Operation Delay Damages shall be capped at an amount equal to one hundred percent (100%) of the Development Security amount.

EXHIBIT C: COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment x 1000. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a 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 Capacity and/or Efficiency Rate are applicable.

(b) Availability Adjustment. The “**Availability Adjustment**” (or “**AA**”) is calculated as follows:

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

$$AA = 100\%$$

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

$$AA = 100\% - \text{Monthly Capacity Availability}$$

- (iii) If the Monthly Capacity Availability is less 70%, but greater than or equal to 50%, then:

- (iv) $AA = 100\% - (\text{Monthly Capacity Availability} \times 2)$

- (v) If the Monthly Capacity Availability is less than 50%, then:

$$AA = 0$$

(c) Efficiency Rate Adjustment. The “**Efficiency Rate Adjustment**” is calculated as follows:

- (i) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

$$\text{Efficiency Rate Adjustment} = 100\%$$

- (ii) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

$$\text{Efficiency Rate Adjustment} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

- (iii) If the Efficiency Rate is less than 75%, but greater than or equal to 50%, then:

$$\text{Efficiency Rate Adjustment} = 100\% - (\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate})$$

- (iv) If the Efficiency Rate is less than 50%, then:

$$\text{Efficiency Rate Adjustment} = 0$$

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

(e) Additional Annual Cycle Payment. Within thirty (30) days after the end of each Calendar Year, Buyer shall pay Seller an amount equal to the sum of:

(i) the product of (A) the number of Additional Annual Cycles during that Contract Year up to 45 Additional Annual Cycles, multiplied by (B) the amount of \$[REDACTED]/Cycle, plus

(ii) the product of (A) the number of Additional Annual Cycles during that Contract Year in excess of 45 up to 80 Additional Annual Cycles, multiplied by (B) the amount of \$[REDACTED]/Cycle.

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

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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.

(c) CAISO Costs and Revenues. 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 Product Scheduled or delivered from the Delivery Point; *provided, however*, 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. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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.

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

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

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

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

provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

APPROVAL DRAFT

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. Gantt chart schedule showing progress on major steps to achieving each of the Milestones.
3. 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.
4. Remedial Action Plan (if required per Section 2.4).
5. Description of any planned material changes to the Facility or the site that Buyer has not otherwise been made aware of by Seller.
6. 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.
7. Photos, in sufficient quantity and of appropriate detail, in order to document interconnection, construction and startup progress.
 8. Upon commencement of Test Energy deliveries, a report on Facility performance including performance projections for the next twelve (12) months.
 9. A summary of Seller's efforts to comply with workforce and prevailing wage requirements.
 10. Any other documentation reasonably requested by Buyer.

EXHIBIT F: FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Typical Month]

Hour	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
0	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
4	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
5	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3	-3
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
18	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
19	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
20	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
21	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
22	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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.

APPROVAL DRAFT

EXHIBIT G: FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Comments
	(MW)			
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				
0:00				

Comments: _____

EXHIBIT H: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Facility Energy to, the CAISO Balancing Authority.
3. Seller has provided Buyer Maximum Import Capability (MIC) rights for full RA Product, if applicable.
4. The commissioning of the equipment has been completed in accordance with the manufacturers' specifications.
5. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____[DATE]_____.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.
9. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT I: FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("**Certification**") of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] ("**Engineer**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between [SELLER ENTITY] 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 that a Capacity and Efficiency Rate Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, (iii) a Battery Discharging Factor of __%, and (iv) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

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 ENTITY] ("**Seller**") to Redwood Coast Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

(such description shall amend the description of the Site in Exhibit A of the Agreement.)

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

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. [XXXXXXX] (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. [XXXXXXX] 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 (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 materials 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

Include 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.

Include 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.

EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Redwood Coast Energy Authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 3.5 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: Attn: Street: City: Attn: Phone: Email:	All Notices: Attn: Street: City: Attn: Phone: Email:
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: Federal Tax ID Number:
Invoices & Payments: Attn: Phone: Email:	Invoices & Payments: Attn: Phone: Email:
Scheduling: Attn: Phone: Email:	Scheduling: Attn: Phone: Email:
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Email:	Credit and Collections: Attn: Phone: Email:
With additional Notices of an Event of Default to: Attn: Phone: Email:	With additional Notices of an Event of Default to: Attn: Phone: Email:

EXHIBIT O: CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

- A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).
- B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the 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 then-current Effective Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each 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 Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.

- (a) 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.
- (b) 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.
- (c) 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.

- A. 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.
 - 1. Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
 - 2. Electrical input at maximum charging level at the 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 Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - 1. Time;
 - 2. The amount of Facility Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
 - 3. Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
 - 4. Storage Level (MWh).
- C. Site Conditions. During each CT, 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 Facility; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT 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 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 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 Facility Meter, to go from 0% SOC to 100% SOC;
7. Amount of Facility Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

1. General. At all times during a CT, the 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 Facility.

2. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT 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 CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in

its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
2. 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; and
3. Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor.

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

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing 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 Capacity Tests based on the then current design of the Facility ("**Supplementary 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 Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

1. The total amount of Facility 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 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 Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

2. The total amount of Facility 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 Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity and Efficiency Rate Test

- Procedure:

1. System Starting State: The Facility will be in the on-line state at 0% SOC.
2. Record the initial value of the SOC.
3. Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.
4. Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
5. Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
6. Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
7. Record and store the SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

8. Record and store the Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.

9. If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.

10. Record and store the Facility Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.

- Test Results:

1. The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

2. The total amount of Facility Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

1. Record the Facility active power level at the Facility Meter.
2. Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
3. Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.

- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 1. Record the Facility active power level at the Facility Meter.
 2. Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 3. Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 1. Record the Facility reactive power level at the Facility Meter.
 2. Command the Facility to follow 1.48 MW for ten (10) minutes.
 3. Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:

1. Record the Facility reactive power level at the Facility Meter.
 2. Command the Facility to follow 1.48 MW for ten (10) minutes.
 3. Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

APPROVAL DRAFT

EXHIBIT P: FACILITY AVAILABILITY CALCULATION

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

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

Where:

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

MONTHRS_m is the total number of hours for the month;

UNAVAILHRS_m is the total number of hours, or partial hours, in the month during which the Facility was unavailable to charge and/or discharge Energy and/or provide Ancillary Services, in whole or in part, for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): Approved Maintenance Hours, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, and Buyer breach or default. 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 Facility for less than a full hour or that results in unavailability of less than all of Effective Capacity will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Facility is unavailable, but for less than the full amount of the Effective Capacity, the UNAVAILHRS_m for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Effective Capacity.

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

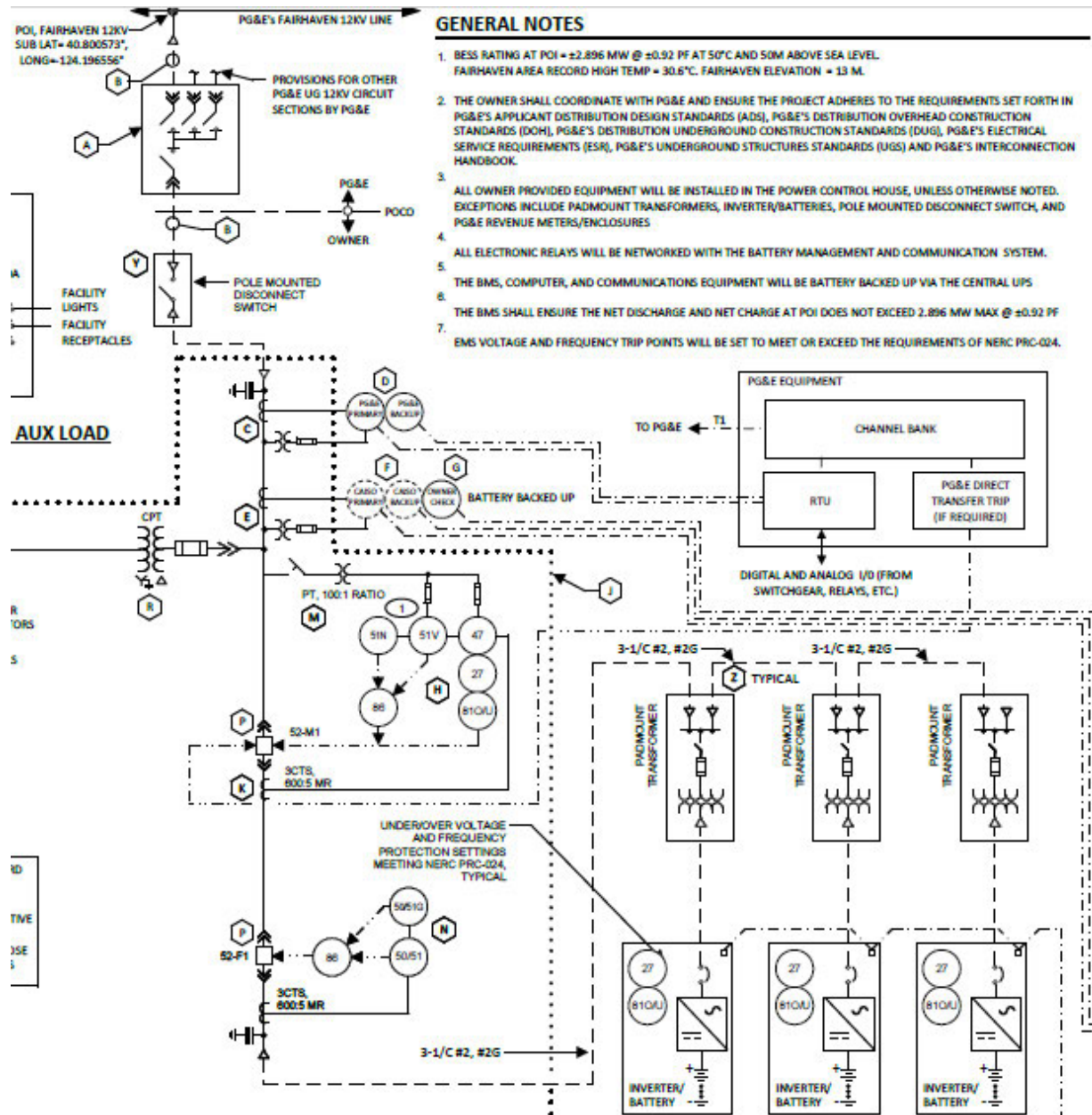
If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time Buyer is required to schedule or bid the Facility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

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 Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, Operating Restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]		
Technology:	Battery Energy Storage System (BESS)		
Storage Unit Name:	Flycatcher 2		
A. Contract Capacity			
Guaranteed Capacity (MW):	2.96 MW		
Effective Capacity (MW):	2.96 MW		
B. Total Unit Dispatchable Range Information			
Interconnect Voltage (kV)	12 kV		
Maximum State of Charge (SOC) during Charging	100%		
Minimum State of Charge (SOC) during Discharging	0%		
Maximum Storage Level (MWh):	11.84 MWh		
Minimum Storage Level (MWh):	0 MWh		
Maximum Charging Capacity (MW):	2.96 MW		
Maximum Discharging Capacity (MW):	2.96 MW		
Maximum energy throughput (BET) (Discharged MWh/year):	3840 MWh/year		
C. Daily/Monthly/Annual Cycles			
Maximum daily Cycles:	2		
Maximum monthly Cycles:	60		
Maximum annual Cycles Covered by Contract Price:	320		
Maximum Additional Annual Cycles	80		
Maximum Delivery Term Cycles (20 years)	8000		
D. Charge and Discharge Rates			
Mode	Maximum (MW)	Ramp Rate (MW/s) Description	
Energy (Charge)	1.9	[Charging mode]	
Energy (Discharge)	1.9	[Discharging mode]	
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:	Yes		
Voltage support is included:	Yes		

EXHIBIT R: METERING DIAGRAM



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