



CAC Item C8

Staff Memo Item 15

TO: East Bay Community Energy Board of Directors

FROM: JP Ross, Sr. Director Local Development, Electrification, and

SUBJECT: Innovation EBCE Resilience Program (Action Item)

DATE: June 17, 2020

Recommendation

- A. Approve the selection of two vendors in response to the Distributed Resource Adequacy (RA) Request for Proposals to deliver RA in the form of Load Modification from behind-the-meter solar and storage installations delivering resilience to EBCE commercial and residential customers.
- B. Authorize the CEO or his designee to negotiate and execute a Load Modifying Agreement with Sunrun Inc. for Load Modification up to 5.75MW/23MWh through December 31, 2032.
- C. Authorize the CEO or his designee to negotiate and execute a Load Modifying Agreement with Enel X in substantially the same form as the Sunrun agreement for Load Modification up to 5MW/20MWh through December 31, 2032.

Background

On November 5, 2019, EBCE, in coordination with Silicon Valley Clean Energy, Peninsula Clean Energy and Silicon Valley Power, issued a competitive solicitation for Distributed Resource Adequacy (RA) Capacity. The solicitation was for a minimum of 10MW of Resource Adequacy from solar and storage systems for EBCE to deliver resilience to single and multi-family residential and commercial customers.

Through the Request for Proposals (RFP), EBCE desired to enter into Resource Adequacy (“RA”) contracts with one or more vendors to deliver new behind-the-meter solar and storage systems, or retrofit storage on existing solar systems, on customer properties. However, during the intervening months EBCE has worked with the California Energy Commission to develop an innovative alternative approach to meeting our RA obligation through reducing EBCE’s peak demand through the targeted dispatch of behind the meter (BTM) storage systems. This “Load Modifying Resource” will be dispatched on a daily basis during EBCEs highest peak hours, which will decrease EBCE’s RA obligation and reduce EBCE’s wholesale energy procurement volumes.

The aggregation of distributed behind-the-meter batteries to deliver both Load Modification and resilience is a first of its kind initiative. This program will deliver multiple benefits to our community by adding resilience while also creating jobs and delivering Load Modification to EBCE. Load Modification payments to vendors will be shared with customers to reduce the cost of batteries and encourage customer participation. EBCE will procure Load Modification from these resources for up to ten (10) years. EBCE is working with vendors and the California Energy Commission to make sure that the full value of Load Modification provided is counted.

EBCE will work with selected vendors on acquiring customers for the program, with a goal of increasing resilience during Public Safety Power Shutoffs (PSPS). Systems are required to island from the grid so that homes and businesses will have power during PSPS events. A minimum of 20% of systems will be installed in Disadvantaged Communities (DACs), Low Income Communities and CARE/FERA or Medical Baseline customers properties.

Staff expects the program to deliver resilience to over 1000 residential customers. Commercial customer participation rates are harder to estimate prior to program launch as system sizes are extremely variable based on the nature of the load and site constraints. Staff will report participation rates to the Board during program operation.

Both Sunrun and Enel X have made commitments in line with the Oakland Clean Energy Initiative for local workforce development and hiring practices. This will ensure that jobs are located in Alameda County EBCE will maximize the benefit to local communities by requiring Workforce Development commitments from vendors.

Discussion

On November 5, 2019, EBCE issued an RFP for Distributed RA Capacity. Responses to the RFP were due December 23, 2019. EBCE received bids from 19 vendors, which proposed a range of RA pricing across customer categories. EBCE staff from Local Development, Marketing, Procurement and Operations reviewed each of the proposals. Each bid was evaluated on the basis of competency to perform scope of work, best fit, and price. EBCE then interviewed eight vendors based on the technical evaluation criteria in the RFP shown in Table 1 below, and as described in further detail in Appendix 1.

Category Weighting	Proposal Section(s)
A. Completeness of Response to RFP	Pass/Fail
B. Capacity Requirements & Deployment Timeline	Pass/Fail
C. Technology Safety Certifications & Standards	Pass/Fail
D. Islanding Capability	Pass/Fail
E. Pricing	40
F. Experience Developing Similar Projects & Providing RA Capacity	15
G. Experience & Qualifications of Personnel	10
H. Quality & Detail of Go-to-Market & Customer Engagement Plan	15

I. Proposed Fire Safety Measures	10
J. Local Hiring/Workforce Development Plan	10
TOTAL SCORE	100

Table 1: Scoring Criteria

Staff interviewed the eight vendors with the highest scoring credible proposals that ensured a cross section of customer categories including; single family and multi-family residential, commercial and health care facilities, would be covered. The two finalists were selected for the price and capacity proposed, their approach to customer engagement, and staff’s confidence in their ability to successfully execute the program. The selected portfolio will meet the 20% threshold of priority customers. The vendors are shown in Figure 1 below in according to their final stage in the submission process.

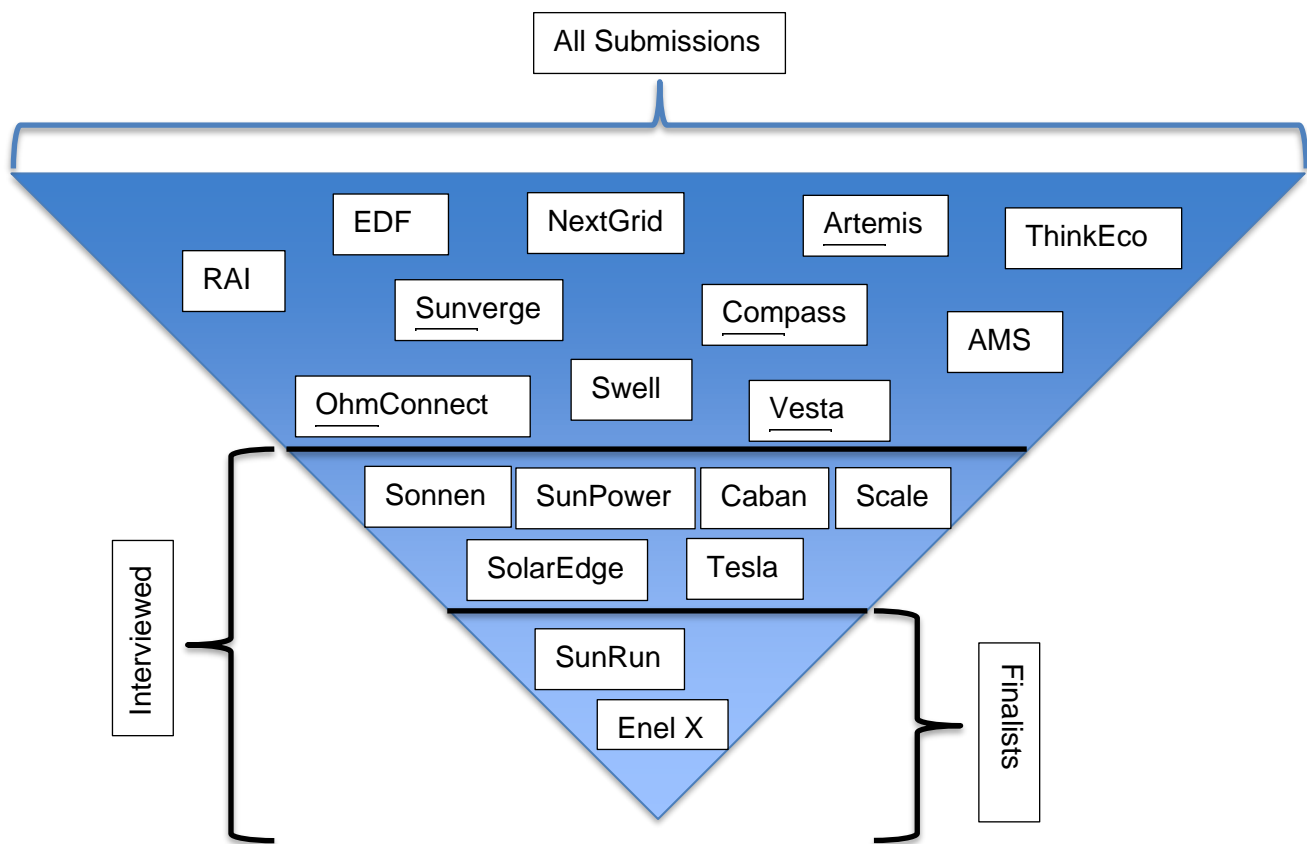


Figure 1: Vendor Selection Funnel

Sunrun and Enel X were selected based on their ability to deliver Load Modification at competitive pricing while delivering customers a compelling value proposition. EBCE is committed to partnering with vendors to deliver resilience across a range of residential and commercial customer segments, while also ensuring 20% of capacity is deployed in disadvantaged and low-income communities, CARE/FERA and Medical Baseline customers premises. Vendors willingness and ability to work with EBCE to develop marketing campaigns

that build awareness of EBCE was a critical important factor as this will be EBCE's first large outbound marketing campaign.

In conjunction with the Load Modification Agreement, EBCE will sign Customer Data Sharing Non-Disclosure Agreements and Co-Marketing Agreements. These agreements will ensure customer data security while defining the rules of engagement with respect to marketing campaigns. EBCE will lead on marketing efforts to our customers, using multiple data sources to identify customers who can benefit from this program. EBCE marketing materials will drive customers to an EBCE hosted website where customers can provide their contact information to express interest in the program. Customers will be validated by SMUD and then passed to EBCE. EBCE will then add additional information prior to passing customer information to the vendors including electricity usage, EBCE rate and the solar potential of the building as determined by Google's SunRoof solar estimation tool. Customer data security will be carefully managed through this process.

Time is of the essence. EBCE is striving to launch the program as soon before the 2020 fire season. Acquiring customers and getting new solar and storage systems installed can take up to 6 months, customer enrollment and system installation will continue through 2022.

Sunrun and EBCE had successfully agreed to contract terms in order to request Board approval. However, the June 11 decision by the CPUC granting PG&E the sole right to procure Local Resource Adequacy reduces the value of this procurement and puts this program in jeopardy. Although the CPUC publicly states support for resilience the central RA buyer decision reduces the incentive for LSEs like EBCE to support behind the meter solar and storage programs that can improve community resilience. EBCE is still evaluating ways that this program can still be successful, and therefore requests the Board authorize the CEO to negotiate and execute these contracts.

Attachments

- A. Resolution to Authorize the CEO to Negotiate and Execute Agreements for Up to 10.75 Megawatts of Load Modification
- B. Distributed Resource Adequacy Capacity RFP
- C. Sunrun contract

Appendix 1: Detailed Evaluation Criteria for the Distributed RA Capacity RFP

A. Completeness of Response to RFP		Weighting
	Responses to this RFP must be complete. ALL required Proposal sections (Cover Letter, Developer Qualifications, Capacity & Program Approach and Pricing Form) are included. Additionally, within the Proposed Capacity & Program Approach section, all Mandatory Proposal Parameters must be addressed. Responses that do not include the proposal content requirements identified within this RFP and subsequent Addenda will be considered incomplete, and be rated a Fail in the Evaluation Criteria.	Pass/Fail
B. Capacity Requirements & Deployment Timeline		
	All proposed RA capacity is sited on eligible customer sites, uses eligible technologies and meets the 20% minimum requirements for DAC, low-income, MUD, CARE/FERA and medical baseline projects in the residential and commercial customer categories. Additionally, Proposer indicates ability to meet desired deployment timeline of initial proposed capacity deployment by September 30th, 2020 and the remaining proposed capacity by September 30th, 2021.	Pass/Fail
C. Technology Safety Certifications & Standards		
	Proposer indicates that proposed PV and battery types, or any other proposed technologies, meet all relevant safety certification and standards including, but not limited to, the standards described in the RFP (UL 1642, UL 1741, UL 1973, UL 9540, IEC 62109-1, IEC 62619, AC 156)	Pass/Fail
D. Islanding Capability		
	All storage systems installed by the Proposer must have the ability to island from the electrical grid and provide backup power for the customer site.	Pass/Fail
E. Pricing		
	Scoring of proposed price based on bins shown in the scoring matrix tab	40
F. Experience Developing Similar Projects & Providing RA Capacity		
	The Proposer has significant experience developing and constructing solar + storage systems in California, particularly the Bay Area. The Proposer demonstrates expertise in developing dispatchable solar + storage systems and provides solutions capable of providing the dual value streams of customer savings and market participation.	5

	Proposer has experience successfully participating in PDR (or other alternative proposed mechanism as specified in a given Proposal) and demonstrates a deep understanding of the PDR program and the requirements for CAISO participation.	7
	The Proposer has demonstrated success developing DER projects in disadvantaged and low-income communities in California and/or has experience utilizing public - private partnerships to market DER technologies.	3
G. Experience & Qualifications of Personnel		
	The listed personnel has experience designing, developing and managing projects/programs that include CAISO market participation, particularly through PDR, and/or DER development at a regional scale. Added value may be assigned to personnel involved in creation and design of relevant CAISO market products.	10
H. Quality & Detail of Go-to-Market & Customer Engagement Plan		
	The proposed go-to-market strategy approach is innovative, comprehensive and collaborative. It indicates both a willingness and a clear approach to creating a tailored program for development of DER for RA capacity beyond current or past marketing efforts of the Proposer.	5
	The Customer Engagement Strategy includes clear descriptions of how the Proposer will effectively use EBCE marketing assets to reach priority communities.	5
	Proposal includes a discussion of how the installed systems' operations will be optimized between serving customer needs (resilience and bill savings) and providing the promised RA capacity. This discussion should describe the Proposers battery management software and sizing approach	3
	Proposal includes a line-item description of how the relevant financing mechanisms, incentives and RA payment stack up to provide a unique value proposition to EBCE's customers. This description should also include an indication of how, and how much of, EBCE's RA payment will be passed on to customers.	2
I. Proposed Fire Safety Measures		
	Proposer indicates a familiarity with and experience meeting the new NFPA 855 standards in past projects and a clear strategy for coordinating with AHJs for permitting PV + BESS projects.	5
	All impacts of meeting stated safety criteria, including additional time, expense, or limits on feasible project sites, are reasonable and made clear by Proposer.	5
J. Local Hiring/Workforce Development Plan		

	<p>Proposer provides indication that they are willing and able to meet workforce and hiring requirements and describe experience hiring Alameda County residents in past projects. Proposer provides concrete examples and descriptions of a strategy to further enhance local hiring beyond the "at least 50%" goal stated in the RFP. To achieve the highest score, Proposers should indicate a willingness to, experience with, and strategy for working with state-certified apprenticeship training programs.</p>	<p>10</p>
	<p>TOTAL SCORE</p>	<p>100</p>

RESOLUTION NO. R-2020-__

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING LOAD MODIFYING
AGREEMENTS WITH ENEL X AND SUNRUN INC. FOR UP TO 10MW/40MWH LOAD
REDUCTION TO DELIVER RESILIENCE TO EBCE CUSTOMERS

WHEREAS, The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, On July 18, 2018, the Board approved the Local Development Business Plan (“LDBP”) and budget. The LDBP identifies a series of local development early actions, including collaborative procurement, and outlines and defines a series of policy principles and metrics to measure the impact on Alameda County.

WHEREAS, Public Safety Power Shutoffs (“PSPS”) have already impacted over 50,000 EBCE customers and are expected to continue for the next 10 years; and

WHEREAS, PSPS events are particularly difficult for medical baseline, CARE and frontline communities; and

WHEREAS, Solar and battery storage systems can provide resilience to sustain residential customers in both single and multi-family dwellings as well as commercial customers through multi-day PSPS events; and

WHEREAS, EBCE jointly issued a public solicitation with Peninsula Clean Energy, Silicon Valley Clean Energy, and Silicon Valley Power on December 23 to request proposals for a combined total of 32.7MW of Resource Adequacy from vendors; and

WHEREAS, EBCE has completed a review of proposals and selected two vendors, Sunrun Inc. and Enel X, to partner with to deliver solar and storage solutions to EBCE customers for the purpose of increasing resilience in our community and delivery peak load reduction to EBCE; and

WHEREAS, EBCE has worked with the California Energy Commission to develop an alternative approach to delivering Resource Adequacy (RA) to LSEs by aggregating and dispatching a portfolio of behind-the-meter (BTM) solar and storage assets to reduce EBCE’s peak demand and RA obligation; and

WHEREAS, the Board desires to engage with Sunrun Inc. and Enel X to deliver up to 10.75MW/43MWh of solar + storage on the homes and businesses of EBCE customers.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. The CEO or his designee is hereby designated to negotiate and execute a Load Modifying Agreement with Sunrun Inc. attached in Exhibit A, for Load Modification up to 5.75MW/23MWh through December 31, 2032.

Section 2. The CEO or his designee is hereby designated to negotiate and execute a Load Modifying Agreement with Enel X in substantially the same form as the Sunrun agreement attached in Exhibit A, for Load Modification up to 5MW/20MWh through December 31, 2032.

Section 3. The CEO is further authorized to execute any clarifying or clerical changes to the Load Modifying Agreements with Sunrun Inc. and Enel X executed in accordance with this resolution, provided that such changes are reviewed and approved by General Counsel.

ADOPTED AND APPROVED this 17th day of June, 2020.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**EBCE BEHIND THE METER LOAD MODIFYING AGREEMENT
JUNE 2020**

**BEHIND THE METER
ENERGY STORAGE AGREEMENT FOR RESILIENCE
COVER SHEET**

Seller: Sunrun Inc., a Delaware corporation

Buyer: East Bay Community Energy Authority, a California joint powers authority

Execution Date:

Description of Project:

Contract Amount (Load Modification):

Minimum of 1,350 kW (“Minimum Commitment”) for 4 hours per day

Not to Exceed 5,750 kW (“Maximum Commitment”) for 4 hours per day

Contract Price (Load Modification): [REDACTED]

Contract Amounts (Capacity Attributes):¹

RA Attributes: Minimum of 400 kW (“Minimum Commitment”); Not to Exceed 1,650 kW (“Maximum Commitment”) NQC

Local RA Attributes: Minimum of 400 kW (“Minimum Commitment”); Not to Exceed 1,650 kW (“Maximum Commitment”) NQC

Contract Price (Capacity Attributes): [REDACTED]

Milestones:²

Milestone	Date
Customer Agreements Signed	10% of Contract Amount by: January 15, 2021 25% of Contract Amount by: September 15, 2021 50% of Contract Amount by: July 15, 2022 Remaining Contract Amount by: October 15, 2022

¹ NTD: Capacity Attributes will apply in event of Product Transition from LM to RA pursuant to Section 5.2(b).

² NTD: Host customer-related matters to be addressed in Co-Marketing Agreement; milestones in this agreement focus on other key project development tasks.

Load Modifying Supply Plan Submitted	March 1, 2021
Construction Start Deadlines	10% of Contract Amount by March 31, 2021 25% of Contract Amount by: November 15, 2021 50% of Contract Amount by: August 15, 2022 Remaining Contract Amount by: November 15, 2022
Expected Initial Delivery Date	December 31, 2022

Delivery Term: 10 Contract Years

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS	1
1.1 Contract Definitions	1
1.2 Rules of Interpretation	20
ARTICLE 2: TERM	21
2.1 Effectiveness	21
2.2 Term	22
ARTICLE 3: PROJECT DEVELOPMENT	22
3.1 Project Construction	22
3.2 Interconnection	23
3.3 Metering	23
3.4 Progress Reports	23
3.5 Remedial Action Plans	23
ARTICLE 4: INITIAL DELIVERY DATES	24
4.1 Timing of the Initial Delivery Dates	24
4.2 Conditions Precedent to the Initial Delivery Dates	24
4.3 Cooperation in Connection with Initial Delivery Dates	27
4.4 Confirmation of Initial Delivery Dates	27
ARTICLE 5: TRANSACTION	27
5.1 Product	27
5.2 Purchase and Sale Obligation	28
5.3 Allocation of CAISO Payments and Costs	29
5.4 Customers	29
ARTICLE 6: OPERATIONS	30
6.1 Operations	30
6.2 Charging Energy	31
6.3 Standard of Care	31
6.4 Buyer’s Compliance Obligations; Certification of Product	31
6.5 Scheduling	31
6.6 Information Sharing and Shared Learning	32
6.7 Changes in Law	32
ARTICLE 7: EVENTS OF DEFAULT; REMEDIES	34
7.1 Events of Default	34
7.2 Remedies; Declaration of Early Termination Date	35
7.3 Termination Payment	36
7.4 Notice of Payment of Termination Payment	36
7.5 Disputes with Respect to Termination Payment	37
7.6 Rights and Remedies Are Cumulative	37
ARTICLE 8: FORCE MAJEURE	37
8.1 Force Majeure	37

ARTICLE 9: INVOICING AND PAYMENT	38
9.1 Invoicing	38
9.2 Payment	38
9.3 Payment Adjustments; Billing Errors	38
9.4 Billing Disputes	39
9.5 Netting of Payments	39
ARTICLE 10: PERFORMANCE ASSURANCE	39
10.1 Seller's Development Security	39
10.2 Seller's Delivery Term Security	40
10.3 First Priority Security Interest in Cash or Cash Equivalent Collateral	40
10.4 Seller Financial Information	41
ARTICLE 11: SAFETY	41
11.1 Safety	41
11.2 Reporting Serious Incidents	42
11.3 Remediation	42
ARTICLE 12: TAXES	42
12.1 Taxes	42
12.2 Cooperation	43
ARTICLE 13: LIMITATIONS	43
13.1 No Consequential Damages	43
13.2 Waiver and Exclusion of Other Damages	43
ARTICLE 14: REPRESENTATIONS; WARRANTIES; COVENANTS	44
14.1 Seller's Representations and Warranties	44
14.2 Buyer's Representations and Warranties	45
14.3 General Covenants	46
14.4 Covenants of Seller	46
ARTICLE 15: INDEMNITIES	47
15.1 Indemnity by Seller	47
15.2 Notice of Claim	47
15.3 Defense of Claims	48
15.4 Subrogation of Rights	48
15.5 Rights and Remedies are Cumulative	49
ARTICLE 16: INSURANCE	49
16.1 Insurance	49
16.2 Evidence of Insurance	50
16.3 Failure to Comply	50
ARTICLE 17: RECORDS AND AUDIT RIGHTS	50
17.1 Operations Logs	50
17.2 Records and Audit	50
17.3 General Audit Right	51

17.4	State Auditor	51
17.5	Data Request Cooperation	51
17.6	Access Rights	51
ARTICLE 18: ASSIGNMENT		51
18.1	General Prohibition on Assignment	51
18.2	Collateral Assignment	51
18.3	Permitted Assignment by Seller	52
18.4	Unauthorized Assignment; Costs	52
ARTICLE 19: DISPUTE RESOLUTION		52
19.1	Governing Law	52
19.2	Dispute Resolution	53
ARTICLE 20: CONFIDENTIAL INFORMATION		53
20.1	Confidential Information	53
20.2	Permitted Disclosures	53
20.3	Remedies	54
20.4	Customer Information	54
ARTICLE 21: GENERAL PROVISIONS		54
21.1	Entire Agreement; Integration; Exhibits	54
21.2	Amendments	54
21.3	Survival	54
21.4	Waivers	55
21.5	No Agency, Partnership, Joint Venture or Lease	55
21.6	Severability	55
21.7	Mobile Sierra	55
21.8	Counterparts	55
21.9	Electronic Delivery	55
21.10	No Recourse to Members of Buyer	56
21.11	Forward Contract	56
21.12	Further Assurances	56
ARTICLE 22: NOTICES		56
22.1	Addresses for the Delivery of Notices	56
22.2	Time of Delivery	56

APPENDICES

Appendix I – Description of Portfolio	I-1
Appendix II – Operational Characteristics	II-1
Appendix III – Progress Reporting Form	III-1
Appendix IV – Certification for Commercial Operation	IV-1
Appendix V – Form of Letter of Credit	V-1
Appendix VI – Portfolio Safety Plan and Documentation	VI-1
Appendix VII – MUA Decision Attestation	VII-1
Appendix VIII – Notices	VIII-1
Appendix IX – Portfolio Modification Certification	IX-1
Appendix X – Form of Quarterly Report	X-1
Appendix XI – [RESERVED]	XI-1
Appendix XII – Terms and Conditions for Product Transition	XII-1
Appendix XIII – Form of Annual Load Modifying Resource Dispatch Plan	XIII-1

ENERGY STORAGE AGREEMENT FOR RESILIENCE

This Energy Storage Agreement for Resilience (“**Agreement**”) is made by and between the buyer (“**Buyer**”) and the seller (“**Seller**”) as of the execution date (“**Execution Date**”), in each case as set forth on the cover sheet (“**Cover Sheet**”) to this Agreement. Seller and Buyer are referred to each individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Projects in the Portfolio; 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.** Capitalized terms used in this Agreement have the following meanings, unless otherwise specified:

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

“**Agreement**” has the meaning set forth in the preamble.

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

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

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

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

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (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.

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

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

“**Buyer**” has the meaning set forth in the preamble to this Agreement.

“**Buyer Group**” has the meaning set forth in Section 15.1.

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

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

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

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

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

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

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

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

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

- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership

interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

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

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

“Claim” has the meaning set forth in Section 15.1(a).

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

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

“Conditions Precedent” has the meaning set forth in Section 4.2.

“Confidential Information” has the meaning set forth in Section 20.1.

“Confirmation Notice” means a Downward Change Confirmation Notice or an Upward Change Confirmation Notice, as applicable.

“Construction Delay Cure Period” has the meaning set forth in Section 3.1(d).

“Construction Delay Damages” means liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Construction Start” means (i) acquisition of all Governmental Approvals necessary for the construction of the applicable Project(s), (ii) engagement of each Contractor, (iii) execution of each required Customer Agreement for such Project(s), and (iv) ordering of all essential equipment and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the applicable Projects of the Portfolio may begin and proceed to completion without foreseeable interruption of material duration.

“Construction Start Deadline” has the meaning set forth in the Cover Sheet.

“**Contract Price**” means the amount specified in Section 5.2(d).

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

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

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

“**Cover Sheet**” has the meaning set forth in the preamble to this Agreement.

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

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

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

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

“**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.

“**Critical Milestone**” has the meaning set forth in Section 3.5.

“**Customer**” means a Person that is a retail electric customer of Buyer.

“**Customer Agreement**” means Seller’s agreement with a Customer for the installation and operation of a Project as part of the Project.

“**Customer Information**” means Customer-related information that is subject to CPUC rules, regulations or orders or other applicable Laws regarding customer privacy, including California Public Utilities Code Section 8380 et seq.

“**DAC**” means disadvantaged community as defined by CPUC regulations and published guidance.

“**Damage Payment**” means the dollar amount equal to the total amount required to be posted by Seller as Development Security pursuant to Section 10.1.

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

“**Delay Damages**” means any Construction Delay Damages or IDD Delay Damages.

“**Delay Notice**” has the meaning set forth in Section 4.1(b)(i).

“**Delivered Quantities**” has the meaning set forth in Section 5.2(c).

“**Delivery Term**” has the meaning set forth in Section 2.2(b).

“**Delivery Term Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to forty dollars [REDACTED] per kilowatt of the Contract Amount that has reached the Initial Delivery Date at the time of calculation.

“**Development Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to forty dollars [REDACTED] per kilowatt of the Minimum Commitment Contract Amount.

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

“**Disclosure Order**” has the meaning set forth in Section 20.2(a).

“**Disclosure Request**” has the meaning set forth in Section 20.2(b).

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

“**Downward Change Confirmation Notice**” has the meaning set forth in Section 6.7(a)(i).

“**Downward Change Notice**” has the meaning set forth in Section 6.7(a)(i).

“**Early Termination Date**” has the meaning set forth in Section 7.2(a).

“**EFC**” or “**Effective Flexible Capacity**” has the meaning given to “Effective Flexible Capacity” in the CAISO Tariff.

“**Electric System Upgrades**” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution

Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company's/Participating TO's electric system for delivery of Energy from the Project such that the Project can provide Product at all times during the Delivery Term.

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

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's and Project's compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all emission reduction credits, marketable emission trading credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project.

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

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

“Event of Default” means a Seller's Event of Default or a Party's Event of Default.

“Execution Date” has the meaning set forth in the preamble.

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

“Expected Initial Delivery Date” has the meaning set forth on the Cover Sheet.

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

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

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to

the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

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

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

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

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

(b) Force Majeure does not include:

(i) Covid-19 related restrictions imposed by Governmental Authorities as currently in place as of the Effective Date;

(ii) a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service;

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

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

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

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

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

(viii) Seller’s inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Portfolio Project (including as a result of any Public Safety Power Shutoff), except if Seller’s inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

(x) Seller’s failure to obtain or retain Customers; or

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

“Force Majeure Failure” has the meaning set forth in Section 8.1(d).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement. 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, all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

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

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

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“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.

“IDD Cure Period” has the meaning set forth in Section 4.1(b)(i).

“IDD Delay Damages” means liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) sixty (60).

“Indemnifiable Loss(es)” has the meaning set forth in Section 15.1(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2(b).

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

“Interest Rate” has the meaning set forth in Section 9.2.

“Joint Powers Agreement” means that certain Joint Powers Agreement of Buyer, dated as of December 1, 2016, by and among the County of Alameda, the City of Albany, the City of Berkeley, the City of Dublin, the City of Emeryville, the City of Fremont, the City of Hayward, the City of Livermore, the City of Oakland, the City of Piedmont, the City of San Leandro, and the City of Union City.

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

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

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

“**Letter of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Appendix V.

“**LIBOR**” means the London Interbank Offered Rate for the corresponding deposits of U.S. dollars.

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

“**Load Modifying Resource**” means a behind the meter generation or storage system that is capable of being dispatched to provide Load Modification.

“**Load Modifying Resource Dispatch Plan**” means a one-year plan, submitted for each calendar year of the Delivery Term, specifying on a month by month basis the hours of day during which the Contract Amounts will be delivered from the Project and substantially in the form of Appendix XIII.

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

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

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

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. 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, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits,

grants, or benefits related to the Project or generation therefrom or any costs or fees related to the Site or Project.

“**Maximum Commitment Contract Amount**” has the meaning set forth in the Cover Sheet.

“**Minimum Commitment Contract Amount**” has the meaning set forth in the Cover Sheet.

“**Monthly Payment**” has the meaning set forth in Section 5.2(d).

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

“**MUA Decision**” has the meaning set forth in Section 4.2(p).

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

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

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

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

“**Non-Defaulting Party**” has the meaning set forth in Section 7.2(a).

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

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

“**Notice of Claim**” has the meaning set forth in Section 15.2(a).

“**Notify**” means to provide a Notice.

“**NQC**” or “**Net Qualifying Capacity**” has the meaning given to “Net Qualifying Capacity” in the CAISO Tariff as may be updated from time to time.

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

“**Other Capacity Attributes**” means, exclusive of RA Attributes, Local RA Attributes, and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be

identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person, (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

“Other Programs” has the meaning set forth in Section 5.4(f).

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

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

“Party’s Event of Default” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Development Security and Delivery Term Security.

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

“Person” means 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.

“Portfolio Modification” has the meaning set forth in Section 5.4(c).

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

“Product” has the meaning set forth in Section 5.1(a).

“Product Transition Trigger” shall mean either of the following (1) the CEC no longer accepts Buyer’s submission of Load Modifying Resources as a means of reducing Buyer’s annual peak demand forecast, or (2) the proportion between the aggregate amount of Load Modifying Resources submitted by Buyer, to the aggregate CEC reduction in Buyer’s annual peak demand forecast, falls below eighty percent (80%).

“Progress Report” means a reasonably detailed progress report including the items set forth in Appendix III.

“Project” or **“Projects”** means the energy storage facilities installed at the Sites as more particularly described in Appendices I, II, and IX, including all appurtenant facilities,

communications and control systems, and equipment, from which Seller has agreed to provide the Product to Buyer pursuant to this Agreement.

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

“**Proxy Demand Resource**” or “**PDR**” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

“**Quarterly Report**” means the report provided by Seller to Buyer within 30 days after each March 31, June 30, September 30, and December 31 following the Initial Delivery Date in the form attached as Appendix X.

“**RA Attributes**” means, any and all resource adequacy attributes, exclusive of any Local RA Attributes, Flexible RA Attributes and Other Capacity Attributes, as may be identified at any

time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, that can be counted toward RAR and Local RAR.

“**Receiving Party**” has the meaning set forth in Section 20.2(b).

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

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

“**Regulatory Disclosure**” has the meaning set forth in Section 20.2(a).

“**Reliability Demand Response Resource**” or “**RDRR**” has the meaning set forth in the CAISO Tariff.

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

“**Remedial Action Plan**” has the meaning set forth in Section 3.5.

“**Remediation Event**” means the occurrence of any of the following with respect to the Portfolio or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Portfolio’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.2, in its reasonable discretion, that the Portfolio Safety Plan is not consistent with the Safety Requirements; or (g) any actual condition related to the Portfolio or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Portfolio or a Site.

“**Remediation Period**” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension).

“**Requirements**” means Prudent Operating Practices and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CEC, CPUC, CARB, FERC, NERC and WECC.

“**Resold Product**” has the meaning set forth in Section 5.1(b).

“**Resource Adequacy**” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations

may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

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

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

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

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

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

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

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

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

“**Safety Requirements**” means Prudent Operating Practices and all applicable safety-related (construed broadly) requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC.

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

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

“**Security Interest**” has the meaning set forth in Section 10.3(a).

“**Seller**” has the meaning set forth in the preamble to this Agreement.

“**Seller’s Event of Default**” has the meaning set forth in Section 7.1(a).

“**Seller’s Initial Portfolio List**” has the meaning set forth in Section 4.2.

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

“**Seller’s Portfolio List**” has the meaning set forth in Section 5.4(d).

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

“**Settlement Amount**” means an amount equal to the greater of (a) the amount of Delivery Term Security required under this Agreement and (b) the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Shortfall**” means any difference between a Delivered Quantity and a Contract Amount.

“**Shortfall LDs**” means a dollar amount equal to twelve (12) times the product of the Contract Amount and the Contract Price, paid by Seller to Buyer within ten (10) Business Days of a failure by Seller to deliver Delivered Quantities equal to the Contract Amounts in any month during the Delivery Term, or thereafter drawn by Buyer from the Delivery Term Security.

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

“**Site(s)**” means the real property on which the Project is located, as identified in Appendix I and Appendix VIII, as updated by Seller pursuant to Section 5.4(d).

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

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

“**Supplying Party**” has the meaning set forth in Section 20.2(b).

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

“**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 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.

“**Term**” has the meaning set forth in Section 2.2(a).

“**Terminated Transaction**” has the meaning set forth in Section 7.2(a).

“**Termination Payment**” has the meaning set forth in Section 7.3.

“**Transmission Provider**” means the CAISO.

“**Ultimate Parent**” means the Person that owns, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller and is not controlled (as defined within the definition of “Affiliate”) by any other Person; provided that in calculating ownership percentages or determining “control” for all purposes of the foregoing:

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

(b) except (i) for purposes of determinations in accordance with paragraph (a) above and (ii) for purposes of determining ownership of the direct equity interests in Seller, any ownership interest held or control exercised by a natural person shall not be taken into account.

“**Upward Change Confirmation Notice**” has the meaning set forth in Section 6.7(a)(ii).

“**Upward Change Notice**” has the meaning set forth in Section 6.7(a)(ii).

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

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

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

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, appendix, or exhibit is a reference to that section, paragraph, clause of, or that Party, appendix, or exhibit to, this Agreement unless otherwise specified;

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

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

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

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

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

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

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent 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;

(l) the terms “year” and “calendar year” mean the period of months from January 1 through and including December 31; the term “month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively;

(m) unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed;

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

(o) all references to Product mean each and all components of the Product unless the context infers a particular component of Product; and

(p) 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

2.1 **Effectiveness.** Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date.³

2.2 **Term.**

(a) The “**Term**” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term (unless terminated earlier in accordance with the terms of this Agreement).

(b) The “**Delivery Term**” is the period commencing on the Initial Delivery Date and continuing for the number of Contract Years specified on the Cover Sheet. The “**Initial Delivery Date**” is the first day of the first calendar month for which Product in the Contract Amounts is delivered; provided that Initial Delivery Date may not occur until satisfaction of the Conditions Precedent set forth in Article 4

Article 3: PROJECT DEVELOPMENT

3.1 **Project Construction.**

(a) Seller shall develop, design and construct the Project in timely fashion in order to perform Seller’s obligations under this Agreement.

(b) Seller shall cause Construction Start to occur for the applicable Projects no later than the applicable Construction Start Deadline. Seller shall provide Notice to Buyer certifying the satisfaction of this Section 3.1(c) on or before the applicable Construction Start Deadline.

³ NTD: Prior to Execution Date EBCE will require (A) Seller’s most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller’s organizational documents and any amendments thereto.

(c) If Construction Start is not achieved on or before the applicable Construction Start Deadline, then for each day beginning with the day after the applicable Construction Start Deadline through and including the date on which Construction Start occurs for the required Projects, for a period beyond the applicable Construction Start Deadline lasting no more than ninety (90) days (“**Construction Delay Cure Period**”), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(d), Seller’s failure to achieve Construction Start on or before the applicable Construction Start Deadline shall not be deemed a Seller’s Event of Default. If Seller achieves the Initial Delivery Date on the applicable Expected Initial Delivery Date, any Construction Delay Damages paid by Seller for the applicable Construction Start Deadline shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the applicable Initial Delivery Date.

3.2 **Interconnection.** Seller shall (a) execute all necessary Interconnection Agreements for the Projects in the Project, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company’s applicable tariffs, the Participating Transmission Owner’s applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering.** At Seller’s expense, Seller shall obtain and maintain one or more CAISO resource IDs dedicated exclusively to the Project and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product. CAISO-required meters shall be owned, maintained and operated by Seller at Seller’s sole cost and expense. In addition, Seller shall install, and shall maintain throughout the Delivery Term unless Buyer exercises its Product Transition rights under Section 5.2, a revenue-grade meter capable of measuring and demonstrating on a monthly basis the sufficiency of the Load Modification Delivered Quantities.

3.4 **Progress Reports.** Within fifteen (15) days after the close of every fiscal quarter, starting with the first full fiscal quarter following the Execution Date and until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Critical Milestones within ten (10) Business Days of receipt of such request by Seller.

3.5 **March 2021 and March 2022 Elections.**

(a) No later than March 1, 2021,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

(iii) Buyer at its option may elect to change the accounting for the Load Modification Contract Amount from a kW-Month capacity construct to a kWh energy construct so long as no changes to the Seller's compensation and revenue hereunder results from such change.

(b) No later than March 1, 2022,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

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

Article 4: INITIAL DELIVERY DATES

4.1 Timing of the Initial Delivery Dates.

(a) **Initial Delivery Dates.** Seller shall cause the Initial Delivery Date to occur on, and not prior to, the applicable Expected Initial Delivery Date.

(b) **Failure to Meet Expected Initial Delivery Date.**

(i) Seller shall provide Buyer with advance Notice of any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, including a true and reasonably detailed explanation of the cause of such delay (“**Delay Notice**”), at least ninety (90) days in advance of the Expected Initial Delivery Date (or, if Seller’s anticipation of such delay does not arise until after such advance window, then as soon as reasonably possible following such anticipation arising). For each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting no more than one hundred eighty (180) days (“**IDD Cure Period**”), Seller shall pay IDD Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any IDD Delay Damages. Buyer may draw any IDD Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due.

(ii) Prior to the expiration of the IDD Cure Period, so long as Seller has provided the Delay Notice to Buyer and paid IDD Delay Damages to Buyer in accordance with this Section 4.1(b), Seller’s failure to achieve the Initial Delivery Date on the Expected Initial Delivery Date shall not be deemed a Seller’s Event of Default. Upon (A) Seller’s failure to provide a Delay Notice to Buyer in accordance with this Section 4.1(b), (B) Seller’s failure to pay IDD Delay Damages in accordance with this Section 4.1(b), or (C) Seller’s failure to achieve the Initial Delivery Date prior to the expiration of the IDD Cure Period, in each case for any reason other than a Force Majeure extension or a Buyer Event of Default, Seller will be deemed a Defaulting Party pursuant to Section 7.1(a)(v).

(iii) Upon the expiration of the IDD Cure Period, if Seller has failed to achieve the Initial Delivery Date with respect to the entire Project but is capable of achieving the Initial Delivery Date with respect to Projects of the Project which could provide no less than eighty percent (80%) of the Contract Amount, then Buyer shall have the right, in lieu of terminating this Agreement based on such event of default, to reduce the Contract Amount and Contract Amount accordingly and allow Seller to declare the Initial Delivery Date based on such reductions, in exchange for Seller’s one-time payment to Buyer of █████ per kw of such reductions.

4.2 **Conditions Precedent to the Initial Delivery Date.** The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the “**Conditions Precedent**”) and must be satisfied by Seller, to Buyer’s reasonable satisfaction, at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is expressly set forth below, in which case such other deadline shall govern:

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

(b) Seller shall have executed a Customer Agreement with each Customer whose Project is to be a part of the Project as necessary for the safe and lawful operation of the Project and to enable Seller to deliver the Product to Buyer in the Contract Amounts, and such Customer Agreements shall remain valid and in full force and effect.

(c) Seller shall have constructed or caused to be constructed the Projects that are to be part of the Project as of the Initial Delivery Date in accordance with this Agreement to

enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product in the Contract Amounts from the Project.

(d) Seller shall have executed and complied with any necessary Interconnection Agreement(s) and installed any necessary metering to deliver Product to Buyer in the Contract Amounts, in each case in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(e) Seller shall have submitted to Buyer a Portfolio Safety Plan.

(f) Seller shall have provided Buyer with (A) Seller's Portfolio List in accordance with Section 5.4(d) that demonstrates Projects and Customers under executed Customer Agreements with Seller sufficient for Seller to deliver, in aggregate, Product in the Contract Amounts ("**Seller's Initial Portfolio List**"), and (B) a description of the Project and Projects set forth in Appendix I. If Seller provides to Buyer Seller's Initial Portfolio List, but prior to the occurrence of the Initial Delivery Date Seller changes Seller's Initial Portfolio List, then this Condition Precedent shall not be satisfied and the date on which Seller provides to Buyer a changed Seller's Portfolio List in accordance with this Agreement shall constitute provision of Seller's Initial Portfolio List for purposes of this Condition Precedent.

(g) Seller shall have provided to Buyer an attestation, in the form attached hereto as Appendix VII, that Seller is following all of the rules set forth in CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities (the "**MUA Decision**").

(h) Seller shall have provided to Buyer documentation of Seller's compliance with the dual participation requirements of Section 5.4(f).

(i) Seller shall have delivered to Buyer all insurance documents required under Article 16.

(j) Seller shall have provided Delivery Term Security to Buyer as required by Section 10.2.

(k) Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages

(l) No Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(m) Seller shall have satisfied the following conditions specific to Load Modifying Resources:

(i) No later than the Dispatch Plan Deadline, Seller shall have delivered to Buyer a Load Modifying Resource Dispatch Plan for the first year of the Delivery Term.

4.3 **Cooperation in Connection with Initial Delivery Date**. The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of

their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Contract Amounts of Product beginning on the applicable Initial Delivery Date.

4.4 **Confirmation of Initial Delivery Dates.** Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the applicable Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller's Notice. No later than seven (7) Business Days following the applicable Initial Delivery Date, Buyer shall provide a Notice to Seller confirming the occurrence of the applicable Initial Delivery Date.

Article 5: TRANSACTION

5.1 **Product.**

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver exclusively to Buyer, all Load Modification or, upon a Product Transition pursuant to Section 5.2(b), all Capacity Attributes, in each case that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Projects in the Portfolio (collectively, the "**Product**"), pursuant to the terms and conditions contained herein (including Portfolio Modification provisions in Section 5.4(e)). Operational Characteristics shall not be modified during the Term.

(b) Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement ("**Resold Product**").

5.2 **Purchase and Sale Obligation.**

(a) **Initial Product.** During the Delivery Term, unless and until a Product Transition occurs under Section 5.2(b), Seller shall deliver to Buyer all Load Modification, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Section 5.2(c).

(b) **Product Transition.** At any time during the Delivery Term, but only upon the occurrence of a Product Transition Trigger, Buyer may, by no less than 75 days written notice to Seller, elect to receive Capacity Attributes rather than Load Modification from the Project (the "**Product Transition**"). Upon receipt of a Product Transition notice from Buyer, and as a condition to Buyer's obligation to take and pay for Capacity Attributes for the remainder of the Delivery Term, Seller shall within ninety (90) days satisfy the Capacity Attribute Conditions set forth in Part One of Appendix XII. Commencing on the first day of the First Showing Month after Seller's satisfaction of the Capacity Attribute Conditions, and for each day of each Showing Month during the remainder of the Delivery Term, Seller shall deliver to Buyer and Buyer shall pay for all Capacity Attributes of Product, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Part Two of Appendix XII. Upon a Product Transition, and for remainder of the Delivery Term the Product shall be Capacity Attributes and not Load Modification and Seller shall have no further obligation to provide, or to comply with

any provision of this Agreement that is limited to, Load Modification. For clarity, the Product Transition may occur a maximum of one (1) time during the Delivery Term.

(c) **Payment.** The provisions of this Section 5.2(c) shall apply unless a Product Transition Occurs, in which case the provisions of Part Two of Appendix XII shall become effective and replace this Section 5.2(c).

(i) Each monthly invoice prepared by Seller pursuant to Article 9 shall include meter data substantiating the quantity of Load Modification, in kWh, delivered to Buyer from the Project consistent with the Load Modifying Resource Dispatch Plan for the applicable month (the “**Delivered Quantities**”).

(ii) For all Load Modification that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment (“Monthly Payment” or “MP”) as follows:

$$MP = DQ \times CP$$

where,

DQ = The Delivered Quantities;

and

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

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

5.3 **Allocation of CAISO Payments and Costs.**

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

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

5.4 **Customers.**

(a) **Seller Obligation to Obtain Customers.** Seller shall obtain or cause to be obtained the Customers necessary to enable the safe and reliable delivery of Product in the Contract Amounts to Buyer during the Delivery Term. Seller shall enter into a Customer Agreement with each such Customer, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority. In connection with but without limiting the foregoing, Seller shall at all times comply with the Co-Marketing Agreement.

(b) **Customers Eligible for Inclusion in Project.** Product provided to Buyer must come exclusively from Projects installed at Sites listed in Seller's Portfolio List in accordance with Section 5.4(d). Unless a Product Transition has occurred, Customers must meet the definition of a "Customer" during and throughout the Delivery Term in order to be included in Seller's Portfolio List.

(c) **Seller's Portfolio.** Seller shall cause Seller's Portfolio at all times during the Delivery Term to contain at least twenty percent (20%) of Contract Capacity as delivered from assets associated with DAC, LMI, CARE/FERA or Medical Baseline Customer accounts.

(d) **Seller's Portfolio List.** As of the date first submitted in accordance with Section 4.2 and throughout the Delivery Term, Seller shall maintain a list of Customers in Seller's Portfolio in the form and containing the information set forth in the **Seller's Portfolio List** in Appendix III ("**Progress Reporting Form**"). If any of the material Customer information in Seller's Portfolio List materially changes during the Delivery Term, such change shall be deemed a Portfolio Modification pursuant with Section 5.4(e) and upon completion of such Portfolio Modification, Seller shall submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List. In addition, Seller shall provide any additional Customer information reasonably requested by Buyer in connection with this Agreement.

(e) **Portfolio Modification.** The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio (a "**Portfolio Modification**") at any time during the Delivery Term, subject to the requirements of this Section 5.4 and Article 11, and any such Portfolio Modifications included in the next issued Quarterly Report. A Portfolio Modification may not alter (i) the Portfolio from the Portfolio description set forth in Appendix I as of the Execution Date, (ii) the Operational Characteristics, or (iii) the Portfolio's ability to deliver Product in the Contract Amounts throughout the Delivery Term. A Portfolio Modification will not alter nor relieve any of Seller's obligations under this Agreement.

(f) **Dual Participation.** Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("**Other Programs**"), provided that (i) participation of Customers in both Seller's Portfolio and Other Programs does not impair (in whole or in part) Seller's ability to perform its obligations under this Agreement (including Section 14.4) and (ii) Seller complies with all rules and requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority. For the avoidance of doubt, a failure by Seller or a Customer

to achieve participation in Other Programs shall not in any way limit or excuse Seller's obligations to Buyer under this Agreement.

(g) **Seller's Relationship with Customer.** The terms and conditions of the Customer Agreements governing the relationship between Seller and a Customer with respect to such Customer's participation in Seller's Portfolio are independent of Buyer, and Buyer shall have no responsibility with respect to such Customers for purposes of Seller's Portfolio. Seller shall independently resolve any disputes arising between Seller and any Customer.

Article 6: OPERATIONS

6.1 **Operations.** Seller shall at all times retain operational control of the Project and be responsible for operation and maintenance of the Project, and Buyer shall have no liability for the failure of Seller, any Customer, or any Project owner or operator to comply with any applicable Law, Requirements, or other requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance.

(a) **Islanding:** Projects are required to be "islandable" and be able to provide back-up power to Customers in the event of a power outage.

6.2 **Charging Energy.** As between Buyer and Seller, Seller shall be responsible for procuring and delivering all of the Charging Energy to the Project and paying all of the associated costs of such Charging Energy.

6.3 **Standard of Care.** In performing all of its obligations under this Agreement, including in its scheduling, interconnection, operation and maintenance of the Project, Seller shall comply with all Requirements and Safety Requirements.

6.4 **Buyer's Use and Certification of Product.**

(a) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting requirements of all applicable Governmental Authorities and other Persons, as such requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product (including, solely in the event of a Product Transition, enabling Buyer to apply Product towards Buyer's Compliance Obligations), or sell Resold Product, at all times during the Delivery Term. Promptly following Buyer's written request, Seller agrees to take all actions and execute or provide any documents, information, or instruments with respect to Product reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority.

(b) During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and use such Product (including, solely in the event of a Product Transition, use of such Product to satisfy its Compliance Obligations). If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental

Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

6.5 **Dispatch**. The provisions of this Section 6.5 shall apply unless a Product Transition Occurs, in which case the provisions of Part Three of Appendix XII (“Scheduling”) shall become effective and replace this Section 6.5.

(a) For each year of the Delivery Term, Seller shall submit to Buyer a Load Modifying Resource Dispatch Plan on or before the Dispatch Plan Deadline.

(b) No less than 15 days before the Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the coming year.

(c) Buyer may require seller to modify Dispatch Plan to maximize Load Modification for Buyer outside of Customers’ TOU periods upon mutual agreement of an equitable adjustment to the Contract Price to reflect the demonstrable economic loss to Seller or Seller’s Customers.

(d) At all times during the Delivery Term, Seller shall operate the Project to provide the Contract Amounts of Load Modification as specified in the applicable Load Modifying Resource Dispatch Plan.

6.6 **Information Sharing and Shared Learning**. Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer’s portfolio of assets to meet its customers’ needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data at least on an aggregated basis but excluding cost or similar proprietary information, upon Buyer’s reasonable request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. Except with respect to services, attributes, or products delivered to Customers pursuant to Customer Agreements or products or services related to Renewable Energy Credits (which shall not require any Notice to Buyer), for information related to Seller’s multiple uses of the Project, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Project to a third party.

6.7 **Changes in Law**.

(a)

(i) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in a *decrease* to the amount of Product that may be calculated or derived from the Operational Characteristics (including any extension by the CEC, CPUC or CAISO of the required duration of energy storage resources for Load Modification or, after a Product Transition, Resource Adequacy), Seller shall exercise

commercially reasonable efforts to maintain the Contract Amounts. If despite such efforts Seller is unable to maintain the Contract Amounts as a result of such change in requirements, then either Party may provide Notice to the other Party, once it is reasonably evident that the Contract Amounts cannot be maintained, specifying the altered amounts of Product (“**Downward Change Notice**”). Following a Downward Change Notice, Buyer will confirm via Notice to Seller the amended Contract Amounts and Contract Amount based on such change and the date that Seller shall commence delivery of such amended amounts (“**Downward Change Confirmation Notice**”).

(ii) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in an *increase* to the amount of Product that may be calculated or derived from the Operational Characteristics (including in the case of a new category of Load Modification or after a Product Transition, Capacity Attributes), then either Party shall provide Notice to the other Party as soon as practicable following knowledge of such change specifying the altered amounts of Product (“**Upward Change Notice**”). Following an Upward Change Notice, Buyer shall have sole discretion over whether to accept a corresponding increase to any Contract Amount and the Contract Amount. If Buyer chooses to accept such increase, Buyer will confirm via Notice to Seller the amended Contract Amounts and Contract Amount based on such change and the date that Seller shall commence delivery of such amended amounts (“**Upward Change Confirmation Notice**”). If Buyer declines to accept any such increase, Seller shall have the right to sell to third parties any resulting Product that is in excess of the Contract Amounts.

(iii) The Contract Amounts and Contract Amount shall automatically adjust upon the date set forth in the Confirmation Notice without further need for the Parties to amend this Agreement. Until such date, Seller shall continue to deliver the Contract Amounts of Product as stated prior to the Confirmation Notice, unless otherwise required by Law or other Requirements.

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

(c) If a change in CAISO, CEC or CPUC Requirements renders this Agreement or any provisions hereof incapable of being performed or administered, then either 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 Execution 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 either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this

Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(d) Without limitation or modification of Section 6.7(a) or Section 6.7(c), in the event of any change in Requirements by the CPUC, CEC, CAISO, or other Governmental Authority or Person that significantly modifies the market mechanisms or regulatory construct for delivery of Load Modification or (after a Product Transition) Capacity Attributes from resources similar to and including the Project (but that does not fall under Section 6.7(c)), either Party may provide Notice to the other Party requesting that the Parties discuss in good faith changes to this Agreement that would enable each Party to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith for a period of at least sixty (60) days but shall have no further obligation or rights under this Section 6.7(d).

Article 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

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

(i) Seller fails to satisfy a Performance Assurance requirement set forth in Article 10 and Seller fails to provide replacement Performance Assurance within ten (10) Business Days of Buyer’s written demand therefor in accordance with Article 10;

(ii) any material misrepresentation or omission, in any metering or submetering, Load Modifying Resource Dispatch Plan, Supply Plan, Seller’s Portfolio List, report, or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation or undue delay or withholding is not cured within ten (10) Business Days of Buyer’s receipt thereof;

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Project, except as specified in Article 5.1;

(iv) Seller fails to achieve Construction Start by the applicable Construction Start Deadline for reasons other than Force Majeure, subject to Section 3.1(d);

(v) Seller fails (A) to deliver a Delay Notice in accordance with Section 4.1(b)(i) or (B) to achieve an Initial Delivery Date by the applicable Expected Initial Delivery Date for reasons other than Force Majeure, subject to Section 4.1(b)(ii);

(vi) Seller fails in any month to deliver Delivered Quantities to Buyer equal to the Contract Amounts (unless Buyer has received Shortfall LDs in lieu of Delivered Quantities); provided that Shortfall LDs may not be used to avoid a Seller’s Event of Default (A) during the months of August and September (unless a Product Transition has occurred) or (B) more than three (3) times in any twelve (12) month period during the Delivery Term; or

(vii) In any year in the Delivery Term, aggregate Delivered Quantities are less than eighty five percent (85%) of the Contract Amounts for such period.

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

(viii) 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;

(ix) any representation or warranty made by such Party under this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof, 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) days period despite exercising best efforts;

(x) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with all Requirements and Safety Requirements in accordance with Section 6.3, except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(xi) such Party becomes Bankrupt;

(xii) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 18; or

(xiii) 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.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring

before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;
- (f) provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount. The Non-Defaulting Party shall calculate 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 (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

7.5 **Disputes with Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the

Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 19.

7.6 **Rights and Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

Article 8: FORCE MAJEURE

8.1 **Force Majeure**.

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

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

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

(d) **Force Majeure Failure**. Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "**Force Majeure Failure**":

- (i) if during the Delivery Term:

(A) due to a Force Majeure event, Seller is unable to meet its obligations under this Agreement (including any failure to deliver Delivered Quantities to Buyer equal to the Contract Amounts) for a period greater than one hundred eighty (180) days; or

(B) the Project is destroyed or rendered inoperable by an event of Force Majeure.

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

(e) **Effect of Termination for Force Majeure Failure.** If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 21.3.

Article 9: INVOICING AND PAYMENT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice, in arrears, to Buyer no sooner than ten (10) Business Days after the end of each month of the Delivery Term for all amounts due from Buyer to Seller under this Agreement, including, as applicable: (a) the Monthly Payment, and (b) other compensatory adjustments required by this Agreement, including adjustments for Taxes. Each invoice shall (i) contain data sufficient to document and verify all amounts included therein, including any relevant records, invoices, or settlement data from CAISO, necessary to verify the accuracy of any amount and (ii) be in a format specified by Buyer.

9.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. 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 three-month LIBOR, 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.

9.3 **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 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. 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 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **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 of 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 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 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 (12) 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.

9.5 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages, 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.

Article 10: PERFORMANCE ASSURANCE

10.1 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) Business Days of the Execution Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon the earlier of (a) Seller's delivery of the Delivery Term 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. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Stage 1 Commercial Operation Deadline, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

10.2 Seller's Delivery Term Security. To secure its obligations under this Agreement, Seller shall deliver Delivery Term Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Delivery Term Security in full force and effect, and shall within five (5) Business Days after any draws made by Buyer in accordance with this Agreement (other than to satisfy a Termination Payment) replenish the Delivery Term Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Delivery Term Security. If the Delivery Term Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Delivery Term Security.

10.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 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 a Seller's Event of Default or a Party's Event of Default on the part of Seller, an Early Termination Date resulting from a Seller's Event of Default or a Party's Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

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

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

(iii) Liquidate all Development Security or Delivery Term 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.

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

10.4 **Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Notwithstanding anything else herein to the contrary, to the extent Seller is a publicly traded corporation on a nationally recognized stock exchange, the obligation to deliver financial statements pursuant to Section 10.4 herein shall be waived.

Article 11: SAFETY

11.1 Safety.

(a) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Project and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(b) Prior to Seller's execution of a Contractor's contract, Seller shall demonstrate to Buyer that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Project, as applicable. During the period that a Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements.

(c) Seller shall document a Portfolio Safety Plan and incorporate the Portfolio Safety Plan's features into the design, development, construction, operation, and maintenance of the Project. Seller shall submit for Buyer's review a Portfolio Safety Plan, in a format acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements and (B) Seller's consideration of the Portfolio Safety Plan items in Part Two (Project Design and Description) of Appendix VI. Upon Notice to Buyer, Seller may deviate from any specific procedures identified in the Portfolio Safety Plan while designing, developing, constructing, operating, or maintaining the Project, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Project safely or in accordance with the Safety Requirements.

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

(e) Seller shall remove any Contractor that engages in repeated, material violations of the Portfolio Safety Plan or Safety Requirements, unless doing so would present an ongoing material adverse effect to the operation of the Project.

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

11.3 **Remediation.**

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

(b) Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

Article 12: TAXES

12.1 **Taxes.** Seller shall pay or cause to be paid all Taxes (a) on or with respect to the Portfolio and (b) on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Execution Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **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, however*, that 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.

Article 13: LIMITATIONS

13.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 15 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.2 **Waiver and Exclusion of Other Damages.**

(a) 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.

(b) 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.

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(d), 4.1(c), 7.1(a)(vi), 7.2 AND 7.3, 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.

(d) 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 14: REPRESENTATIONS; WARRANTIES; COVENANTS

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

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

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

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

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

(e) The Project is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Project and Seller will be the applicant on any California Environmental Quality Act documents.

(g) Seller is familiar with conflict of interest Laws, including the California Political Reform Act, and Buyer's board policies governing conflicts of interest; Seller is in compliance with such Laws and board policies and does not know of any facts that would violate such Laws and board policies; Seller and its officers and agents have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any employee, director, officer of Buyer or governmental official in Alameda County, California for the purpose of influencing any act or decision of such employee, director, officer or government official in her official capacity; no officer or agent of Seller (i) is a government official in Alameda County, California or a family member of a government official in Alameda County, California or (ii) has a personal, business, or other relationship or association with any government official in Alameda County, California or family member thereof who may have responsibility for or oversight of any activities of Buyer; Seller does not employ any government official in Alameda County, California or family member thereof.

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

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

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

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

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

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

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

14.3 **General Covenants.** Each Party covenants that commencing on the Execution Date and continuing throughout the Term 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 the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

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

(a) Seller will (i) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Project consistent with Safety Requirements, including any approvals required under the California Environmental Quality Act, (ii) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals, and (iii) at Buyer’s request, provide to Buyer digital copies of any Governmental Approvals.

(b) For Multifamily Projects, 90% of all workers employed on in support of the Projects by Seller or through Contractors shall be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher.

Seller shall make commercially reasonable effort to: Cause Alameda County residents to provide at least 50% of the work hours associated with the construction, operation, and maintenance of the Projects; hire graduates of state-certified apprenticeship training programs, such as Cypress Mandela and Rising Sun Energy Center, in support of the construction, operation, and maintenance of the Projects.

(c) For Single-family Projects, Seller will use reasonable efforts to ensure that employees hired by Seller, and its Contractors, that will perform construction work or provide services at the Site related to construction of the Project are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California Law, if any. Nothing herein shall require Seller or its Contractors to comply with, or assume liability created by other inapplicable provisions of any California labor Laws.

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

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

(f) Seller shall operate the Project during the Delivery Term in accordance with Appendices I and II and Safety Requirements.

(g) Seller shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to energy storage facilities.

(h) Seller shall follow all the rules set forth in Exhibit A of the MUA Decision.

Article 15: INDEMNITIES

15.1 Indemnity by Seller.

(a) Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees, and representatives ("**Buyer Group**") from and against all third party or Customer claims arising out of this Agreement, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, however described (collectively, "**Claims**"), which arise out of or relate to or are in any way connected with (i) Seller's delivery of the Product to Buyer, (ii) Seller's or its Affiliates' ownership, development, construction, operation or maintenance of the Project, including the Project(s) and the Site(s); (iii) Seller's or its Affiliates' actions or inactions, including Seller's breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Project, the Project(s), Seller's Portfolio, Customer(s), or Site (including any Claims relating to a Shortfall); (iv) any environmental matters associated with the Project, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; (v) any agreement between Seller or its Affiliates and a third party including any Customer Agreement; (vi) the participation of Customers in the Project (or the solicitation thereof); or (vii) Seller's or its Affiliates' violation of any applicable Law, Requirements, or other requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller's Affiliates, Customers, or others, excepting only such losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group (collectively, "**Indemnifiable Losses**").

(b) Seller shall defend, indemnify and hold harmless the Buyer Group harmless from and against all Claims incurred by or brought against Buyer in connection with Environmental Costs.

15.2 Notice of Claim.

(a) **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, Buyer will promptly Notify Seller in writing of any Claim which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 15.1. The Notice is referred to as a “**Notice of Claim.**” A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Seller is not obligated to indemnify Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 15.2(b), Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim as provided in the last sentence of Section 15.2(b), Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

15.4 **Subrogation of Rights.** Upon making any indemnity payment, Seller will, to the extent of such indemnity payment, be subrogated to all rights of the Buyer against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) Seller is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until Buyer recovers full payment of its Indemnifiable Loss, any and all claims of the Seller against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Buyer’s rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall

execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.5 **Rights and Remedies are Cumulative.** The rights and remedies of a Party pursuant to this Article 15 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement, except with respect to any expressly exclusive remedies herein.

Article 16: INSURANCE

16.1 **Insurance.** Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its Contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.1 constitute a material obligation of this Agreement.

(a) **Workers' Compensation and Employers' Liability.**

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(b) **Commercial General Liability.**

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than five million dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional named insured.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) **Business Auto.**

(i) Business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence.

(ii) 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."

(d) **Construction All-Risk Insurance.** During the construction of the Project prior to the Stage 2 Commercial Operation Date, construction all-risk form property insurance covering the Project and naming Seller (and Lender if any) as the loss payee.

(e) **Contractor's Pollution Liability.**

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

(ii) The limit will be at least two million dollars (\$2,000,000.00) each occurrence for bodily injury and property damage.

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

16.2 **Evidence of Insurance.** Within ten (10) days after the Execution Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

16.3 **Failure to Comply.** If Seller fails to comply with any of the provisions of this Article 16, Buyer may, but is not obligated, to purchase the insurance coverage required under Section 16.1 and set off the cost thereof from any amounts owed by Buyer to Seller under this Agreement.

Article 17: RECORDS AND AUDIT RIGHTS

17.1 **Operations Logs.** Seller shall maintain a complete and accurate log of all material operations. Such log will include, but not be limited to, information on charging, discharging, availability, maintenance performed, outages, energy characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Project. Seller shall provide this information electronically to Buyer on a monthly basis. At the request of Buyer or any Governmental Authority having jurisdiction over any of the Requirements, Seller shall provide all records demonstrating that the Project is operated and maintained in accordance with Requirements.

17.2 **Records and Audit.**

(a) Seller shall provide access to such financial records and personnel required by Buyer in order to facilitate Buyer's compliance with applicable Law and Generally Accepted Accounting Principles.

(b) To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Seller will make all records available to Buyer at its principal place of business during normal working hours.

17.3 **General Audit Right.** Buyer has the right during normal working hours, and after reasonable Notice, to examine Seller's records to the extent reasonably necessary to verify (a) Seller's compliance with this Agreement (including Section 14.4), (b) the accuracy of any statement including the Portfolio Safety Plan or other documents that supplement this Agreement, and (c) any charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy, necessary adjustments shall be made promptly.

17.4 **State Auditor.** In accordance with 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 if the compensation under this Agreement exceeds ten thousand dollars (\$10,000.00).

17.5 **Data Request Cooperation.** Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities or Public Records Act requests that are related to or associated with the Project, delivery of Product or this Agreement, subject to the requirements of Article 20.

Article 18: ASSIGNMENT

18.1 **General Prohibition on Assignments.** Except as provided below, neither Party may directly or indirectly assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Seller Change of Control or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Portfolio or the Projects. Seller has the right to assign the Projects and Customer Agreements in connection with any financing or refinancing of the Projects.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Project by Seller, Buyer agrees to 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.

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

transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller, provided that such assignment shall not release Seller from its obligations under this Agreement unless such Affiliate has financial strength and technical capabilities equal to or greater than that of Seller.

18.4 Unauthorized Assignment; Costs.

(a) Any assignment or purported assignment in violation of this Article 18 is void.

(b) No assignment of this Agreement shall be effective unless such assignment is memorialized in a written agreement signed by the assignee and, except in connection with a collateral financing, in which agreement the assignee assumes all of the assignor's obligations and liabilities under this Agreement.

(c) Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

Article 19: DISPUTE RESOLUTION

19.1 **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. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

19.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 19.2.

Article 20: CONFIDENTIAL INFORMATION

20.1 **Confidential Information**. Throughout the Term, neither Party shall disclose (a) the non-public terms or conditions of this Agreement, (b) information disclosed to such Party by the other Party that is (i) marked or expressly identified as “confidential” and (ii) accompanied by a statutory reference to the applicable section of the Public Records Act pursuant to which such information may be kept confidential or (c) Customer Information (collectively, “**Confidential Information**”) to a third party.

20.2 **Permitted Disclosures**. A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“**Disclosing Party**”), other than to those entities set forth in subsection (c); or (c) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC.

(a) **Procedure for Permitted Disclosures**. In connection with requests made pursuant to Section 20.2(b) (“**Disclosure Order**”) and disclosures pursuant to Section 20.2(c) (“**Regulatory Disclosure**”) each Party shall, to the extent practicable, use reasonable efforts to: (A) Notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

(b) **Disclosure Requests**. If a Party (“**Receiving Party**”) receives a request from a third party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “**Supplying Party**”) Confidential Information (“**Disclosure Request**”), then the Receiving Party shall provide Notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such Notice, the Supplying Party may provide a Notice to the Receiving Party stating that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information, in such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party’s attempts to protect from disclosure the information. If the Supplying Party does not seek or does not receive a protective order or other judicial determination protecting the Confidential Information, the Receiving Party may disclose the Confidential Information, which disclosure will not be considered a violation of this Agreement. The Parties recognize that Buyer is a public entity subject to the provisions of the California Public Records Act, and that disclosures made thereunder shall not be considered a violation of this Agreement.

20.3 **Remedies**. Except as provided in Section 20.2 with respect to the Parties’ permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

20.4 **Customer Information.** Seller shall comply with all applicable Laws relating to the protection of Customer Information, including California Public Utilities Code Section 8380, *et seq.* and the “Rules Regarding Privacy and Security Protections for Energy Usage Data” adopted by the CPUC.

Article 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement 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 Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

21.3 **Survival.** Applicable provisions of this Agreement shall continue in effect after termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Sections 15.1 through 15.5 (Indemnities) and any other indemnity rights survive the end of the Term without limit, (b) all audit rights under Sections 17.2 and 17.3 survive the end of the Term for an additional one (1) year, or as required by applicable Law, (c) all rights and obligations under Article 20 (Confidentiality) survive the end of the Term without limit, and (d) all provisions relating to limitations of liability survive without limit.

21.4 **Waivers.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any waiver of a default under this Agreement must appear in a writing signed by the waiving Party.

21.5 **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 Product seller and Product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Project, the Product or any business related to the Project. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or indemnitee. In no event shall Buyer’s receipt or review of any Seller submission, or Buyer’s monitoring of Project data or cooperation in Project operations be construed as an assumption of any responsibility, liability or obligation of Seller for the design, construction or operation of the Project.

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

21.7 **Mobile Sierra**. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Mktg, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).

21.8 **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.

21.9 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, provided that any digital signatures are in compliance with California Code of Regulations, Title 2, Division 7, Chapter 10, Sections 22000 – 22005.

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

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

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

Article 22: NOTICES

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

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

SIGNATURES

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

SUNRUN INC.

EAST BAY COMMUNITY ENERGY
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX I

DESCRIPTION OF PORTFOLIO

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

A. PORTFOLIO DESCRIPTION

Project name: East Bay Resilient Capacity Resource

Energy storage technology of Units: Li-ion

Interconnection:

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

B. PORTFOLIO SIZE

Nameplate capacity (aggregate): _ Minimum: 3 MW; Maximum: 12.5 MW

APPENDIX II

OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Product (Load Modification and Capacity Attributes) it can provide.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): ___ MW

Minimum continuous discharge power (Dmin): ___ MW

Maximum discharge duration at constant Dmax : ___ (hours)

Maximum continuous charge power (Cmax): ___ MW

Minimum continuous charge power (Cmin): ___ MW

Maximum charge duration at constant Cmax: ___ (hours)

Amount of Energy released to fully discharge: ___ MWh

Amount of Energy required to fully charge: ___ MWh

Round-trip efficiency: _____ %

Ramp Rates

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

Dmin to Dmax: ___ MW/second

Cmin to Cmax: ___ MW/second

Dmax to Dmin: ___ MW/second

Cmax to Cmin: ___ MW/second

System Response Time

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

Idle to Dmax: ___ seconds

Idle to Cmax: ___ seconds

Dmax to Cmax: ___ seconds

Cmax to Dmax: ___ seconds

Dmin to Cmin: ___ seconds

Cmin to Dmin: ___ seconds

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

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

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

Discharge Start-up Fuel: ___ MMBtu

Starts and other Run Time Limitations

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

Start limitations: _____

Run hour limitations: _____

[Describe minimum times.]

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

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

The minimum down time after a shutdown is ___ seconds

APPENDIX III

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Project description.
3. Indicative site plans representative of Projects to be included in Portfolio. Individual Project site plans for 10% or fewer of total Projects in Portfolio to be provided to EBCE at EBCE's discretion.
4. Description of any material planned changes to the Project or the Site.
5. Schedule showing progress on Project construction generally and achieving each of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Indicative pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress of a representative portion of Projects to be included in Portfolio. Pictures pertaining to 10% or fewer of individual Projects included in Portfolio to be provided to EBCE at EBCE's discretion.
12. Compliance with workforce and prevailing wage requirements.
13. Any other documentation reasonably requested by Buyer.

SELLER’S PORTFOLIO LIST

as of [_____]

Customer Service Account Number	Customer name	Physical address of Site	Total Project capacity installed as part of the Portfolio	Project capacity installed to meet capacity associated with Operational Characteristics	Project capacity installed in excess of capacity associated with Operational Characteristics	Project manufacturer(s) and model number(s) installed at Site with corresponding Portfolio capacity	Customer type (i.e., residential, commercial, municipal)	Project description (e.g., stand storage, so family, disadvantage community,

[By submitting this Seller’s Portfolio List to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Projects comprising Seller’s Portfolio List are in compliance with the terms of the Agreement.]

Signature:	_____
Name:	_____
Title:	_____
Date:	_____

APPENDIX IV

CERTIFICATION

FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to East Bay Community Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) The Portfolio has been completed and commissioned and it became commercially operable on */ /*.
- (2) The Portfolio has been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio has been constructed in accordance with the Portfolio Safety Plan.
- (4) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (5) Seller has designed and built the Portfolio to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (6) The design and construction of the Portfolio was carried out by the original equipment manufacturer or other qualified organization in accordance with the designs and requirements of the original equipment manufacturer.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX V
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority, a California joint powers authority
1111 Broadway, Suite 300
Oakland, CA 94607

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of East Bay Community Energy Authority, a California joint powers authority (“Beneficiary”), 1111 Broadway, Suite 300, Oakland, CA 94607, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Energy Storage Resource Adequacy 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 _____, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts 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 promptly and no later than the business day immediately following our receipt of a drawing certificate from Beneficiary in the form attached hereto as Exhibit A.

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 one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

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

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit 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 East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, 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 Energy Storage Resource Adequacy 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 an event for which Beneficiary is entitled to make a drawing under this Letter of Credit pursuant to the Agreement has occurred.
3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to East Bay Community Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

APPENDIX VI

PORTFOLIO SAFETY PLAN AND DOCUMENTATION

Portfolio Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

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

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

Part Two: Portfolio Design and Description

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

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

Provide a list of major 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: Portfolio Safety Management

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

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,

- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

APPENDIX VII

MUA DECISION ATTESTATION

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

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Project, Seller is following all the rules set forth in Exhibit A of CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

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

Signature: _____
Name: _____
Title: _____

APPENDIX VIII

NOTICES

SELLER	BUYER ⁴
<p>All Notices:</p> <p>Street: City: Attn:</p> <p>Phone: Facsimile: Email:</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org</p> <p>With a copy to: [_____]</p>
<p>Invoices:</p> <p>Attn: Phone: E-mail:</p>	<p>Invoices:</p> <p>Attn: Marie Fontenot, Senior Director of Power Resources Phone: (510) 361-6247 E-mail: mfontenot@ebce.org</p>
<p>Scheduling:</p> <p>Attn: Phone: Email:</p>	<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com</p>
<p>Payments:</p> <p>Attn: Phone: E-mail:</p>	<p>Payments:</p> <p>Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 E-mail: hchang@ebce.org</p>
<p>Wire Transfer:</p> <p>BNK: ABA: ACCT:</p>	<p>Wire Transfer:</p> <p>BNK: River City Bank ABA: 121133416 ACCT: *****3199</p>
<p>Emergency Contact:</p> <p>Attn: Phone: E-mail:</p>	<p>Emergency Contact:</p> <p>Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 E-mail: hchang@ebce.org</p>

⁴ Note to EBCE: Please update as needed.

APPENDIX IX

PORTFOLIO MODIFICATION CERTIFICATION

This certification of commercial operation for a Portfolio Modification (“Portfolio Modification Certification”) is delivered by _____ (“Seller”) to East Bay Community Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Portfolio Modification Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following, severally and not jointly, per terms specified in Appendix X:

- (1) All parts of the Portfolio affected by the Portfolio Modification became commercially operational on / /.
- (2) All parts of the Portfolio affected by the Portfolio Modification have been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the parts of the Portfolio affected by the Portfolio Modification to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (5) The design and construction of the parts of the Portfolio affected by the Portfolio Modification was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Portfolio as modified under the Portfolio Modification is able to operate in a manner consistent with the Safety Requirements.

SELLER: Signature: _____ Name: _____ Title: _____ Date: _____	: _____ _____
--	-----------------------------

APPENDIX X
FORM OF QUARTERLY REPORT

APPENDIX XI

[RESERVED]

APPENDIX XII

RA-SPECIFIC CONDITIONS AND TERMS

PART ONE: CAPACITY ATTRIBUTE CONDITIONS PRECEDENT

1. Seller shall have provided to Buyer a certification of Seller substantially in the form attached hereto as Appendix IV, demonstrating that the Project(s) comprising the Project as set forth in Seller's Portfolio List, can deliver, in aggregate, the Capacity Attributes of Product in the applicable Contract Amounts.
2. Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver the Capacity Attributes of the Product to Buyer at the Contract Amounts (and including as a Proxy Demand Resource or as a Reliability Demand Response Resource).
3. Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Project successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets, including as a Proxy Demand Resource or Reliability Demand Response Resource, in a manner sufficient to enable delivery of the Contract Amounts of Product to Buyer.
4. Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product, including as a Proxy Demand Resource or as a Reliability Demand Response Resource, (i) resulting in certifications of not less than the Contract Amounts and (ii) so as to ensure the applicable Stage of the Project is fully deliverable such that Seller is able to deliver Product in the Contract Amounts to Buyer for purposes of counting towards Buyer's Compliance Obligations.
5. Seller shall have provided documentation demonstrating Seller's calculations related to and attendant fulfillment of the CAISO NQC criteria, or any revised Resource Adequacy criteria, for the applicable Stage of the Project.
6. Seller shall have submitted, or shall have caused its SC to have submitted, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month, and Seller shall have properly submitted, or shall have caused its SC to have properly submitted, a Supply Plan to CAISO.

PART TWO: RA-SPECIFIC PAYMENT TERMS

1. No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to

the CAISO. In the event that Buyer does not Notify Seller of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

2. After following the foregoing procedure, Seller shall submit, or cause to be submitted, a Supply Plan to CAISO, in accordance with the applicable Compliance Showing deadlines for each Showing Month, to identify and confirm the Product to be delivered to Buyer (or, with regard to Resold Product, Buyer's designee) for each day within the applicable Showing Month. For each of the Capacity Attributes of Product that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the Contract Amount of each of the respective Capacity Attributes. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of the respective Capacity Attributes that Seller has delivered for such Showing Month ("Delivered Quantities").

3. For all Capacity Attributes of the Product that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment ("Monthly Payment" or "MP") as follows:

$$MP = DQ \times CP$$

where,

DQ = The sum of the Delivered Quantities of all RA Attributes, Local RA Attributes, and Flexible Attributes; and

CP = The contract price set forth on the Cover Sheet ("Contract Price").

PART THREE: RA-SPECIFIC OPERATIONAL COVENANTS

1. Seller shall have a DRP Agreement in place with the CAISO and is required to satisfy registration requirements and to provide information to EBCE and the CAISO to allow the CAISO to establish performance evaluation methodologies in accordance with the Tariff and the applicable Business Practice Manuals.

2. Seller shall be the SC or shall designate a qualified third party to fulfill such role for the Project in order to deliver Product to Buyer during the Delivery Term in accordance with the terms of this Agreement. Seller shall be solely responsible for all costs associated with the SC. Seller shall take, or cause its SC to take, all necessary steps to qualify itself and the Project in such other manner identified and approved by the CAISO and CPUC that permits Seller to provide Product to Buyer.

3. Seller shall comply, and shall cause SC each Customer, and each Project owner and operator to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any Bidding of the Project to meet any Must Offer Obligations, in order to deliver the Product to Buyer and allow Buyer to use the Product to satisfy Buyer's Compliance Obligations.

4. Seller shall not accept, and shall cause the Project's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation in a Notice. In addition, Seller shall promptly Notify, or cause the Project's SC to promptly Notify,

Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation.

5. Seller shall provide buyer access to the Project's CAISO Portal in order to view market awards or send Buyer a copy of the Project's market awards no later than 16:00 each day the Project is bid in to the CAISO Day-Ahead or Hour-Ahead market.

APPENDIX XIII
FORM OF LOAD MODIFYING RESOURCE DISPATCH PLAN

END OF AGREEMENT



**East Bay Community Energy, Peninsula Clean Energy,
Silicon Valley Clean Energy & Silicon Valley Power**

Distributed Resource Adequacy Capacity

Request for Proposal (RFP)

Issuance Date: November 5, 2019

Due Date: December 23, 2019 (5 p.m. PST)

Purpose

As Bay Area residents and businesses are suffering from unprecedented power outages due to Pacific Gas and Electric Public Safety Power Shutoffs (“PSPS”), we must invest in increased resilience to keep our communities safe and livable. The following Bay Area Load Serving Entities, including; East Bay Community Energy (“EBCE”), Peninsula Clean Energy (“PCE”), Silicon Valley Clean Energy (“SVCE”) and Silicon Valley Power (“SVP”) (collectively “the LSEs”) are seeking proposals from qualified developers or vendors (“Proposers or Respondents”) for a comprehensive offering to provide Resource Adequacy (“RA”) capacity and resilience to the LSEs’ residential and commercial customers through the development of customer-sited Distributed Energy Resources (“DERs”) (described on page 16). Through this solicitation, EBCE, SVCE and PCE are seeking to procure a minimum of 10 megawatts (“MW”) each of RA capacity and SVP will be procuring 2.7 MW of RA capacity, proportional to its geography and customer account size relative to the other LSEs, for a total of approximately 32.7 MW. Every LSE will partner with the relevant selected Proposer(s) to develop a program offering to LSEs’ customers to facilitate the development of projects to provide the desired RA capacity. For each LSE, a minimum capacity will be sited on residential sites with the remaining to be installed on commercial or residential sites (see Mandatory Proposal Requirements: *Target Customer Categories* for definition of “residential” and “commercial” and minimum requirements). A portion of the capacity shall be deployed by September 2020 with the remaining capacity targeted for deployment by either June 2021 or September 2021. The LSEs have an extensive need for economically-viable RA, which they seek to address, at least partially, through DER aggregation mechanisms, such as Proxy Demand Response (PDR).

This solicitation is being issued by the LSEs in a joint manner, due to the alignment of purpose in responding to the PSPS and increasing community resilience. However, Proposers will submit a separate proposal to each LSE that they are interested in proposing to, but are not required to propose to each LSE, as detailed in the Submittal Requirements section. Each LSE will evaluate proposals separately, with substantial communication occurring between LSEs to discuss proposed strategies and pricing. Each LSE will select and contract with winning Proposer(s) separately.

The bulk of this solicitation is the same for each LSE - differences between LSEs have been organized into tables throughout the solicitation to assist prospective Proposers in structuring their response to each LSE.

Background & Objectives

The LSEs have a shared commitment to serving their communities’ needs and delivering low-cost, clean electricity. LSE-specific background information is provided in the table below:

LSE-Specific Background Information

	Date Formed	Service Start Date	Description and Context

EBCE	2016	2018	<p>EBCE is a Joint Powers Authority formed on December 1, 2016, and, on August 10, 2017, EBCE filed its Community Choice Aggregator (“CCA”) Implementation Plan with the California Public Utilities Commission (“CPUC”). On September 7, 2017, the CPUC provided Pacific Gas and Electric (“PG&E”) notice of the receipt of EBCE’s Implementation Plan, and on November 8, 2017, the CPUC certified EBCE’s Implementation Plan. The County provided initial start-up funds to EBCE for the launch period. EBCE has additionally closed a \$50,000,000 unsecured credit facility with Barclays Bank in March of 2018. The maximum debt outstanding reached approximately \$28 million in 2018. In February 2019, EBCE repaid the County in full for the start-up loan costs of approximately \$4.8 million, and in August 2019 EBCE fully repaid the funds drawn on the Barclays credit facility, eliminating all outstanding debt. As of August 1, 2019, EBCE has approximately \$100 million in unrestricted cash and available credit lines, which translates to over 90 Adjusted Days of Liquidity on Hand.</p> <p>On June 1, 2018, EBCE launched Phase I of its service implementation with commercial, industrial, and municipal accounts. Phase II for residential accounts was launched November 1, 2018. Phase III was launched in April of 2019 and will enroll all Net Energy Meter (“NEM”) customers. Phase III is a rolling enrollment through December 2019 based on NEM billing cycles. EBCE’s ~30,000 NEM customers are a small fraction of total accounts and load. EBCE serves over 540,000 customer accounts representing a population of over 1.3 million people, 50,000 businesses, and approximately 6,000 gigawatt hours (“GWh”) of annual load. EBCE is currently the second largest CCA in California and the largest in PG&E territory.</p>
PCE	2016	2016	<p>Peninsula Clean Energy (PCE), a community choice energy (CCE) aggregator, is San Mateo County’s official electricity provider. Formed in February 2016, PCE is a joint power authority, consisting of the County of San Mateo and all twenty of its towns and cities. PCE provides cleaner and greener electricity, and at lower rates, than the incumbent investor-owned utility (IOU), Pacific Gas & Electric Company (PG&E).</p> <p>PCE was the fifth CCA to launch and started serving customers in October 2016 and as of May 1, 2017, PCE service was rolled out to all eligible customers in San Mateo County. PCE serves</p>

			<p>approximately 300,000 customer accounts representing a population of over 700,000 people with 3,600 GWh of clean electricity annually.</p> <p>PCE plans for and secures commitments from a diverse portfolio of energy-generating resources to reliably serve the electric energy requirements of its customers over the near-, mid-, and long-term planning horizons. PCE's programs include transportation electrification and advancing the expansion of low-carbon electricity.</p> <p>In May 2019, Peninsula Clean Energy received an investment grade credit rating from Moody's. As of June 30, 2019, PCE had an unaudited cash balance of \$127.2 million, of which \$114.1 million was unrestricted. The unrestricted cash balance represented 198 days of cash on hand, well in excess of PCE's Board policy requirement of 120 days. PCE expects to publish its FY2018-2019 audited financials at the end of November. Additional information and PCE's financial statements are available on its website: https://www.peninsulacleanenergy.com/budget-and-finances/.</p> <p>For more information on PCE, please go to www.peninsulacleanenergy.com.</p>
SVCE	2016	2017	<p>Silicon Valley Clean Energy (SVCE), a Community Choice Energy agency, is redefining the local electricity market and providing our residents and businesses with new clean energy choices—renewable and carbon-free electricity at competitive rates. SVCE was formed as a Joint Powers Authority in 2016, and now serves approximately 270,000 residential and commercial electricity customers across its service area. 97% of electricity customers in SVCE's service area receive their electricity from SVCE. For more information on SVCE, please visit: https://www.svcleanenergy.org/. SVCE is also in the process of launching a broad set of programs supporting decarbonization efforts, including a virtual power plant initiative to further monetize distributed energy assets. For more information on SVCE's overarching program strategy and planned programs, please visit: https://www.svcleanenergy.org/programs/.</p>

SVP	1896	1896	<p>Silicon Valley Power (SVP) is the trademark adopted for use by the not-for-profit electric municipal utility of Santa Clara, CA, serving residents and businesses for over 120 years.</p> <p>SVP serves the City of Santa Clara with a service area of approximately 19 square miles. SVP is dedicated to its community, customers, and employees. SVP provides safe, reliable, affordable, and sustainable energy solutions while deploying and scheduling resources that optimize the dispatch of SVP's generation fleet and complying with statutory and regulatory requirements. SVP meets its electricity needs in a safe, reliable, cost-effective and environmentally responsible manner. SVP is the only full service, vertically integrated publicly owned utility in Silicon Valley owning generation, transmission and distribution assets. Please see more at: http://www.siliconvalleypower.com.</p>
-----	------	------	--

The objective of this RFP is twofold. The LSEs seek to identify new and existing DER systems capable of providing capacity to satisfy RA requirements while also supporting the development of DERs to increase resilience in each service territory. The increasing threat of PSPS events has intensified the urgency and need for resilience region-wide. DERs deployed through this program will be capable of providing resiliency benefits to the LSEs' customers and the broader community in advance of the 2020 and 2021 fire seasons.

In July 2019, EBCE approved a 10-year contract for the provision of 500 kilowatts ("kW") of RA capacity through aggregated behind-the-meter battery energy storage assets. This RFP builds on the intent of that project and aims to increase the amount of distributed RA capacity procured by the LSEs, grow the market for distributed RA capacity and create a program to empower LSE customers to invest in their own energy needs while supporting the needs of the electricity grid and enhancing community resilience.

The LSEs will provide resources throughout the bid development process (See "Data Provision Process on page 5) and program implementation phase (See "*Marketing Assets to be Made Available to Awardee(s) by LSE*" on page 19). The LSEs seek qualified Proposers capable of working with each LSE to develop customer-facing programs to facilitate efficient development of the required RA capacity and potentially scale the program in future years.

RFP Schedule

The table below summarizes the RFP schedule, with details of each event provided further below, as necessary. **Proposers should note that this is a preliminary schedule and the timeline is subject to change at the discretion of the LSEs.**

Proposed Calendar of Events

Event	Date
--------------	-------------

Issuance of RFP	November 5, 2019
Representative Data Available	November 7, 2019
Informational Webinar	November 12, 2019, 1:30-3:00pm
Deadline for Questions	5pm PST, November 22, 2019
Deadline for Data Requests	5pm PST, December 4th, 2019
Addendum Issuance	December 4, 2019
Final Proposals Due	5pm PST, December 23, 2019
Proposal Review	December 23, 2019 - January 17, 2020
Interviews	January 20-24, 2020
Selection of Preferred Awardee(s)	February, 2020
Contract Negotiation Period	February, 2020
Notice of Intent to Award	March 2020
Board Meeting for Approval	April 2020

Informational Webinar & Q&A Process

LSEs will hold a **mandatory** informational webinar about this solicitation on November 12, 2019 at 1:30-3:00pm. This webinar will provide an opportunity for Proposers to learn more about the solicitation and ask clarifying questions. Register for the Webinar [here](#).

Questions that arise after the date of the webinar shall be sent to jross@ebce.org. Questions sent via email must be received by November 22, 2019 at 5pm PST. **Questions for a specific LSE should be so labeled.** LSEs reserve the right to combine similar questions, rephrase questions, or decline to answer questions, at their sole discretion.

Data Provision Process

In order to facilitate the inclusion of accurate pricing of RA capacity in proposals, the LSEs will provide interested parties with anonymized 15-minute interval load data for a sample of commercial customers in each LSE's service territory. This data will be available on the "Representative Data Available" date (see Proposed Calendar of Events).

By providing Proposers with a sample of actual customer load profiles of representative commercial customers, this data will enable Proposers to create estimated valuations of given DER systems to those customers. In turn, those estimated valuations can be used to develop RA pricing based on actual projects, thereby de-risking proposals and mitigating the chance of inflated or deflated RA pricing. **Interested Proposers must contact JP Ross (jross@ebce.org)**

with an expression of interest by December 4, 2019 (see Deadline for Data Requests in Proposed Calendar of Events) in order to receive access to the secure data room prior to proposal submissions.

Following Proposer selection (“Awardee”), an extended set of data shall be provided with the goal of refining proposed capacity pricing during contract negotiations. Upon contract execution, the contracted Awardee(s) shall indicate to its client LSE(s) specific load profiles to be pursued for project development. Each LSE and its Awardee(s) will then initiate outreach to the chosen residential and commercial customers. Proposers shall consider this process in creation of their Customer Engagement & Go-to-Market Strategy. In order for Awardees to be provided confidential customer information by the LSEs, Awardees shall execute separate confidentiality agreements with the individual parties.

Data Request Process

Data will be made available through a Secure FTP (SFTP) to potential bidders upon request. **LSEs reserve the right to request documentation to substantiate intent and capability to submit a proposal.** Access to the data will be provided to bidders solely upon request to jross@ebce.org. Data requests can be submitted before November 7 and access to the site will be provided by 5PM on November 7. Data requests made after November 7 will be given access to the site within 1 business day of the request being submitted and LSEs satisfaction of requestor’s intent to bid.

Submittal Requirements

It is the Proposer’s responsibility alone to ensure that its proposals are received by each LSE’s Authorized Representative, as listed in the table below, at the time and place identified in this RFP (see Proposed Calendar of Events). Proposers shall submit, in a non-alterable format such as a PDF, a proposal with the title “[LSE Name] - Proposal for Distributed RA Capacity - [Respondent Firm Name].” Proposers may choose to submit separate proposals to any subset of the LSEs, but only an LSE-specific proposal received by that LSE’s Authorized Representative will be considered by that LSE. Do not submit a single joint proposal for all LSEs, and do not submit an LSE-specific proposal to a different LSE’s Authorized Representative.

Authorized Representative for Each LSE

LSE Name	Name	Role	Email
EBCE	JP Ross	Senior Director, Local Development, Electrification and Innovation	jross@ebce.org
PCE	Peter Levitt	Associate Manager, Distributed Energy Resources Strategy	plevitt@peninsulacleanenergy.com with CC to procurement@peninsulacleanenergy.com

SVCE	Aimee Bailey	Director, Decarbonization and Grid Innovation	aimee.bailey@svcleanenergy.org
SVP	Erica van Dyck	Electric Program Manager, Innovation and Distributed Generation/DER	evandyck@svpower.com

The proposal must be submitted electronically to the Authorized Representative by 5:00 p.m. PST on December 23, 2019. Proposals will be received only at the email addresses shown above and any proposal received after the due date/time or at a place other than the stated email address may not be considered and may be returned to the respondent unopened. Any attempt to contact LSE staff to discuss this RFP outside of the Q&A process described in this RFP will result in disqualification.

All proposals shall be prepared in a clear and concise manner. Unnecessarily elaborate proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the parameters set forth in this RFP. Generally, each proposal shall be submitted with a cover letter and three (3) sections, including: (A) Statement of Developer Information & Qualifications, (B) Proposed Capacity & Program Approach and (C) Pricing Proposal. While Developers shall follow the general proposal format and proposal requirements specified below, the **LSEs encourage proposals that satisfy the mandatory proposal parameters while presenting thoughtful, creative solutions for the provision of RA capacity and community resilience.**

Proposals must include the following sections:

1. *Cover Letter*

An authorized representative of the Proposer shall sign the proposal on a cover letter which: (1) identifies this project by name; and (2) identifies the full legal name of the Proposer, along with name of contact person, address, phone number, fax number, email address and contractor's license number; and (3) indicates Proposer's willingness to comply with the procedures identified in this RFP, including an acknowledgement of inclusion of the three (3) sections identified above and described below.

2. *Statement of Developer Information & Qualifications*

Proposers shall include the following elements outlining their firm information and qualifications.

- A brief description of the Proposing firm, including legal form and ownership, and an identification of the size, stability, and capacity of the Proposing firm, including, at a minimum, an identification of the following:
 - a. Total number of years in operation
 - b. Total current number of employees
 - c. Number of offices & locations in California, or relevant locations if the Proposer does not have any California offices
 - d. Number of employees and associated office locations where proposed

services are intended to be rendered

- An identification of the Proposer's experience developing, building, financing, and operating projects of a similar size, scope, and complexity as required by this RFP, including all of the following:
 - a. Number of years Proposer has been developing relevant projects
 - b. Most recent projects for which the Proposer has performed similar services
 - The list of recent projects shall include the name, contact person, address, and phone number of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.
 - The LSEs appreciate that the provision of aggregated DER for RA capacity is a relatively new market. Thus, relevant project examples demonstrating experience in efforts related to, or component pieces of, the services required in this solicitation will be accepted and considered.
 - c. Description of the Proposers experience with or participation in the proposed mechanism for providing the proposed RA capacity. This should focus on experience with Proxy Demand Response ("PDR") or, if Proposer is including an alternative mechanism, experience with the relevant, equivalent, alternative RA provision mechanism.
 - d. Total capacity of solar photovoltaic and/or battery energy storage systems installed to date in kW and kW/kWh, respectively.
 - e. Total installed capacity of energy projects capable of islanding from the grid
- List of the Proposer's principals, employees and agents, including brief bios and extended resumes, which the Proposer intends to assign to this project. Proposers shall include their anticipated roles on the project and their experience with the proposed mechanism for providing the proposed RA capacity and experience developing DER projects in California.
- For anticipated subcontractors (if any), Proposers shall provide a description of the subcontractors' role on the project as well as a description of the subcontractor firm, experience developing, building, financing, and operating projects of a similar size, scope, and complexity as required by this RFP and bios and resumes of the key subcontractor team members.
- Insurance information
 - a. EBCE & SVCE: [1] Insurance information meeting the following minimum requirements: Comprehensive General Liability (\$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury and property damage), Motor Vehicle Liability Insurance (\$1,000,000), and Professional Liability Insurance (\$1,000,000).
 - b. PCE: [1] Insurance information meeting the following minimum requirements: Comprehensive General Liability (\$1,000,000), Motor Vehicle Liability Insurance (\$1,000,000), and Professional Liability

Insurance (\$1,000,000).

- c. SVP: [1] Commercial General Liability no less than the following: \$1,000,000 each occurrence; \$1,000,000 general aggregate; \$1,000,000 products/completed operations aggregate; \$1,000,000 personal injury. [2] Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. [3] Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.

3. *Proposed Capacity & Program Approach*

Proposers must provide a comprehensive description of the distributed RA capacity and accompanying program being offered. This section shall address and/or reflect all mandatory solicitation parameters described in the “**Mandatory Proposal Parameters**” in this document. **As discussed under Submittal Requirements, while Proposers must submit proposals reflective of the mandatory proposal parameters, LSEs are interested in reviewing creative approaches to satisfying these parameters.** And while the program approach outlined in each proposal should be specific to the individual LSE territory, Proposers are encouraged to indicate how the program approach could incorporate a regional approach (and impact cost) if the Proposer were selected by multiple LSEs.

4. *Pricing*

Proposing Firms are required to provide a complete offer pricing package in the form of \$[]/kw-month for each year the proposed capacity shall be providing RA. **Pricing must be presented in Attachment A: Pricing & Capacity Worksheet.** Proposers are encouraged to provide uniform pricing across the entire offered capacity but may provide tiered pricing aligned with achieving the target capacity distribution across customer types discussed in *Mandatory Proposal Parameters: Target Customer Categories*. Instructions for completing Attachment A are included therein.

Evaluation of Proposals

The LSEs reserve the right to reject any and all proposals or waive any irregularities in any proposal or the proposal process. The LSEs reserve the right to negotiate the terms of each LSE's Service Agreement with one or more Awardees. In reviewing the proposals, LSEs will consider the following:

Evaluation Categories by LSE

Evaluation Category	EBCE	PCE	SVCE	SVP
Completeness of RFP Response	Pass/Fail			
Capacity Requirements & Deployment Timeline	Pass/Fail			
Technology Safety Certification & Standards	Pass/Fail			
Installed Storage projects have islanding capability and provide backup power	Pass/Fail			
Pricing	40%	40%	Weighting TBD	Considered
Experience Developing Similar Projects & Providing RA Capacity	15%	25%	Weighting TBD	Considered
Experience and Qualifications of Personnel	10%		Weighting TBD	Considered
Quality and Detail of Go-to-Market & Customer Engagement Plan	15%	25%	Weighting TBD	Considered
Proposed Fire Safety Measures	10%	Pass/Fail	Weighting TBD	Considered
Local Hiring/Workforce Development	10%	Pass/Fail	Considered but not mandatory	Considered but not mandatory
Innovation	N/A	10%	Weighting TBD	Considered

Evaluation of proposals for residential and commercial RA capacity will be performed separately and compared to equivalent proposals. If a Proposer wishes to propose both residential and commercial capacity offerings, they may be included in a single proposal, but should be priced and described distinctly to enable comparison to other proposals focused on the same customer category.

Each LSE expects to invite a shortlist of its high scoring Proposer(s) for in-person interviews. Interviews will be scheduled shortly after each LSE has completed its preliminary proposal evaluations and pursuant to the timeline listed in this RFP.

Proposer(s) Award

Upon selection of preferred Awardee(s), each LSE will enter into separate contract negotiation.

Initial selection for negotiation does not imply guarantee of award. If an LSE is unable to negotiate mutually acceptable contract terms with selected Awardee(s), alternate Proposers from the shortlist may be substituted (see below).

Each LSE may award multiple Awardees for each sector, residential and commercial. Contracted Awardees will be required to provide performance bonding for delivery of contracted capacity amounts.

Proposers with qualified and/or high scoring proposals NOT selected may be placed on a shortlist by the relevant LSE and contacted to provide an updated proposal in the event that the selected Awardee(s) are not able to fulfill their proposed RA capacity. Any RA capacity contracted via this mechanism will be subject to re-verification of proposal eligibility and a request for an updated and revised pricing proposal.

Mandatory Proposal Parameters

The following parameters shall be considered by Proposers and used to structure proposals that align with the LSEs desired goals and objectives. The characteristics of each mandatory parameter are described below, followed by a table delineating the differences in requirements across each LSE. The *Summary of Differences in Mandatory Proposal Parameters by LSE* (see page 24) includes a master table that summarizes the differences in all parameter requirements as they vary across each LSE.

1. *Proposed Capacity: Amount, RA Type & RA Mechanism*

Through this solicitation, EBCE, SVCE and PCE expect to procure a minimum of 10 MW of RA capacity to satisfy local RA requirements through DERs located at customer accounts. Due to its smaller geography, customer size and RA obligation, SVP will procure a minimum of 2.7 MW of RA capacity. To the extent viable, LSEs are also interested in procuring capacity that satisfies flexible RA and/or system RA requirements. Proposers should consider strategies to satisfy flexible RA requirements with DERs and are encouraged to propose flexible RA capacity solutions. Proposers are not required to fully provide the minimum of 10MW of desired capacity but are encouraged to include as much capacity as can be realistically achieved given the stated timelines.

Proposers must describe the mechanism through which RA capacity will be provided and controlled. The LSEs anticipate the primary mechanism to be PDR. If an alternative mechanism is proposed, the Proposer shall provide relevant case studies/examples of RA capacity provided via the proposed mechanism or other evidence that such a mechanism is capable of meeting the LSEs' RA obligations.

For each category of RA capacity proposed, the Proposer shall note the total capacity, deployment date and term being proposed. Proposers are encouraged to include varied term lengths (from 2-10 years) but the LSEs will not exclude responses that include proposed terms of a shorter length or longer length. Capacity amounts and pricing shall be presented in Attachment A: Pricing &

Capacity Worksheet. Each proposal submitted to each separate LSE should include pricing in a separate version of Attachment A.

Outside of Attachment A, specific attributes of local and flex RA should be noted in this section of the proposal narrative. If a Proposer is including local RA, the Local Area (see “Eligible System Locations”) and corresponding capacity should be included. If a Proposer is including flexible RA, the capacity amount and associated flex category (1-4) shall also be noted in this section. Proposers are encouraged to use the narrative in this section of the proposal to explain any nuance in their pricing proposal that is not captured in Attachment A.

To accompany the stated amount of RA capacity provided, Proposers shall provide a description of the Net Qualifying Capacity (NQC), Qualifying Capacity (QC), and if applicable, effective flexible capacity (EFC) calculation methodologies used. Proposers should reference the California Independent System Operator (“CAISO”) criteria for calculating the NQC of distributed energy resources. In addition to describing the methodologies, Proposers shall provide the anticipated amount of additional capacity to be acquired in order to reliably and consistently deliver the proposed contracted capacity of RA. Proposers shall also provide a description of their approach, methodology and experience for completing CPUC Load Impact Protocols, adopted in D.08-04-050, and all CPUC rules for RA from DER aggregations.

If the Proposer intends to rely on a significant amount of Self Generation Incentive Program (“SGIP”) funds or other incentives/programs in the project development process (see section on *Go-to-Market Strategy*) the Proposer should describe how they intend to comply with the applicable program/incentive rules while consistently and reliably meeting the proposed RA capacity. For example, if the proposal relies on SGIP funding, the Proposer should describe how they will meet any and all operational requirements, including, but not limited to greenhouse gas reduction, battery cycling, and round-trip efficiency requirements.

Proposers are required to provide a consistent amount of RA capacity throughout the entire year. The only exception to this requirement is the potential offer of increased RA capacity in August and/or September of a given year.

2. *Deployment Timeline*

In order to align with possible PSPS events, IRP requirements, and RA filing requirements, delivery of a portion of the Proposers promised capacity should be achieved by September 2020 and the remainder by either June 2021 or September 2021.

The deployment targets of September 2020 and September 2021 are intended to align with the respective fire seasons and RA filing requirements, while the June 2021 deployment date is intended to align with IRP requirements. The LSEs do not have specific requirements for capacity amounts by the aforementioned dates, only that the Proposer

deliver the promised capacity on that schedule. Across the entire solicitation, the LSEs expect that a portion will be deployed by September 2020 and the remainder deployed by June and/or September 2021. The target RA delivery targets and deadlines by LSE are shown below. **Proposals shall include a discussion of key milestones to deliver the proposed capacity on this timeline and how the Proposer will report such milestones to the LSE throughout the process. This timeline should also include expected periods of marketing and outreach activities, system sales/financing and system design, permitting and installation.**

RA Delivery Timeline Targets and Deadlines by LSE

	EBCE	PCE	SVCE	SVP
Target for RA Delivered by September 2020 (MW)	3-4	3-4	3-4	No specific capacity for this delivery date
Target for RA Delivered by June 2021 (MW)	No specific capacity for this delivery date	Preference for Remainder	Preference for Remainder	No specific capacity for this delivery date
Required RA Delivered by September 2021 (MW)	Remainder	Remainder	Remainder	Remainder

3. *Target Site Types & Priority Customer Categories*

Capacity procured through this solicitation shall have LSE-specific limitations on the type of sites on which it can be located.

For the purposes of this solicitation, for the proposed RA to count as LSE-specific, at least 80% of the capacity comprising the DER aggregation providing RA to the given LSE must be from that LSE's customers. Furthermore, for SVP specifically, all capacity comprising the DER aggregation must be located within the service territories included in SVP's metered subsystem agreement. However, it is important to note that, while the 80% requirement is intended to provide flexibility for Proposers, it is a minimum floor and should be treated as such. The CCAs prefer aggregations that only include projects on their customer's sites. Proposers are encouraged to set a target well above the 80% minimum for participating LSE to ensure that, in the event of program participant customers returning to bundled utility service, the capacity total will not risk approaching the 80% requirement. Additionally, if a Proposer needs to put systems located on non-LSE customer sites into an aggregation (e.g. to meet PDR participation minimums) they need to justify why those systems cannot be placed on LSE customers' sites.

The residential and commercial site categories are defined as including the following site types:

- **“Residential”**: Residential single or multi-family dwellings four (4) units and below and;
- **“Commercial”**: Commercial sites and multi-family dwellings five (5) units and above

Municipal sites, defined as City and County accounts in each LSE service territory, are considered separately. For LSEs excluding municipal accounts, a separate solicitation may be issued in the future to cover these accounts. For LSEs allowing for capacity to be installed on municipal sites, any capacity will fall into the “commercial” category. Proposers may offer residential capacity, commercial capacity, or both. The eligible sites types, by LSE, can be found in the table below.

In order to support vulnerable communities, each LSE also has different requirements for capacity deployment on sites supporting low-income residents, medical baseline customers, and residents and businesses located in DACs and low income communities. The Proposer shall ensure that proposed RA capacity includes the distribution of that capacity across priority customer categories, as noted below for each LSE. Proposers shall also include in their proposal a plan to reach the required customer categories (See Customer Engagement & Go-to-Market Strategy).

- For capacity in the Residential site category, a **minimum** of proposed RA capacity may be required to be sited on residential properties in DACs, low-income communities, medical baseline customer properties and/or CARE/FERA customer properties. LSEs will work with Contracted Awardees to develop an outreach strategy for medical baseline and CARE/FERA customers.
- For capacity in the Commercial site category, a **minimum** of the proposed RA capacity may be required to be sited on commercial sites in DACs, low-income communities and/or multi-family properties above four (4) units.
- RA capacity above any minimums set may be sited inside or outside of DACs or low-income communities.

As discussed above, the Proposer is allowed, but not required, to propose RA capacity across the Commercial and Residential sectors, provided that a sufficient implementation process is described in the Customer Engagement & Go-to-Market Strategy. **However, if a Proposer includes both residential and commercial capacity the Proposer must demonstrate that the minimum requirement of the total residential capacity is located in/on a DAC, low-income community, medical baseline customer property and/or CARE/FERA customer property, and that the minimum requirement of the**

total commercial capacity is located in a DAC and/or on multi-family properties above four (4) units.

Pursuant to SB 535, CalEPA designated a list of DACs throughout the state for targeted investments from California’s cap-and-trade program. For the purposes of this solicitation, DACs are those in the top 25% of scoring on the CalEnviroScreen 3.0 tool, available [here](#). “Low-income communities” are census tracts with median household incomes at or below 80 percent of the county median income of the primary county of a given LSE or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Health and Safety Code (H&SC) Section 50093. [Please note, EBCE, SVCE and PCE have provided a list of qualifying low-income census tracts that should be used by Proposers.](#) Expanded definitions are included in the “Definitions & Supporting Information” section.

Full definitions of DACs and low-income communities, as used in this RFP, are included in the “Definitions & Supporting Information” section.

Priority Customer Type Minimums & Requirements by LSE

	EBCE	PCE	SVCE	SVP
Minimum RA Required to be Sited in Residential Sites (MW)	5	5	5	0.7
Eligibility of Municipal Sites within the Commercial Category	Not eligible - dedicated solicitation expected at a later date	Eligible only in low-income and DAC communities - dedicated solicitation expected at a later date	Eligible, with a dedicated solicitation expected at a later date	Eligible with a preference in DAC or BAAQMD CARE Communities
Minimum Residential RA Required to be Sited in DACs, Low-Income Communities, Medical Baseline Customer Properties and/or CARE/FERA Customers	20%	5%	Not required, but encouraged	10%
Minimum Commercial RA Required to be Sited in DACs, Low-Income Communities and/or Multi-Family Properties above our units	20%	5%	Not required, but encouraged	10%

4. Eligible DER System Types

The following DER system types are eligible for the total RA capacity proposed by Proposers, provided that operational requirements for the provision of RA can be met:

- New battery energy storage (BES) systems
- New combined solar photovoltaic (PV) + BES systems
- BES retrofits on existing PV systems
- Existing BES systems (provided that dispatchable capacity can be contracted by the LSE and is not otherwise contracted)
- All systems must be able to island from the grid to provide resilience to participating customers

The LSEs reserve the right to review the developer - customer agreement in order to approve the contractual obligation for back-up power/resilience agreed upon by the Proposer and a customer at a given site.

For both new and retrofit BES systems in the proposed capacity the Proposer shall describe the process for managing site control and ensuring that necessary site access exists to maintain and dispatch the system.

Regardless of eligible DER system type, all DER systems included in proposed capacity must meet all CAISO PDR participation requirements. If Proposers include a mechanism other than PDR, Proposers shall include a description of how eligible DER systems meet the relevant requirements of the alternative mechanism.

While the eligible DER system types listed above are anticipated to account for the majority of the capacity procured by each LSE, Proposers may submit additional creative and innovative DER solutions for consideration.

5. *Eligible Project Locations*

Eligible DER systems shall be sited on customer premises as outlined in Parameter 3: *Target Site Types & Priority Customer Categories*. Each LSE's systems shall also be installed within communities served by that LSE to support the resiliency of those communities. The full list of eligible communities for each LSE is shown below. The LSEs appreciate that Proposers may be able to offer DER systems that satisfy local and/or system RA requirements outside of an LSE's service area. The LSEs will not automatically exclude proposals that include geographies outside of its service area, provided that the RA capacity originating outside of its service territory is clearly indicated, but the LSEs also reserve the right to exclude any of these non-conforming bids from consideration. The price of RA capacity located outside of an LSE's service area, relative to capacity located within the LSE's service territory, shall also be noted for consideration.

Eligible Communities within Service Territory by LSE

	Eligible Communities
--	-----------------------------

EBCE	Currently Eligible: Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, Union City, and Unincorporated Alameda County Potentially Eligible - cities joining EBCE pending Board and CPUC approval in 2021: Tracy, Pleasanton and Newark
PCE	Anywhere in San Mateo County, including Atherton, Belmont, Brisbane, Burlingame, Colma, Daly City, East Palo Alto, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside, and unincorporated San Mateo County
SVCE	13 Communities in Santa Clara County: Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County
SVP	City of Santa Clara

6. *Go-to-Market & Customer Engagement Strategy*

The LSEs each seek a robust go-to-market and customer engagement strategy to drive the deployment of the aggregated portfolio of DER systems intended to achieve the proposed RA capacity and increase customer awareness of LSEs as innovative electricity providers delivering benefits to the community. To that end, Awardee(s) will be expected to act as a customer marketing and program engagement partner with the selecting LSE. All Proposers shall include a detailed description of their go-to-market and customer engagement strategy for each priority customer category that Proposer intends to pursue. These strategies should be tailored to the needs of each LSE's community and should be comprehensively explained in each proposal; Proposers are also encouraged to indicate how the program approach could incorporate a regional approach (and impact cost) if the Proposer were selected by multiple LSEs.

An example of go-to-market strategy options is as follows; does the Proposer intend to continue existing marketing efforts in an LSE's service area or does the Proposer intend to create an entirely new product offering and marketing plan to deliver resilience and RA in connection with this solicitation? In short, Proposers should address their desired level of collaboration and co-branding with the LSE to develop and market the program to achieve enrollment targets.

The customer engagement strategy shall describe the creative approach Proposers will take to market the program to ensure customer enrollment. Examples could include but are not limited to collaboration with the LSE, its local government partners, external affinity groups, and/or creation special offer to encourage customer uptake. **Within the larger customer engagement strategy, the Proposer shall include a specific description of its comprehensive approach to reaching customers in DACs, medical baseline and/or CARE/FERA customers, and/or low-income communities and multi-family properties.**

Proposers shall also include a discussion of their approach to reaching customers with existing forms of DER, such as solar PV and/or BES. This discussion shall include details of how the Proposer would manage retrofits of existing systems, including any barriers associated with existing power purchase agreements, lease contracts, incentive program rules, interconnection requirements, and CPUC and/or CAISO rules or regulations. Proposers shall also address their sales team's experience/conversion rates for this segment of customers.

The LSEs can and will provide a variety of marketing assets to assist with customer engagement and Proposers shall discuss in their proposal how each asset would be leveraged in a successful customer engagement strategy. These assets are listed below for each LSE.

Marketing Assets to be Made Available to Awardee(s)

Available Marketing Assets*
<ul style="list-style-type: none"> ● Anonymized interval load data for initial evaluation and targeting (provided through the Data Provision Process), followed by additional data provision and collaborative outreach ● Municipal (City/County) communication channels for marketing to residents and businesses and other collaborative outreach strategies ● Community based organizations and other affinity group communication channels ● Rooftop solar PV capacity ● CARE customer outreach ● EBCE initiated customer outreach ● Medical Baseline customer outreach ● DAC/Financial Rate Assistance Program (FRAP) outreach* ● Medical Rate Assistance Program (MRAP) outreach* ● BAAQMD Community Air Risk Evaluation Boundary*

**Indicates marketing assets specific to SVP.*

Finally, Proposers shall provide, as a key component of their customer engagement strategy, an overview of how the financial benefits and financing options of prospective DER systems will be presented to customers. **A line-item explanation/example shall be provided of how the DER “value stack” can improve the program proposition to prospective customers and show the value of LSE service (e.g. RA value provided by LSE as a “discount” to customer, applicable SGIP incentives to customer segments, and/or other incentives).**

The Proposer should outline how system operations will be optimized between the value streams of backup power/economic benefits in the form of bill savings to the customer and RA/wholesale market price exposure to the LSE.

Various incentives, financing options and other mechanisms offered to customers should be described in detail in addition to the impacts those could have on the feasibility of the Proposer's offered RA capacity. For example, if a customer project relies on SGIP funds the Proposer should describe how a failure to secure, or a step down in those funds, would impact the Proposer's offered RA capacity, price and/or deployment timeline.

7. *Workforce Development Requirements*

Workforce development is an approach to economic development that seeks to enhance a region's economic stability and prosperity by focusing on human capital—developing people and their marketable work skills—as opposed to business development. A coherent workforce development system consists of supply side or “push” strategies and demand side or “pull” strategies. This solicitation can be used by LSEs as a “pull” strategy. Proposals are required to describe their workforce plan for project development, construction or maintenance activities, pursuant to the following requirements by LSE.

Workforce Requirements by LSE

	Workforce Requirements
EBCE	<p>90% of all workers employed on or in support of the Project(s) by Seller or through Contractors shall be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher. Proposers shall make commercially reasonable efforts to hire Alameda County residents to provide at least 50% of the work hours associated with the construction, operation, and maintenance of the project.</p> <p>Additionally, Proposers shall include descriptions of how they intend to partner with workforce development agencies in Alameda County to further enhance opportunities for local hiring. An example of this is prioritization of hiring graduates of state-certified apprenticeship training programs, such as Cypress Mandela and Rising Sun Energy Center, in support of the construction, operation, and maintenance of the project.</p>
PCE	<p>PCE's workforce development requirements are publicly stated here: peninsulacleanenergy.com/wp-content/uploads/2018/10/Policy-10-Inclusive-and-Sustainable-Workforce-revised-10-25-18.pdf.</p> <p>PCE therefore desires to facilitate and accomplish the following objectives: (1) Support for and direct use of local businesses; (2)</p>

	Support for and direct use of union members from multiple trades; (3) Support for and use of training and State of California approved apprenticeship programs, and pre-apprenticeship programs from within PCE's service territory; and (4) Support for and direct use of green and sustainable businesses.
SVCE	SVCE does not have specific workforce requirements for the Proposer's response to this solicitation. However, the proposal shall include the workforce plan as outlined above, and should indicate how requirements for prevailing wages, hiring local residents, and partnering with workforce development agencies would impact the proposed cost structure and timeline.
SVP	SVP does not have specific workforce requirements for the Proposer's response to this solicitation. However, the proposal shall include the workforce plan as outlined above, and should indicate how requirements for prevailing wages, hiring local residents, and partnering with workforce development agencies would impact the proposed cost structure and timeline.

8. *Safety and Fire Prevention*

Proposals are required to include a description of the Proposer's approach to safety and fire prevention that will be applied across projects developed under this solicitation. Proposers should detail how fire safety is prioritized in each project through factors including system design, equipment supply and location of installed units. If applicable, Proposers should also note how the detailed fire safety approach impacts system pricing. Proposers should note fall protection safety management plans if solar is included in the program.

NFPA 855

The new NFPA 855 aims to mitigate risks associated with energy storage systems and ensure that all installations are done in a way that takes fire and life safety into consideration. In addition to looking at where the technology is located, how it is separated from other components, and what fire suppression systems are in place, NFPA 855 considers the ventilation, detection, signage, listings, and emergency operations associated with energy storage systems.

Proposals must be fully compliant with all applicable safety and fire codes, certifications and standards (see Certifications & Standards below), including, but not limited to NFPA 855. As part of their approach to fire safety and prevention, Proposers should describe how they intend to meet new NFPA 855 requirements, and how they plan to coordinate with Authorities Having Jurisdiction (AHJs) on permitting for BES. To the extent meeting these standards will require additional time, expense, or may limit eligible customer locations, Proposers should describe any potential impacts and mitigations that may be

necessary.

Shortlisted Proposers will be required to provide a detailed Safety Plan as part of the contracting process that will be followed during project implementation.

9. *Certifications and Standards*

Proposers shall provide confirmation that the project, including all equipment, installation and interconnection standards and certifications will be met, including but not limited to the following:

Certifications and Standards	Purpose
UL 1642 Standard for Lithium Batteries (Cells)	Sets the bar for basic safety incorporated into each individual cell
UL 1741 Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources	Ensures all equipment can safely interact with, and in some cases even support the utility grid.
UL 1973 Standard for Batteries for Use in Light Electric Rail and Stationary Applications	Includes requirements for propagation resistance to single cell thermal runaway; includes an internal fire test that ensures that propagation to neighboring cells does not occur
UL 9540 Standard for Energy Storage Systems and Equipment	Combines applicable standards for individual components assembled into a fully integrated system.
IEC 62109-1 Safety of power converters for use in photovoltaic power systems	Defines the minimum requirements for the design and manufacture of power conversion electronics for protection against electric shock, energy, fire, mechanical and other hazards
IEC 62619 Safety requirements for large format secondary lithium cells and batteries for stationary and motive applications	Internationally recognized standard includes both cell and battery tests for failure related to abnormal electrical and environmental conditions.
AC 156 Seismic Acceptance Criteria	Equipment must maintain integrity during earthquakes

Note: Proposers are welcome and encouraged to include examples of additional certs/standards that address greenhouse gas emissions and/or other environmental considerations.

10. *Summary of Differences in Mandatory Proposal Parameters by LSE*

Mandatory Proposal Parameter # and Requirement		EBCE	PCE	SVCE	SVP
1	Total Target MW Target	10 MW	10 MW	10 MW	2.7 MW
2	Target RA Delivery Dates (1. Sept 2020, 2. June 2021, 3. Sept 2021)	1. 3-4 MW, 2. no preference for remainder, 3. remainder	1. 3-4 MW, 2. preference for remainder, 3. remainder	1. 3-4 MW, 2. preference for remainder, 3. remainder	No specific delivery date
3	Eligibility of Municipal Sites	Ineligible	Eligible for DAC communities	Eligible	Eligible with preference in DAC/ Low-income /BAAQMD CARE boundaries
3	Minimum Residential Site Category Capacity	5 MW	5MW	5 MW	0.7 MW
3	Priority Customer Type Requirements (Res)	20%	5%	Not required, but encouraged	10%
3	Priority Customer Type Requirements (Com)	20%	5%	Not required, but encouraged	10%
4	Eligible DER System Types	No differences.			
5	Eligible Project Locations	Customers in relevant LSE service territory.			
6	Go-to-Market & Marketing Strategy Content	No Differences.			

6	Marketing Assets Available	See <i>Marketing Assets to be Made Available to Awardee(s)</i> by LSE table on page 19.
7	Workforce Development Requirements	See <i>Workforce Requirements by LSE</i> table on page 21. Also see weighting criteria for differences in scoring.
8	Safety & Fire Protection	No Differences in submittal. See weighting criteria for differences in scoring.
9	Certifications & Standards	No Differences.

Definitions & Supporting Information

To provide additional clarity and guidance for Proposers, this section includes definitions of key terms that appear throughout the RFP and additional detail on the customer load data to be provided to Proposers in order to inform accurate customers.

Definitions

For the purposes of this RFP, the following terms are defined as such:

“Commercial Customer”: Refers to a category of customer sites types consisting of commercial sites and multi-family dwellings five (5) units and above.

“Disadvantaged Communities (DACs)”: Refers to CalEPA’s list of designated communities, pursuant to SB 355 throughout the state for targeted investments from California’s cap-and-trade program. For the purposes of this solicitation, DACs are those in the top 25% of scoring on the CalEnviroScreen 3.0 tool, available [here](#).

“Low-income communities”: Refers to census tracts with median household incomes at or below 80 percent of the median income for the primary county of each LSE, listed as follows;

EBCE: 80% of Alameda County median income (\$81,700)

PCE: 80% of San Mateo County median income (\$99,540)

SVCE: 80% of Santa Clara County median income (\$101,284)

SVP: 80% of Santa Clara County median income (\$101,284)

Or census tracts with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits adopted pursuant to Health and Safety Code (H&SC) Section 50093.

Please note, EBCE, SVCE and PCE have provided a list of qualifying low-income census tracts that should be used by Proposers to remove any uncertainty.

“Priority Customer Categories”: Refers to the following property types:

- residential properties in disadvantaged communities (DACs), low-income communities, medical baseline customer properties and/or CARE/FERA customer properties and;
- commercial sites in DACs, low-income communities and/or multi-family properties above four (4) units.

“Residential Customer”: Refers to a category of customer sites types consisting of residential single or multi-family dwellings four (4) units and below.

Detail of Anonymous Customer Data

As discussed in the “Data Provision Process” section, a sample of customer data will be provided to interested parties in order to inform accurate pricing of RA capacity. The key characteristics of the data to be released by each LSE are as follows.

Anonymous Customer Data Provided to Bidders by LSE

	EBCE	PCE	SVCE	SVP
Quantity of Commercial Customers	5% of customers	5% of customers	5% of customers	5% of customers
Commercial Rate Types	A1, A6, A10 and E19	A1, A6, A10 and E19	A1, A6, A10 and E19	C-1, CB-1
Customer Flags Included	Rate class (e.g. NEM), DAC, Low-Income Area	Rate class (e.g. NEM), DAC, Low-Income Area	Rate class (e.g. NEM), DAC, Low-Income Area	Rate class (e.g. NEM), DAC, Low-Income Area, FRAP, MRAP
Residential Customer Data	Not available for RFP, but may be shared with Awardees	Not available for RFP, but may be shared with Awardees	Not available for RFP, but may be shared with Awardees	Not available for RFP, but may be shared with Awardees
Solar Data	Estimated solar potential (kW) of roof and tilt and orientation of arrays from Google SunRoof	Estimated solar potential (kW) of roof and tilt and orientation of arrays from Google SunRoof	Estimated solar potential (kW) of roof and tilt and orientation of arrays from Google SunRoof	Estimated solar potential (kW) of roof and tilt and orientation of arrays from Google SunRoof
Available Data Time Range	1/1/2018 to 12/31/2018	1/1/2018 to 12/31/2018	1/1/2017 to 12/31/2017	7/1/2018 to 6/31/2019

Terms & Conditions

GENERAL

Incurring Cost: This RFP does not commit the LSEs to award or pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

Claims Against the LSEs. Neither your organization nor any of your representatives shall have any claims whatsoever against the LSEs or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures, or the award of any contract pursuant to this RFP.

Guarantee of Proposal. Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one hundred eighty (180) days after the due date for receipt of proposals and/or one hundred eighty (180) days after receipt of a best and final offer, if one is submitted.

Basis for Proposal. Only information supplied by the LSEs in writing by jross@ebce.org in connection with this RFP should be used as the basis for the preparation of proposals.

Form of Proposals. Proposals must be submitted electronically by e-mail.

Amended Proposals. Respondent may submit amended proposals before the Deadline to Submit Proposals. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified in a written format. The LSEs will not merge, collate, or assemble proposal materials.

Withdrawal of Proposal. Respondents may withdraw their proposals at any time prior to the Deadline to Submit Proposals. Respondents must submit a written withdrawal request signed by the respondent's duly authorized representative addressed to and submitted to the LSE's Authorized Representative.

Late Responses. To be considered, proposals must be received electronically by email by December 23rd, 2019, 5:00 PM PST.

No Public Proposal Opening. There will be no public opening for this RFP.

California Public Records Act (CPRA). All proposals become the property of the LSEs, which are public agencies subject to the disclosure requirements of the California Public Records Act ("CPRA"). If a respondent's proprietary information is contained in documents submitted to any of the LSEs, and respondent claims that such information falls within one or more CPRA exemptions, the respondent must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a

request for such information to any LSE, the LSE in question will make best efforts to provide notice to respondent prior to such disclosure. If respondent contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in the individual LSE's county, before the given LSE's deadline for responding to the CPRA request. If respondent fails to obtain such remedy within the LSE's deadline for responding to the CPRA request, the LSE may disclose the requested information. Respondents and the selected Awardee further agrees that it shall defend, indemnify, and hold each LSE or its agents, harmless against any claim, action, or litigation (including, but not limited to, all judgments, costs, fees, and attorney's fees) that may result from the LSE's assertion of an exemption or privilege as a basis for withholding any information marked confidential by the respondent.

Confidentiality. All data and information obtained from or on behalf of the LSEs by the respondent and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the respondent and its agents as confidential. The respondent, selected Proposer(s) and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from the LSEs. Generally, each proposal and all documentation, including financial information, submitted by a respondent to the LSEs is confidential until a contract is awarded, when such documents become public records, unless exempted under the CPRA.

Response is Genuine: By submitting a response pursuant to this RFP, Respondent certifies that this submission is genuine, and not sham or collusive, nor made in the interest or on behalf of any person not named therein; the submitting firm has not directly or indirectly induced or solicited any other submitting firm to put in a sham bid, or any other person, firm or corporation to refrain from submitting a submission, and the submitting firm has not in any manner sought by collusion to secure for themselves an advantage over any other submitting firm.

Electronic Mail Address. Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Respondents agree to provide jross@ebce.org with a valid e-mail address to receive this communication.

LSE Rights. The LSEs reserve the right to do any of the following at any time:

- a. Reject any or all proposal(s), without indicating any reason for such rejection;
- b. Waive or correct any minor or inadvertent defect, irregularity, or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation;
- c. Request that respondents supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- d. Terminate the RFP, and at its option, issue a new RFP;
- e. Procure any equipment or services specified in this RFP by other means;
- f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
- h. Negotiate with any or none of the respondents;

- i. Modify in the final agreement any terms and/or conditions described in this RFP;
- j. Terminate failed negotiations with any Proposer without liability, and negotiate with other Proposer(s);
- k. Disqualify any respondent, including a selected Proposer, on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to the LSEs;; and/or
- l. Accept all or a portion of a Proposer's proposal



**East Bay Community Energy, Peninsula Clean Energy,
Silicon Valley Clean Energy & Silicon Valley Power**

Distributed Resource Adequacy Capacity Request for
Proposal (RFP)

Addendum #1

Issuance Date: November 19, 2019

The following Addendum #1 includes all questions received during the pre-proposal webinar

and via electronic communication to this point. Similar questions have been combined for brevity.

1. **Confirmation on the Energy Products being procured. Page 9. Is this solicitation exclusively for the rights to Resource Adequacy (RA) or does this solicitation envision other energy products to be eligible to the buyer (i.e. energy product revenues, ancillary services, buyer dispatch)?**

While the LSEs are focused on procuring RA they will certainly entertain and appreciate proposals that include options for dispatch that would enable benefits to the given LSE from various services.

In Section 6 the RFP states: "The Proposer should outline how system operations will be optimized between the value streams of backup power/economic benefits in the form of bill savings to the customer and RA/wholesale market price exposure to the LSE". These wholesale benefits could be expanded to include other services that benefit the LSE.

2. **Residential types. Page 16. Is there any benefit in exceeding the thresholds listed for DACs? For example, if there were two bids with similar pricing but one bid had 20% DACs and the other had 60% DACs, would the latter be preferred? If so, where does that show up in the Evaluation rubric - Quality and Detail of Go-to-Market & Customer Engagement Plan?**
 - a. **Is there a minimum requirement for commercial customers? There appears to be a minimum RA required to be sited on residential sites on Page 15.**

A higher proportion of Low Income/SAC customers enrolled would be positively viewed by the LSEs.

There is no minimum for commercial customers but there is a minimum for residential customers, as stated on RFP page 15.

3. **If not Proxy Demand Response (PDR) what other RA mechanisms are eligible?**

The LSEs are assuming PDR is the main RA mechanism, but if there are others that Proposers are aware of then they are welcome to include them.

4. **Does each LSE perform their evaluation independently?**

Yes, proposal submittals, evaluations and the ensuing contracting will be done independently but the LSEs reserve the right to discuss proposals internally with the goal of establishing regional best practices.

5. **Will there be a list of webinar participants circulated to support teaming?**

Yes, it was emailed to webinar attendees following the webinar.

6. How, if at all, must the DERs be aggregated?

DERs must be aggregated in a way that they can meet LSE RA obligations through the relevant (likely PDR) mechanism for providing RA. If multiple Proposers chosen, each one will have to aggregate their own resources – the LSEs don't expect awardees to coordination aggregation.

7. Are you going to be viewing proposals with gas any differently than solar + battery proposals? Can solar + battery + gas proposals count for full RA Capacity under this RFP.

Fossil-fuel fired generation is not eligible for inclusion in Proposals submitted under this RFP.

8. Do LSEs have forecast of RA capacities they are going to procure in 2020 and 2021?

The LSEs know their overall RA requirements, and this solicitation is for a small subset of that requirement. The LSEs are not making their RA obligations public.

9. Are there more details on LSE marketing assets other than in RFP?

In addition to the resources explained in the proposal, will LSE's have designated people/hours they can commit to helping with the GTM/customer engagement strategy once a proposer is selected?

No, the marketing assets listed in the RFP are the assets that will be provided. If there are other assets that a Proposer wants to request that could improve the program, the LSEs are open to considering other options.

Designated staff/hours for GTM/customer engagement strategy will be worked out through negotiation process w/ shortlisted proposers, depending on what was proposed in the GTM/customer engagement strategy.

10. Must the aggregated DER be dedicated for CCA use or is each individual site's capacity to be dedicated for each LSE?

Each DER aggregation will be dedicated to the LSE that it is proposed to. Proposers will be contracting with each LSE separately.

11. Will CCAs consider CAISO Metered-Generator-Output (MGO) as the performance evaluation methodology instead of the traditional DR baseline?

Proposers are asked to disclose how they are calculating the NQC of their

aggregation. Provided that the calculations and methodologies included are aligned with relevant CAISO and CPUC requirements the LSEs will consider whichever performance evaluation methodology is included by the Proposer.

12. Can you please repeat the minimum RA capacity required per proposer? Can it be aggregated over multiple sites? in KW and kWh

I was not able to see the minimum proposal requirements. Could you repeat the minimum project size?

Is the 500kW minimum, 500kW of commercial OR residential (with a minimum 1MW for a mixed commercial/residential proposal?)

This minimum proposal size is 500 kW. This minimum proposal size is driven by the minimum aggregated capacity for PDR participation. This may be aggregated over multiple sites. For example, the 500kw can be comm, res or both (250kW on each).

13. Is there a standard form of contract across the LSE's or will each LSE be using their own contract?

Yes, the LSEs are working on a standard form for use, but it is TBD by each LSE legal team as to whether the standard form will be used as is, or whether changes will be made.

14. Will LSEs share the list of their customers that we can market our solar/storage/microgrid solutions including LSE's RA capacity?

Will the solar capacity per site be made available in the data room?

The LSEs are providing anonymized info for commercial customers now through the data room to facilitate initial pricing. There is also the potential to share more customer data later during the contracting and implementation process. The details of that process will be LSE specific.

Estimated solar capacity and annual production from Google SunRoof is available along with corresponding anonymized interval data in the data room. Instructions for accessing this data can be found in the RFP.

15. Difference in other assumptions can make the bids quite different. Will the following be provided:

- a. **-assumptions of electrical infrastructure that would guide costs needed for islanding**
- b. **value that needs to be given to the customer, as the remaining value will guide the RA price**

Assumptions of electrical infrastructure needed for islanding will not be provided,

up to each Proposer.

The LSEs expect that the RA revenue stream will lower cost of ownership/operation for customer – there will be a flow through of the RA payment from LSE to customer. The lowered cost should increase participation rates. The LSEs expect proposers to know what pricing is necessary to achieve this increased participation and will price RA payments in accordance with what you know is necessary to drive adoption.

16. Given there may be multiple awardees, is there a breakdown of the individual parts of the proposal than an individual proposer can respond to? Is that based primarily on capacity?

RA Capacity must be a part of all proposals. The LSEs understand that this proposed capacity may change based on # of awardees selected (e.g. a Proposer includes res and comm sited capacity but is only chosen to provide res capacity). This will be discussed through negotiation process.

The quality of GTM approach, price and capacity will all be evaluated.

17. How are LSEs balancing the workforce requirements with their rapid proposal and deployment timelines and cost competitiveness requirements?

**Is the prevailing wages requirement be forced for residential installations?
Is the union personnel required?**

The LSEs are relying on Proposers to balance between meeting workforce requirements and meeting specified deployment timelines. Concerns or restrictions can be noted in proposals and will be weighed during the evaluation of various proposal sections.

Prevailing wage and union requirements differ by LSE and are included on RFP p. 19.

18. Can the CCA's facilitate providing bill credits to consumers for participation?

This is an interesting proposal, the LSEs are interested in seeing how it fits into a Go-to-Market strategy

19. What are the resiliency requirements per facility/project?

Is there a minimum length of time that capacity needs to be supplied by the battery system? (is there a minimum energy capacity preferred or specified?)

The LSEs do not plan to create resilience minimums – because minimums are customer specific and should be discussed between Proposers and customers. The duration needed for resilience is for Proposers to evaluate and offer to customer.

Capacity for RA does have specific durations for local and flex RA and the balance of these needs should be optimized by Proposer.

20. Do the LSEs expect that the chosen proposer and the LSE will coordinate for customer acquisition even for the Sept. 2020 timeline or do you need the proposer to have actual projects that they can commit for Sept. 2020 delivery in order to participate in the RFO?

Is the timeline based on commercial operation/permission to operate or will completed installation be considered for the 2020 deployment

The LSEs do not require that proposer has existing projects and plan to coordinate with Proposer on customer acquisition for first timeline. Targeted and focused Go-to-Market strategies are very important.

The September 2020 deadline coincides with an RA filing and is for systems that will be online, operational in January 2021 for RA purposes. The September 2020 first delivery allows for 3 months of cushion to finalize projects. As long as the LSEs can count those assets in 2021 RA filing, there could be some flexibility on that Sept 2020 timeline. The LSEs recognize that there is a CPUC registration process for RA that takes time as well.

The target delivery dates in the RFP do NOT have mandatory capacity amounts associated with them (just target amounts). Proposers should indicate how much capacity is realistic for delivery by each target date based on their existing customer pipelines, customer acquisition rates, etc.

21. Are proposers liable for any penalties due to a failure to meet RA requirements?

Yes, penalties will be in commercial contract. This RA will be like any other resource with damages for failure to show.

22. Are the LSEs prepared to provide any credit security for the proposer-LSE RA contracts?

This will be dealt with on an LSE specific basis during contracting.

23. Is the SunRun - EBCE contract announced earlier this year providing RA? If so, is that using PDR as the RA mechanism?

Yes, the SunRun contract provides RA and used PDR as the mechanism.

24. Will the LSEs be providing / publishing a list of CAISO Scheduling Coordinators to help developers find SCs for CAISO bidding as PDR resources?

The LSEs are not planning to release such a list at this point. The LSEs refer Proposers to the CAISO list of schedule coordinators.

25. What are the integration requirements for aggregated assets for dispatch and M&V?

The LSEs do not have specific dispatch and metering protocols or requirements at this time. Please see Question 1 and Question 32 for more information on dispatch.

26. Is there a list of storage hardware vendors that the projects should focus on? Is there any guidance on technologies?

If a resource can provide RA but does not provide any resilience benefit, is it eligible to include in an aggregation?

There is no list of preferred hardware vendors.

Due to the dual goals of RA and resilience contained in this RFP, the LSEs are only looking for resources that provide both. Only solar +storage (both new and storage retrofits), storage only and any other DER solution capable of providing RA and resilience that a Proposer may be aware of will be considered.

Generally, the LSEs are also procuring RA at this time, separate of this RFP. Thus, if there are other technologies and providers that are in the market, they are encouraged to monitor for other solicitations.

27. Part of the evaluation criteria includes "Fire Safety Measures". Is there an expectation that proposers should be going above and beyond current building and electrical code requirements? Does storage technology (e.g. Lithium Iron Phosphate vs. NMC) come into play here?

There is not an expectation that Proposers will go beyond code requirements, but fire safety is extremely important to each LSE. This is why it is included as a weighting criteria. Proposers are encouraged to include any additional fire safety measures (beyond code) they are willing to take.

Storage technology is relevant to the extent that some chemistries have higher fire risk. In their fire safety measures Proposers should describe the measures relevant to their proposed technologies.

28. Does the "at least 80% of the capacity comprising the DER aggregation must be from that LSE's customers" requirement mean that 80% of

capacity must be local RA? Or that 100% of capacity must be local RA, but 20% can be from local resources who are not CCA customers?

If a customer who is providing RA elects to shift back to utility service, will they no longer be eligible to participate in this program? Or only if they would increase the portfolio to below 80% of CCA customers?

This sentence refers to the latter example provided in the question. The LSEs realize some customers in their service territories may still be PG&E (or other) customers and that sub-LAPs may cross LSE service territories, so a minimum of 80% of the customers in a given aggregation proposed to an LSE must be LSE customers. But 100% of the capacity proposed needs to fit the local RA requirements. If a Proposer bids local RA, it should be local.

The CCAs recognize that CCA customers have choice, and if they were to opt out, they would still be eligible for this program. The CCAs have not specified that customers have to remain in the CCA to participate in the program.

However, it is important to note that, while the 80% requirement is intended to provide flexibility for Proposers, it is a minimum floor and should be treated as such. Proposers are encouraged to set a target well above the 80% minimum for participating LSE to ensure that, in the event of program participant customers returning to bundled utility service, the capacity total will not risk approaching the 80% requirement. *Additionally, if a Proposer needs to put systems located on non-LSE customers into an aggregation (to meet PDR minimums, etc) they need to justify why those systems cannot be placed on LSE customers.*

29. Do you have any site guidelines that must be taken into consideration (for commercial storage only), besides grid access efficiency?

There are no specific site guidelines, only customer cohort guidelines (see Target Site Types & Priority Customer Categories on RFP p. 14).

30. Where do I find Attachment A: Pricing & Capacity Worksheet.?

It is available for download at Ebce.org/solicitations

31. What are the priority target markets? You mentioned San Jose and Palo Alto, but these cities are served by different LSEs. Would SJCE and PA Utility participate in this RFP?

Are the LSEs able to provide more accurate definitions of the boundaries of their service territories, through zip codes, census tracts, or other designations? Or is the best approach to use the county-level approach you mentioned earlier, and just remove those certain cities?

The eligible and priority markets for this RFP are the service territories of the

issuing LSEs. The simplest way to delineate this area is that it includes Alameda, San Mateo, Santa Clara counties, excluding the cities specified in the webinar slides that do not receive service from the LSEs issuing this RFP. The excluded cities are the City of Alameda, San Jose, Palo Alto, Pleasanton and Newark.

However, Pleasanton, Newark and Tracy, which is not in Alameda County, will be served by EBCE in January of 2021 so will become eligible for the second milestone year for Proposers proving proposals to EBCE.

32. Are CCA's requiring provisions in customer agreements as part of their participation in this program? Any requirements that the CCA's have on T's and C's for agreements with customers?

Will there be a requirement for developers to document customers to "opt in" to this program or will the dispatch of the resource effectively be "invisible" to the customer?

Generally, the customer will need to opt-in to this program, and if the customer opts-out then the RA payments will cease and the Proposer will need to replace with other capacity. This opt-in make take place between the customer and the LSE, or be included in the customer - Proposer agreement, but this will be dealt with on an LSE specific basis as part of the GTM strategy. It is currently being considered and various LSEs may require a dedicated agreement between the customer and the LSE in addition to the Proposer - customer agreement.

Pending the handling of an "opt-in" clause, the LSEs are not currently specifying any requirements for the Proposer - customers agreement but various LSEs may require review/approval of the Proposer - customer agreement. This is currently being considered and will be dealt with during the contracting process.

The Proposer should be prepared to have the dispatch of the resource be invisible to the customer and the LSEs expect bidders to know how batteries can be optimized across RA requirements (e.g. must offer obligation, if applicable) and customer value streams (e.g. Demand charges and RA periods for commercial customers will most likely be different, as the peak demand may not overlap with RA time periods). However, if Proposers are able to work with customers who may desire more visibility into the process as part of the GTM strategy that is desirable.

33. The CPUC has dual participation restrictions on PDR and other DR programs with the IOUs. e.g. Can't do PDR and CPP. Are you aware of similar restrictions for CCA customers?

The LSEs are cognizant of these restrictions for IOUs but not aware of any additional restrictions for CCA customers. Proposers must make sure that assets can be aggregated for RA and successfully participating in PDR or other

proposed mechanism.

34. Are Silicon Valley Power customers eligible for the SGIP incentive for energy storage?

Yes, if they receive gas service from PG&E

35. The RFP details terms of 2-10 years with flexibility to propose shorter or longer terms. Is there any weighting on longer terms (within the 10 years)?

There is no weighting for longer terms. Term preference is LSE specific.

36. Would the Solar+Storage or standalone ESS be required to be capable of operating in island mode? How are you determining that aggregated resources are island capable?

Yes, islanding capability is a requirement across this program and solicitation. Systems need to be individually capable of islanding for the site. Confirming that assets will provide back-up power will be a part of go to market strategy.

37. BTM solar "kills" traditional PDR baselines. Can you determine what aspect of PDR the SunRun contract is using to avoid this problem and add that info to the RFP docs? Is it Permanent Load Shift?

The Sunrun contract is confidential. Proposers will need to confirm how much RA they can provide based on the DER systems they can develop.



**East Bay Community
Energy, Peninsula Clean Energy, Silicon Valley Clean Energy
& Silicon Valley Power**

Distributed Resource Adequacy Capacity Request for
Proposal (RFP)

Addendum #2

Issuance Date: December 5, 2019

The following Addendum #2 includes all questions received via electronic communication and not included in Addendum #1. Similar questions have been combined for brevity.

1. **How will the parties work together to provide or integrate with the LSE for dispatch signals? There is no information in the RFP on the DERMS API integration or platform between the parties to manage DERs by aggregating data and enabling hardware dispatch, back-end infrastructure, etc.**

See Addendum #1, Questions #1, #25 and #32.

RA provided through PDR will coordinate dispatch through CAISO PDR rules. If Proposers expect to use an RA mechanism other than PDR, there may be a need for further integration. In that case, Proposers should understand the integration needed with a given LSE to ensure that their proposed mechanism can satisfy RA requirements. LSEs will work with Proposers on a case by case basis during the legal and commercial contracting processes.

2. **What additional data will be provided to support customer outreach? Will actual customer data be provided?**

See Addendum #1, Question #16. The LSEs are already providing actual anonymized customer data. The potential to share additional customer load profiles during the contracting process and un-anonymized data during the implementation process (post contract execution) will be on an LSE specific basis. Proposers should indicate how possibility for the sharing of additional data after contracting would be incorporated into their Go-To-Market strategy.

3. **What is the ability for a 3rd party to reach Low Income and DAC customers? Will these customers be specifically identified?**

Low-income & DAC customers have already been identified in the anonymized data provided. See RFP pages 17-19 and Addendum #1, Question #9 for additional discussion of marketing assets provided to Proposers. See Question #11 for Low Income Census tracts.

4. **Are special permits required to implement residential projects?**

All residential projects will be subject to the permitting requirements of the Authority Having Jurisdiction (AHJ) over a given site.

5. **Will the LSEs provide a residential customer 'hotline' for customer questions?**

The LSEs have not decided what specific marketing activities they will be undertaking. Proposers are asked to create a Go-To-Market and Marketing Strategy proposing such activities.

6. **Is there a preference of which interconnection process is used?**

No. Proposers should factor interconnection timelines into their proposed deployment timeline.

7. **Do any of the LSEs have a position on specific technologies offered outside of the list provided? Is there anything they do NOT want to consider?**

See Addendum #1, Questions #7, #26 and Question #27 in this addendum.

8. Are all CAISO mechanisms options for consideration (e.g., PDR, PGA and DERA)

Yes. See Addendum #1, Question #3.

9. Are there any specific metering requirements for the projects?

See Addendum #1, Question #25.

10. The typical understanding of PDR resources is that resources don't receive any credit for exports beyond site load. However, we're curious whether there may be some nuance to this, specifically that PDR resources don't receive energy market payments for exports, but do receive capacity/RA credit for exports. Can the LSEs confirm whether this is the case, or that PDR resources actually are limited by site load for both energy and capacity credit?

The LSEs are open to any proposals that would allow for the full value of aggregated BTM storage and solar+storage to be fully counted for Resource Adequacy. A proposal to fully value the capacity of BTM batteries for RA would be considered.

11. Are the income thresholds listed for "low-income communities" on pg 24 the median incomes, or 80% of the median incomes? In other words, should we do the math and multiply those income levels by 80%, or have you already done it?

The thresholds listed on RFP p. 24 are 80% of the median household income for the given county, as recorded in the 2018 American Community Survey. To avoid confusion around median income year, each LSE has provided the census tracts in their territory that qualify as "low-income" for the purposes of this RFP. These census tracts are the definitive list of census tracts that qualify as low-income for each LSE.

Low income Census Tracts by LSE

EBCE	SVCE	PCE	SVP*
6001400700	6085500100	06081610800	5049.01
6001400800	6085500800	06081610900	5050.01
6001400900	6085501700	06081601300	5050.07
6001401000	6085502001	06081610302	5052.02
6001401300	6085502002	06081612000	5053.01
6001401400	6085502201	06081601502	5053.02
6001401500	6085502910	06081602200	5053.03
6001401600	6085503113	06081611900	5053.04
6001401800	6085503116	06081610202	5053.05

6001402200	6085503210	06081610400	5054.01
6001402400	6085503214	06081611800	5054.02
6001402500	6085503218	06081610500	5054.03
6001402600	6085503331	06081602100	5055
6001402700	6085503332	06081610203	5056
6001402800	6085503802	06081610201	5057
6001402900	6085503902	06081612100	5059
6001403000	6085503903	06081600800	5060
6001403300	6085504101	06081984300	5061.01
6001403400	6085504102		5061.02
6001403501	6085504412		5061.03
6001403502	6085504422		
6001405301	6085504506		
6001405302	6085504601		
6001405401	6085504602		
6001405402	6085504802		
6001405500	6085505009		
6001405600	6085505100		
6001405700	6085505202		
6001405800	6085505600		
6001405901	6085506501		
6001405902	6085509000		
6001406000	6085509303		
6001406100	6085509403		
6001406201	6085511608		
6001406202	6085511915		

6001406300	6085512026		
6001406400	6085512310		
6001406500	6085512314		
6001406601	6085512506		
6001406602	6085512508		
6001407000	6085512509		
6001407101	6085512602		
6001407102	6085512603		
6001407200	6085512604		
6001407300	6085513000		
6001407400			
6001407500			
6001407600			
6001408200			
6001408400			
6001408500			
6001408600			
6001408700			
6001408800			
6001408900			
6001409000			
6001409100			
6001409200			
6001409300			
6001409400			
6001409500			

6001409600			
6001409700			
6001410100			
6001410200			
6001410300			
6001410500			
6001420400			
6001422100			
6001422300			
6001422400			
6001422500			
6001422700			
6001422800			
6001422900			
6001423100			
6001423200			
6001423500			
6001423602			
6001425104			
6001430900			
6001431000			
6001432200			
6001432400			
6001432501			
6001432502			
6001432600			

6001433103			
6001433104			
6001433200			
6001433600			
6001433800			
6001433900			
6001434000			
6001435104			
6001435400			
6001435500			
6001435601			
6001435602			
6001436200			
6001436300			
6001436500			
6001436602			
6001436900			
6001437500			
6001437701			
6001437702			
6001438201			
6001440200			
6001440307			
6001451404			

*** SVP list of Census tracts are all census tracts in SVP territory**

12. To be crystal clear on the '80% of capacity' rule, please confirm that this interpretation is correct: 80% of capacity must be from resources on LSE customer

sites (with SVP as the exception). The only locational constraint on the remaining 20% of capacity is that it must be 'local RA', meaning that it is in a sub-LAP that overlaps the CCA's territory. If this is correct, can you please provide the sub-LAPs that are eligible for each CCA? Based on our understanding, they are as follows, but would be good to confirm:

EBCE	SVCE	PCE	SVP
PGE_PGEB, PGE_PGSEB	PGE_PGCC, PGE_PGSEF	PGE_PGP2, PGE_PGSEF	PGE_PGP2, PGE_PGSEB

This interpretation is correct. Proposers should also consider, however, that per the "Eligible Project Locations" RFP section, the CCA's are strongly prioritizing projects within their service territory. Locational requirements specific to the proposed RA mechanism may also apply (e.g. all PDR resources in a given aggregation must be in the same sub-lap).

Additionally, proposers should treat this rule as a minimum floor and aim to set a target for 100% of the capacity coming from LSE customer sites in a given aggregation. The CCAs prefer aggregations that consist of projects on their customer's sites. See Addendum #1 Question #28.

Generally, Proposers should refer to CAISO for confirmation of sub-lap boundaries, as CAISO is the entity that defines the sub-lap boundaries, requires PDR resources to be comprised of DERs from within a given sub-lap and is the entity that would be enforcing that. The LSEs do not have any additional information besides the map and zip-code reference available at from PGE ([here](#)).

As a municipal-owned utility, SVP is not assigned sublaps, however if this will be used for SLAP nodal pricing reference, these sublaps would be nearest in proximity to SVP. This assignment is subject to change at any time without prior notice. SVP is seeking DER RA within the City of Santa Clara's boundary.

- 13. The vagueness of the current resiliency requirements are problematic, because the RFP presents 'resilience' as a true/false condition. However, it is really more of a sliding scale, where a minimal amount of investment can create a minimal amount of resilience. This is especially difficult on the C&I side, where there are almost unlimited degrees of resilience for a project, from short-duration, critical load-only backup, to full off-grid microgrids. If all parts of the spectrum qualify as resilience, this box can be checked by adding minimal functionality to a given site, meaning that this requirement would greatly increase the complexity of the RFP, but without providing significant additional value for customers (essentially 'compliance resiliency').**

In Addendum #1 Question #32 the LSEs indicated they may reserve the right to review the developer - customer agreement used by the Proposer during implementation. The LSEs will exercise this right in order to review and approve of the contractual obligation for back-up power/resilience that the Proposer includes in their customer contract for a given site. This will give LSEs the ability to ensure that the systems developed for RA are providing some level of meaningful resilience to the customer while enabling flexibility for

systems to meet the needs of a given customer and avoiding the creation of a "resilience requirement" that creates an undue burden on developers in cases where a prescribed level of resilience might not meet a customer's needs.

The robustness of the Proposer's approach to determining the resilience needs of customers and a requisite system will be considered by each LSE when scoring the Go-to-Market Strategy.

14. We understand that PCE has been rated investment grade. What credit documentation will the other LSEs have available?

SVP can provide an investment grade rating. SVCE and EBCE plan to pursue investment grade ratings.

15. If the winning bidder(s) commit to a certain capacity, and cannot deploy that capacity because of lack of customer interest or other factors, will that bidder be penalized?

Awardees must reach the capacity that they have contracted to supply. Specific penalties will be determined in the contracting process.

16. Beyond resilience, will host customers be expecting to receive any benefits from their systems (peak shaving, load shifting, etc) when those systems are not being called on to meet RA needs?

Yes. Proposers are expected to know how to optimize the interplay between customer benefits and system benefits. See Webinar Questions Addendum #30.

17. Will the sites need to be open for demonstration, STEM learning or other public access, during certain hours of operation?

There is no requirement to this effect.

18. Are the LSEs subject, in any way, to the upcoming California Consumer Privacy Act (CCPA), either as a covered business or a service provider? Have the LSEs implemented all necessary requirements for compliance with the CCPA, including individual rights processes and right to opt-out of data selling? Do the services covered under this RFP constitute "selling" as defined in the CCPA?

All LSEs in this program are public agencies, and therefore are not considered "businesses" or "service providers" subject to the CCPA.

It is expected that awardees in this program will be private businesses that will sell solar+storage solutions to customers. Those businesses and the services they provide may be subject to the CCPA.

19. Are there any restrictions (contractual or otherwise) on sharing customer personal information with service providers for marketing products or services? For example, would the LSE share the names, addresses, meter numbers, account numbers, and rates of their customers?

Additional data sharing beyond the anonymized data shared via the Data Room will be determined on an LSE specific basis during contracting and will likely only be shared after a contract, or other data sharing agreement, is executed. Each LSE may have specific contractual requirements and processes, such as requiring permission from the customer in question, to enable the sharing of customer specific data with Awardee(s).

As discussed in the RFP on p. 17, Awardee(s) are "expected to act as a customer marketing and program engagement partner" LSE in question. Proposers should use the Go-to-Market & Customer Engagement Strategy section of the RFP response to discuss what additional customer information would be useful and how it would be used in a successful Go-to-Market & Customer Engagement Strategy. The LSEs will work with Awardee(s) to execute their proposed strategies.

20. Do the LSE have email addresses for the customers?

Yes, however, see previous previous question and refer to Addendum #1 Question #14 for more information on the data sharing process.

21. Can the LSEs provide total residential accounts, number of existing NEM accounts, number of existing storage accounts, total small commercial customers (excluding industrial/large commercial), number of existing NEM accounts, number of existing storage accounts?

	EBCE	SVCE	PCE	SVP
Total Residential Accounts	501,424 Rate Schedules: E1, E6, ETOU, EV rates	243,251 SVCE SA IDs / 252,579 total SA IDs (as of 11/16/19) Rate schedules: E1, E6, ETOU, EV rates	261,000	47,007
# of Existing Residential NEM Accounts	28,084	19,659 SVCE SA IDs / 20,941 total SA IDs (as of 11/16/19) Rate schedules: E1, E6, ETOU, EV rates	~12,331	~800
# of Existing Residential Storage Accounts	571 total interconnections++	449 total interconnections (as of 8/22/19)	~383	1
Total small commercial customers	44,340	20,596 SVCE SA IDs / 21,553 total SA IDs (as	21,860	6,168

	Rate schedules: A1, A6	of 11/16/19) Rate schedules: A1, A6		
# of existing small commercial NEM accounts	695	343 SVCE SA IDs / 390 total SA IDs (as of 11/16/19) Rate schedules: A1, A6	~320^	~90
# of existing small commercial storage accounts	571 total interconnections++	3 total interconnections (as of 8/22/19)* Rate schedules: A1, A6	~8	<5

*Please note that SVCE has additional storage deployed by commercial customers, but they are not "small commercial" customers, as was asked in the question, so they are not reflected in the numbers above.

++EBCE storage accounts are not broken down by customer class

^PCE calculated this number to include commercial/ag/industrial NEM with solar under 200kW.

- 22. As a Solar Structure Manufacturer/Supplier, we are looking to provide a proposals for our structure for all of the LSE's. Would we be required to partner with a Developer to provide a proposal that encompasses the entire scope of the project, or can we supply proposals that cover just the structural aspect of the outlined projects?**

All proposals are required to include RA capacity.

- 23. At what stage does hard pricing need to be included in the bid? In our initial submission or during the subsequent negotiating stage? Can the bidders provide pricing that is varied or scaled based upon the quantity/capacity that is negotiated and finalized with the LSEs?**

Firm pricing must be provided in the bid. All pricing will be finalized during contracting.

If a bidder expects pricing to change based on volume and chooses to submit multiple pricing offers based on volume increments, that is acceptable (within reason).

- 24. Can the bidders provide different pricing for each of the LSEs? If so, how would you evaluate/score that proposed pricing arrangement?**

Pricing can vary for each LSE. Proposers should submit a different version of Attachment A: Pricing & Capacity Worksheet for each LSE that they are proposing too.

All LSEs will evaluate their Proposals independently. See Addendum #1 Question #4.

- 25. Regarding fire safety certification, should it be assumed that the P3 investor/owner**

will be responsible for this (i.e., that the risk for this will be transferred to the P3)?

The LSEs are not defining the ownership/financing structure of the projects, which will be left to the Proposer to determine. The LSEs anticipate that the owner of the asset will assume the fire risk.

- 26. There are dependencies that will only be guaranteed in the future, e.g. actually being able to identify and contract community load counterparts, and the ability to reach the promised price point. Will there be off-ramps in the agreement, or does signing an agreement with an LBE require the delivery of RA at the agreed-upon price point, no matter what.**

A signed contract requires the Awardee to deliver on the agreed upon RA capacity.

- 27. Our microgrids utilize solar PV, battery storage and dispatchable generation. We would be maximizing the use of the solar and batteries, with the natural gas only for the backup generation that, from our research, we believe is essential for C&I customers to adopt distributed energy solutions. I've attached a brochure to help give you more details about our system.**

We would be using the batteries to bid the RA, and the natural gas would only be used for servicing the C&I customers. The natural gas would not be related to the services provided to the LSE.

So, what I'm still trying to figure out is, are the LSE's not going to seriously consider battery, solar, and dispatchable generation C&I microgrid proposals for this RFP, even if the natural gas will not participate in the RA bid?

As stated in the Addendum #1, the LSEs will NOT procure RA capacity from fossil fuel technology. A primary intent of this RFP is to catalyze the market for behind-the-meter energy storage in the LSEs' service territories.

However, the LSEs will consider an overall customer solution that includes natural gas-based technology if a natural gas based system is required to enable a sufficient level of resilience that creates value to the host customer, provided that the following is true:

- The natural gas based technology is not used to provide RA
- The natural gas based technology still results in GHG emissions reductions. i.e. it is only activated rarely for back-up power purposes during long power outages

These requirements will be enforced via review of the developer - customer agreement by the LSE in question.

- 28. On page 12 of the RFP, bidders are instructed to submit a description of the Net Qualifying Capacity (NQC), QC, and EFC according to the CAISO methodologies. We understand that from CAISO that they haven't finalized an NQC calculation methodology for solar+storage hybrid (one meter) projects. If this is the case, would the Joint CCA team provide a standard methodology for all bidders to use so our proposals use the same basis calculations?**

Current CPUC PD:

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M320/K714/320714614.PDF>

The LSEs recognize that the accepted methodologies are changing. There will be provisions to adapt to any regulatory changes throughout the legal and commercial contracting processes. It is likely that specific provisions to address possible regulatory change will also be included in the contract itself.



EBCE Customer Resilience Program

JP Ross
June 17, 2020



Outline

- Background
- Proposed Program
- Solicitation
- Load Modification
- Board Request

PSPS and Resilience

- 2018 PSPS resulted in >50,000 EBCE accounts losing power at least once
- PG&E expects PSPS to continue for the next decade
- EBCE is working to deliver resilience to our customers through multiple program areas
 - Critical Facilities
 - Medical Baseline Resilience Program
 - **EBCE Resilience Program for Residential and Commercial Customers**
- This program will deliver resilience to thousands of customers while also procuring Load Modification at a competitive rate

Program Outline

- EBCE will partner with multiple vendors to deploy solar and storage on homes and businesses throughout EBCE service territory
- Systems will be able to island from the grid to provide resilience
- Battery capacity will be aggregated and sold to EBCE for Load Modification
- Vendor payments will be shared with customers to increase participation by providing an ongoing revenue stream for battery capacity
- A minimum of 20% of system capacity will be installed in low income/disadvantaged communities or CARE/FERA/Medical Baseline homes
- Vendors have agreed to workforce development requirements similar to OCEI
- As first major call to action EBCE is using this program to raise awareness with customers

Solicitation Summary

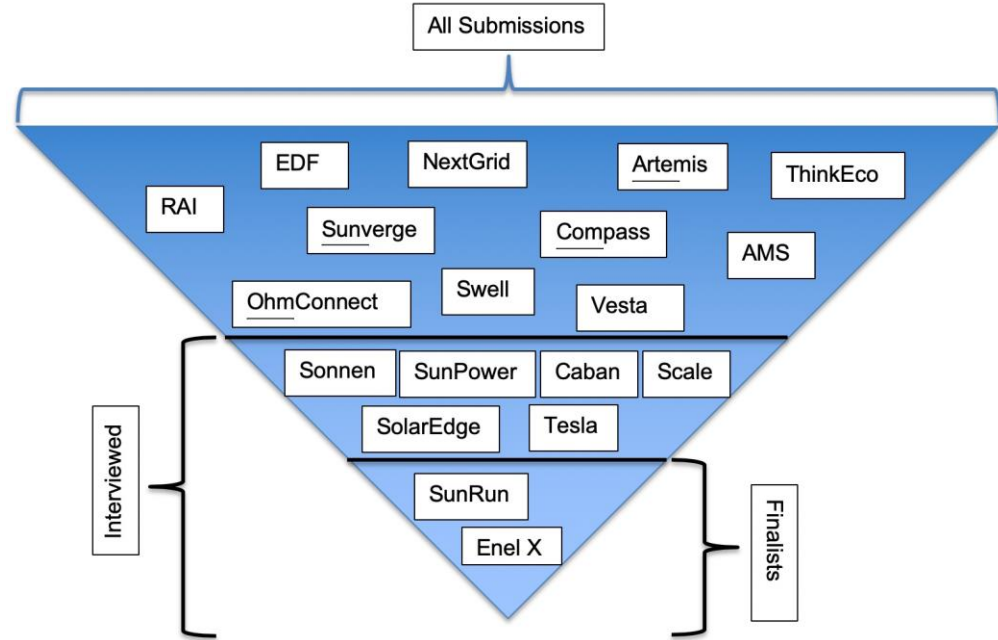
- Issued Nov, 19 2020 with 3 other LSEs; PCE, SVCE, PCE
- EBCE goal of delivering 10+MW of RA from behind the meter solar + storage
- Received 19 bids 12/23/19
- Interviewed 8 vendors
- Negotiating with four finalists

Category Weighting	Proposal Section(s)
A. Completeness of Response to RFP	Pass/Fail
B. Capacity Requirements & Deployment Timeline	Pass/Fail
C. Technology Safety Certifications & Standards	Pass/Fail
D. Islanding Capability	Pass/Fail
E. Pricing	40
F. Experience Developing Similar Projects & Providing RA Capacity	15
G. Experience & Qualifications of Personnel	10
H. Quality & Detail of Go-to-Market & Customer Engagement Plan	15
I. Proposed Fire Safety Measures	10
J. Local Hiring/Workforce Development Plan	10
TOTAL SCORE	100

Table 1: Scoring Criteria

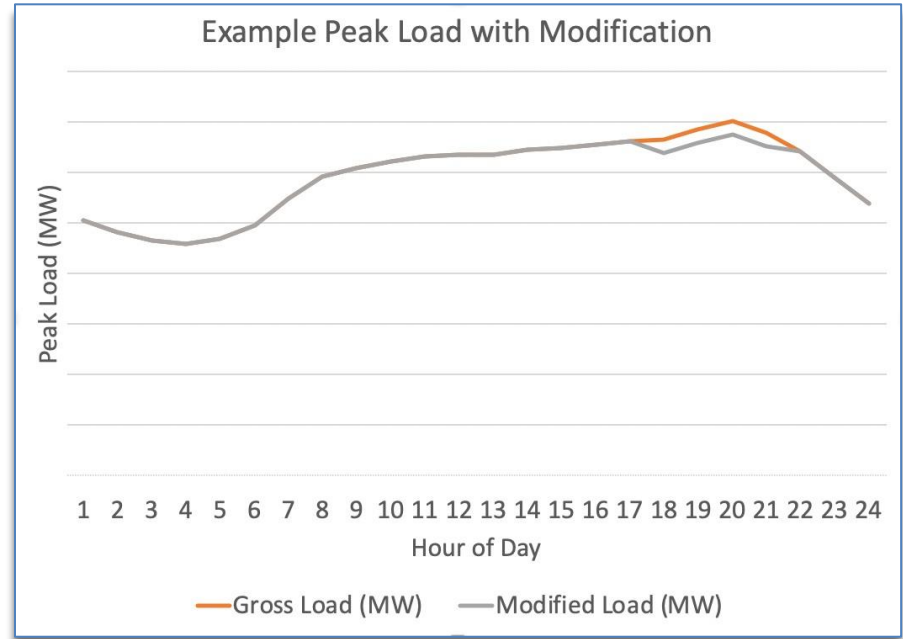
Final Vendor Selection

- EBCE has selected 2 finalists
- Requesting Board Approve contract with Sunrun and provide Authority for CEO to negotiate and execute with EnelX for a total of 10.75MW of Load Modification
- Time is of the essence as EBCE works to launch the program in time to deliver solutions by Summer 2020



Load Modification

- Load Modification reduces EBCE Resource Adequacy obligation by reducing peak load
- EBCE will be able to change hours of dispatch over the term as load shape changes
- Load reduction happens every day
- Annual dispatch plan filed with the CEC



Action Item

- Approve the selection of two vendors in response to the Distributed Resource Adequacy (RA) Request for Proposals to deliver RA in the form of load reduction from behind-the-meter solar and storage installations delivering resilience to EBCE commercial and residential customers.
- Authorize the CEO or his designee to negotiate and execute a Load Modifying Agreement with Sunrun Inc. attached in Exhibit A, for Load Modification up to 5.75MW/23MWh through December 31, 2032.
- Authorize the CEO or his designee to negotiate and execute a Load Modifying Agreement with Enel X in substantially the same form as the Sunrun agreement attached in Exhibit A, for Load Modification up to 5MW/20MWh through December 31, 2032.

THANK YOU!



EBCE.org



/EastBayCommunityEnergy



@PoweredbyEBCE



customer-support@ebce.org



833.699.EBCE (3223)

