



Consent Item 9

TO: East Bay Community Energy Board of Directors

FROM: Marie Fontenot, Senior Director of Power Resources

SUBJECT: LS Power and Convergent Contract Approvals
(Action Item)

DATE: June 16, 2021

Recommendation

Adopt two Resolutions authorizing the Chief Executive Officer to execute agreements with 2020 Renewable Energy and Storage request for offers (RFO) awardees Tumbleweed Energy Storage LLC and Henrietta D Energy Storage, LLC. The two energy storage agreements are expected to be operational in 2021 and 2024 and will deliver energy arbitrage and Resource Adequacy (RA):

- a. 15-year 50MW/200MWh lithium-ion battery storage project based in Kern County, June 2024 online date with Tumbleweed Energy Storage, LLC, developed by LS Power (“LS Power Contract”); and
- b. 15-year 10MW/40MWh lithium-ion battery storage project in Kings County, August 2021 online date with Henrietta D Energy Storage, LLC, developed by Convergent Energy+Power (“Convergent Contract”).

Background

The 2020 Renewable Energy and Storage RFO is EBCE’s second long-term contract solicitation that was launched in November 2020. The RFO sought several hundred megawatts (MW) of contracts with renewable energy and battery storage projects with a preference for projects located in CA, and more preferentially, those located in Alameda County. EBCE’s objective was to drive investments in new renewable and energy storage projects in Alameda and CA, while securing affordable resources to manage future power price risk. EBCE received a very healthy response to its RFO both in volume and quality of projects and proposals. EBCE administered the RFO and completed robust analytics using internal tools and the cQuant valuation platform to calculate the net present value of proposed projects and determine the optimal

portfolio to meet its objectives. EBCE intends to bring additional contracts from this RFO to the Board for approval in July. All of these contracts will be utilized to hedge EBCE against price fluctuation in the CAISO energy markets and they will also contribute to procurement mandates issued by the California Public Utilities Commission (CPUC). One procurement mandate identified volumes of RA capacity each CPUC-jurisdictional load serving entity must procure and have online in the years 2021, 2022 and 2023; it is the “2021-2023 Electric Reliability Requirements”¹. The second mandate requires additional volumes of RA come online in years 2024, 2025, and 2026. That mandate is the “Decision Requirement Procurement to Address Mid-Term Reliability 2023-2026”², which is currently in draft form.

The LS Power Contract is for all output from a 50MW/200MWh battery storage project based in Kern County. It is a 15-year contract settled using a capacity pricing structure. This contract takes the form of a “tolling contract” in that EBCE pays a monthly capacity price to utilize the battery storage project, but EBCE is responsible to pay for the “fuel” to operate the project. Because this project is a battery, the fuel is electricity; EBCE will charge the battery during the lowest price hours and anticipates many of those hours will be negative priced, during which time EBCE will be paid to charge the battery (during periods of negative prices) or pay nominal fees to charge if prices are positive. EBCE will then be paid to discharge the battery in the CAISO market during high price hours. The project is expected to be operational in June 2024. This resource would qualify towards EBCE’s 2024-226 Mid Term Reliability Requirement. LS Power is an experienced energy developer and operator which has developed, constructed, managed, and acquired over 45,000MWs of generating capacity and has experience working with CCAs. The contracting entity under LS Power is Tumbleweed, LLC.

The Convergent Contract is for all output from a 10MW/40MWh battery storage project based in Kings County. It is a 20-year tolling contract settled using a capacity pricing structure and will be operational in the summer of 2021. This project’s construction is de-risked in that it is nearly complete. Because of the near-term online date, EBCE will be able to use this project in its 2021-2023 Electric Reliability Procurement Requirement. Convergent Energy+Power is an experienced battery storage developer with 83MW of capacity operational and approximately 400MW under development. Convergent was formed in 2011 and has been active in the energy storage market since the market’s inception, however EBCE is the first CCA it is executing a contract with. The contracting entity under Convergent is Henrietta D Energy Storage, LLC

¹ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>

² <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M385/K026/385026493.PDF>

Conclusion

EBCE staff recommends authorizing the CEO to negotiate and execute the 50MW/200MWh battery storage contract with LS Power and the 10MW/40MWh battery storage contract with Convergent Energy+Power. These three projects will help EBCE to satisfy its 2021-2023 Electric Reliability Requirements, as mandated by the CPUC and the Decision Requiring Procurement for Mid-Term Reliability 2023-2026. EBCE will continue to move forward in evaluating additional projects.

Attachments:

- A. Resolution Authorizing Tumbleweed Energy Storage Agreement;
- B. Resolution Authorizing Henrietta D Energy Storage Agreement;
- C. LS Power and Convergent Overview presentation
- D. Pro forma Energy Storage Agreement (ESA)

RESOLUTION NO. ___

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO
NEGOTIATE AND EXECUTE THE
HENRIETTA D ENERGY STORAGE, LLC ENERGY STORAGE AGREEMENT**

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

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 joint powers agreement in March of 2020.

WHEREAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHEREAS, Henrietta D Energy Storage, LLC, proposed a 10MW/40MWh battery energy storage project in Kings County, developed by Convergent Energy+Power; and

WHEREAS, the project is expected to be operational by August 1, 2021 and will remain operational for a term of fifteen years.

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

Section 1. The CEO is hereby authorized to negotiate and execute a twenty-year agreement with Henrietta D Energy Storage, LLC for a 10MW/40MWh battery energy storage project in Kings County. The final agreement shall include the key terms outlined in the staff report associated with this Resolution.

ADOPTED AND APPROVED this 16 day of June, 2021.

Dan Kalb, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

RESOLUTION NO. __

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO
NEGOTIATE AND EXECUTE THE
TUMBLEWEED ENERGY STORAGE, LLC ENERGY STORAGE AGREEMENT**

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

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 joint powers agreement in March of 2020.

WHEREAS, the EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHEREAS, Tumbleweed Energy Storage, LLC, proposed a 50 MW/200 MWh battery energy storage facility in Kern County, developed by LS Power;

WHEREAS, the project is expected to be operational by June 1, 2024 and will remain operational for a term of fifteen years.

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

Section 1. The CEO is hereby authorized to negotiate and execute a fifteen-year agreement with Tumbleweed Energy Storage, LLC for a 50MW/200MWh battery storage project in Kern County. The final agreement shall include the key terms outlined in the staff report associated with this resolution.

ADOPTED AND APPROVED this 16 day of June, 2021.

Dan Kalb, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board



2020 RPS & Storage Resource RFO - Project Approvals

PRESENTED BY: Marie Fontenot

DATE: June 16, 2021



Solicitation Overview

Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable and clean energy sources
- Meet a significant percent of SB350 long-term contracting requirements, equal to 65% of RPS obligations
- Meet IRP Near- and Mid-Term Resource Adequacy Reliability Procurement mandates
- Create new renewable energy projects to deliver PCC1 RECs
- Contract low-cost energy hedges to compliment existing portfolio

Project Characteristics

Facilities:

- Location: Projects may be within or outside of California. All energy must be deliverable to CAISO.
- Construction Status: Energy and related products may come from new or existing resources.

Capacity:

- Minimum Contract Capacity: 10 MW
- Maximum Contract Capacity: 200 MW

Delivery Date:

- Energy and RPS attribute delivery must be within calendar years 2021, 2022, 2023, or 2024, with a preference for projects that begin delivery earlier within this window.

Contract Duration:

- 5-20 year durations

Technology:

- Renewables, Storage, and Large Hydro

Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered
- Evaluated exhaustive combinations of projects to achieve desired volume targets, while optimizing project risk, location, workforce development, economics, and other characteristics
- Encouraged RFO participants to be creative and provide proposal variations on individual projects and include battery storage

Participation

- **Robust project offering with over 70 unique project sites and over 400 contract variations**
- **All 6 products that were solicited were offered**
- **Offers included solar, wind, geothermal, hydro, and storage**
- **Projects based in 6 different states, predominantly CA**
 - **Only 2 projects in EBCE service territory. 1 project is speculative without site control, the other project in Tracy is shortlisted.*

Evaluation Process

- **Evaluation Rubric scored 3 areas:**
 - Counterparty Execution, Offer Competitiveness, and Project Development Status
 - Multiple items under each area
- **Two reviewers were assigned to each project.**
- **Staff reviewed all submitted information and provided scores for all categories except for Term Sheet Markups and NPV.**
 - Each item has 10 point max. at its own weighting.
 - Term Sheet Markups were scored by one assigned reviewer.
 - NPV scores were directly incorporated into overall project score with a weighting of 45%.
 - The Net Present Value was calculated based on simulations on 3 different forward curves
 - For each forward curve we took a weighted average of the P5 (50%), P50 (25%), and P95 (25%) and then took a simple average across the 3 curves
 - We normalized this number on a \$/MW basis and the projects were then assigned a 0-10 score based on the NPV distribution
- **Scoring and rubric were consistent with the selection process for the 2018 California Renewables RFP.**

Projects Proposed for Execution

Seeking approval for two Energy Storage Agreements (ESAs) submitted into EBCE's 2020 Renewable Energy & Storage Resource RFO

- 15-year 50 MW/200 MWh battery storage project based in Kern County with LS Power. Expected to be operational in June 2024.
- 15-year 10 MW/40 MWh battery storage project in Kings County with Convergent Energy + Power. Expected to be operational in August 2021.

LS Power Project Details

- Selected via the 2020 Renewable Energy & Storage RFO
- 50MW/200MWh battery storage project based in Kern County
 - 4hour battery duration optimizes energy load shifting
 - Equates to 47MW of RA and includes the ability to extend the battery duration in the future
- 15-year contract
- Tolling contract structure
- Expected Commercial Operation Date is November 2024
- Project has an executed interconnection agreement and site control. Discretionary permits in late stages.
- LS Power is investing into EBCE’s Community Investment fund as part of this contract
- Committed toward utilizing union labor and prevailing wages
- The contracting entity under LS Power is Tumbleweed Energy Storage, LLC
- Job creation:
 - Construction Jobs: 50-60
 - Operations & Maintenance Jobs: 5-6
 - Approximately 3-5 local full time hires currently with additional hires expected.
 - Some of that staffing will be based locally in Pleasanton, Alameda County to support the O& M and development teams.

LS Power Company Overview



- LS Power Group is a leading independent power producer
 - Parent company of LS Power Development and LS Power Investment Partnerships. Headquartered in New York City, with offices in Pleasanton, East Brunswick, NJ, and Chesterfield, MO
 - LS Power operates across the United States with a diverse portfolio of utility-scale solar, wind, hydro, natural gas, and battery storage generation projects. LS Power’s employee team consists of 270 people.
- Since LS Power’s inception in 1990, the organization has developed, constructed, managed, and acquired over 45,000 MW of power generation and over 660 miles of transmission infrastructure. LS Power Development has developed over 11,000MW of generation.
- The company has raised over \$47 billion in debt and equity financing to invest in North American infrastructure. LS Power Investment Partnerships currently has over \$10 billion in equity capital invested.

Convergent Project Details

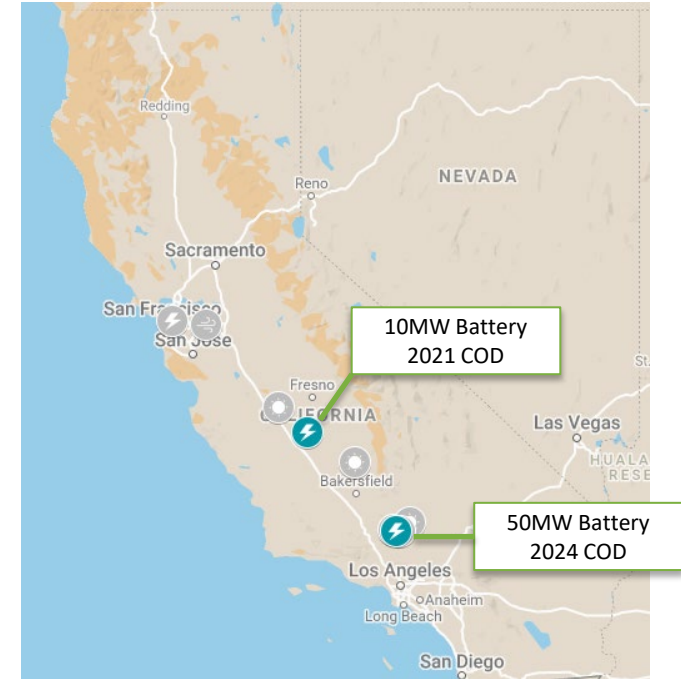
- Selected via the 2020 Renewable Energy & Storage RFO
- 10 MW/40 MWh battery project based in Kings County
 - 4-hour battery optimized for all available CAISO day-ahead and real-time products
 - 10MW of RA and includes the ability to extend the battery duration in the future
 - Local RA (Greater Fresno) value in NP15 territory
- Project will be EBCE's first battery and first full tolling contract
- Project is fully built and awaiting final approvals for interconnection
- 10-year contract
- P-node settled project
- Expected Commercial Operation Date is September 2021
- Project has an executed interconnection agreement and site control.
- Contracting entity is Henrietta Energy Storage, LLC

Convergent Company Overview

- Convergent is a leading independent developer of energy storage solutions in North America
 - In 2019, Energy Capital Partners (ECP) purchased Convergence providing financial resources to continue setting energy storage sector milestones.
- Convergent is the largest independent operator of energy storage solutions in North America with over 120 MWs and 240 MWhs of projects in operation, construction, or under contract.
- Convergent is first developer to build and operate energy storage as a “non-wires alternative” for utility infrastructure.
- Convergent's 10 MW behind-the-meter energy storage system is the largest in North America.
- Convergent has a portfolio of energy storage projects across the country with utilities and ISOs:
 - Southern California Edison
 - New York Independent System Operator
 - New England Independent System Operator
 - Edison International
 - Central Maine Power

Portfolio Characteristics

- The final portfolio is will include additional projects including RPS-eligible generation
 - Supplemental presentation to Board expected in July
- Current Projects range from 10 to 50 MWs in nameplate capacity, all with 4 hour duration
- Both projects for approval are battery energy storage. A later approval will include renewable energy and renewable energy + storage resources
- Project maturities range from early to late-stage development
- Both projects are committed to utilizing union labor
- Projects include funds allocated towards community investment
- Final portfolio selection does account for project fall-out risk



*Gray projects are existing EBCE contracts

RPS Portfolio Summary

| Contracted Portfolio: | | | | | | | |
|------------------------------|-----------------------|-----------|-------------|---------|--------------------|------|------------|
| Developer | Technology | Nameplate | | County | Actual or Expected | Term | Settlement |
| | | MW | Storage MW | | COD | | |
| Clearway Energy Group | Solar | 112 | N/A | Kern | 12/22/2020 | 15 | DLAP |
| Salka Energy Group | Wind | 57.5 | N/A | Alameda | 6/30/2021 | 20 | Pnode |
| Idemitsu Solar | Solar | 55.8 | N/A | Tulare | 12/31/2021 | 15 | DLAP |
| EDP Renewables North America | Solar+Storage | 100 | 30MW/120MWh | Fresno | 12/31/2022 | 20 | Pnode |
| sPower | Solar+Storage | 125 | 80MW/160MWh | Kern | 12/31/2022 | 20 | Pnode |
| Terra-Gen | Solar+Virtual Storage | 100 | TBD | Kern | 12/31/2022 | 15 | Pnode |

Next Steps

- Complete negotiations of additional projects under consideration. Supplemental presentation to Board anticipated in July.
- Assess projects as they hit key milestones and mature further.
- Update filing to CPUC on status of 2021-2023 Electric Reliability Requirements due August 2, 2021.
- CPUC's 2021 IRP cycle provides formal opportunity for portfolio review and analysis of open position, cost and risk. Further engagement with board and community in spring/summer timeframe.

ENERGY STORAGE AGREEMENT

COVER SHEET

Seller: [Seller Name, e.g., Project Company LLC] (“**Seller**”)

Buyer: East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”)

Description of Facility: A [XX MW/XXX MWh] grid-connected battery energy storage facility, all located in _____ County, in the State of _____, as further described in Exhibit A.

Milestones:

| Milestone | Date for Completion |
|---|----------------------------|
| Evidence of Site Control | |
| Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR | |
| Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities | |
| Executed Interconnection Agreement | |
| Financial Close | |
| Expected Construction Start Date | |
| Full Capacity Deliverability Status Obtained | |
| Initial Synchronization | |
| Network Upgrades completed | |
| Expected Commercial Operation Date | |

Delivery Term: [XX] Contract Years.

Guaranteed RA Amount: The Net Qualifying Capacity (NQC) of the Facility, which is [XX] MW.

Storage Contract Capacity: [XX] MW for [two (2) hour] [four (4) hour] discharge

Guaranteed Efficiency and Availability:

| Contract Year | Guaranteed Efficiency Rate | Guaranteed Storage Availability |
|----------------------|-----------------------------------|--|
| 1 – [XX] | 88.0% | 98.0% |

Minimum Efficiency Rate: [Seventy percent (70%)]

Contract Price

The Storage Rate shall be:

| Contract Year | Storage Rate |
|----------------------|---|
| [1 – XX] | \$X.XX/kW-mo. (flat) with no escalation |

[If applicable per Seller bid]

The Tolling Rate shall be:

| Contract Year | Tolling Rate |
|----------------------|--------------------------------------|
| [1 – XX] | \$X.XX/MWh (flat) with no escalation |

Product:

- Generating Facility Energy
- Green Attributes (Portfolio Content Category 1)
- Storage Capacity
- Capacity Attributes (select options below as applicable)
 - Energy Only Status
 - Full Capacity Deliverability Status and Expected FCDS Date:
- Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security: \$90/kW of Contract Capacity

Performance Security: \$105/kW of Contract Capacity

TABLE OF CONTENTS

| | Page |
|--|-------------|
| ARTICLE 1 DEFINITIONS | 1 |
| 1.1 Contract Definitions | 1 |
| 1.2 Rules of Interpretation | 17 |
| ARTICLE 2 TERM; CONDITIONS PRECEDENT..... | 18 |
| 2.1 Contract Term | 18 |
| 2.2 Conditions Precedent | 18 |
| 2.3 Development; Construction; Progress Reports | 19 |
| 2.4 Remedial Action Plan | 19 |
| ARTICLE 3 PURCHASE AND SALE..... | 19 |
| 3.1 Purchase and Sale of Product | 19 |
| 3.2 Ownership of Standalone Energy Storage Incentives | 20 |
| 3.3 Future Environmental Attributes | 20 |
| 3.4 Capacity Attributes | 20 |
| 3.5 Resource Adequacy Failure | 21 |
| 3.6 Compliance Expenditure Cap | 21 |
| ARTICLE 4 OBLIGATIONS AND DELIVERIES..... | 22 |
| 4.1 Delivery | 22 |
| 4.2 Title and Risk of Loss | 22 |
| 4.3 Charging Energy Management | 22 |
| 4.4 Reduction in Delivery Obligation | 24 |
| 4.5 Storage Availability | 24 |
| 4.6 Storage Capacity Tests | 25 |
| 4.7 Interconnection Capacity | 25 |
| 4.8 Station Use | 25 |
| ARTICLE 5 TAXES | 25 |
| 5.1 Allocation of Taxes and Charges | 25 |
| 5.2 Cooperation | 26 |
| ARTICLE 6 MAINTENANCE OF THE FACILITY..... | 26 |
| 6.1 Maintenance of the Facility | 26 |
| 6.2 Maintenance of Health and Safety | 26 |
| 6.3 Shared Facilities | 26 |
| ARTICLE 7 METERING..... | 27 |
| 7.1 Metering | 27 |
| 7.2 Meter Verification | 27 |

| | | |
|-------------------|---|----|
| ARTICLE 8 | INVOICING AND PAYMENT; CREDIT | 28 |
| 8.1 | Invoicing | 28 |
| 8.2 | Payment | 28 |
| 8.3 | Books and Records | 28 |
| 8.4 | Invoice Adjustments | 28 |
| 8.5 | Billing Disputes | 29 |
| 8.6 | Netting of Payments | 29 |
| 8.7 | Seller's Development Security | 29 |
| 8.8 | Seller's Performance Security | 30 |
| 8.9 | First Priority Security Interest in Cash or Cash Equivalent Collateral | 30 |
| 8.10 | Financial Statements | 31 |
| ARTICLE 9 | NOTICES | 31 |
| 9.1 | Addresses for the Delivery of Notices | 31 |
| 9.2 | Acceptable Means of Delivering Notice | 31 |
| ARTICLE 10 | FORCE MAJEURE | 31 |
| 10.1 | Definition | 31 |
| 10.2 | Termination Following Force Majeure Event | 32 |
| 10.3 | Notice for Force Majeure | 33 |
| ARTICLE 11 | DEFAULTS; REMEDIES; TERMINATION | 33 |
| 11.1 | Events of Default | 33 |
| 11.2 | Remedies; Declaration of Early Termination Date | 36 |
| 11.3 | Termination Payment | 36 |
| 11.4 | Notice of Payment of Termination Payment | 37 |
| 11.5 | Disputes With Respect to Termination Payment | 37 |
| 11.6 | Rights And Remedies Are Cumulative | 37 |
| ARTICLE 12 | LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES | 37 |
| 12.1 | No Consequential Damages | 37 |
| 12.2 | Waiver and Exclusion of Other Damages | 38 |
| ARTICLE 13 | REPRESENTATIONS AND WARRANTIES; AUTHORITY | 38 |
| 13.1 | Seller's Representations and Warranties | 38 |
| 13.2 | Buyer's Representations and Warranties | 39 |
| 13.3 | General Covenants | 40 |
| 13.4 | Prevailing Wage | 40 |
| 13.5 | Workforce Development and Supplier Diversity | 41 |
| ARTICLE 14 | ASSIGNMENT | 41 |
| 14.1 | General Prohibition on Assignments | 41 |
| 14.2 | Collateral Assignment | 41 |
| 14.3 | Permitted Assignment by Seller | 43 |
| 14.4 | Permitted Assignment by Buyer | 43 |
| 14.5 | Purchase Option | 43 |

| | | |
|-------------------|--|----|
| 14.6 | Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity | 44 |
| ARTICLE 15 | DISPUTE RESOLUTION | 45 |
| 15.1 | Governing Law | 45 |
| 15.2 | Dispute Resolution | 45 |
| ARTICLE 16 | INDEMNIFICATION | 45 |
| 16.1 | Indemnity | 45 |
| 16.2 | Claim Notice | 46 |
| 16.3 | Defense of Claims | 46 |
| 16.4 | Amounts Owed | 47 |
| 16.5 | Rights and Remedies are Cumulative | 47 |
| ARTICLE 17 | INSURANCE | 47 |
| 17.1 | Insurance | 47 |
| ARTICLE 18 | CONFIDENTIAL INFORMATION | 48 |
| 18.1 | Definition of Confidential Information | 48 |
| 18.2 | Duty to Maintain Confidentiality | 48 |
| 18.3 | Irreparable Injury; Remedies | 49 |
| 18.4 | Disclosure to Lenders, Etc. | 49 |
| 18.5 | Press Releases | 49 |
| 18.6 | Information and Shared Learning | 49 |
| ARTICLE 19 | MISCELLANEOUS | 50 |
| 19.1 | Entire Agreement; Integration; Exhibits | 50 |
| 19.2 | Amendments | 50 |
| 19.3 | No Waiver | 50 |
| 19.4 | No Agency, Partnership, Joint Venture or Lease | 50 |
| 19.5 | Severability | 50 |
| 19.6 | Mobile-Sierra | 50 |
| 19.7 | Counterparts | 51 |
| 19.8 | Facsimile or Electronic Delivery | 51 |
| 19.9 | Binding Effect | 51 |
| 19.10 | No Recourse to Members of Buyer | 51 |
| 19.11 | Forward Contract | 51 |
| 19.12 | Further Assurances | 51 |

Exhibits:

| | |
|-----------|--|
| Exhibit A | Facility Description |
| Exhibit B | Facility Construction and Commercial Operation |
| Exhibit C | Compensation |
| Exhibit D | Scheduling Coordinator Responsibilities |
| Exhibit E | Progress Reporting Form |
| Exhibit F | Form of Commercial Operation Date Certificate |
| Exhibit G | Form of Installed Capacity Certificate |
| Exhibit H | Form of Construction Start Date Certificate |
| Exhibit I | Form of Letter of Credit |
| Exhibit J | Form of Guaranty |
| Exhibit K | Form of Replacement RA Notice |
| Exhibit L | Notices |
| Exhibit M | Storage Capacity Tests |
| Exhibit N | Storage Availability |
| Exhibit O | Operating Restrictions |
| Exhibit P | Metering Diagram |
| Exhibit Q | Workforce Development |

ENERGY STORAGE AGREEMENT

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

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.6.

“**Actual Monthly NQC**” means the amount of Net Qualifying Capacity able to be shown during a given month.

“**Actual Round-Trip Efficiency**” means the measured round-trip efficiency of the Facility, as a percentage, measured in accordance with Exhibit M.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternating Current**” or “**AC**” means alternating current.

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

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

“**Available Energy**” has the meaning set forth in Exhibit N.

“**Available Energy Measured**” has the meaning set forth in Exhibit N.

“**Available Power**” has the meaning set forth in Exhibit N.

“**Available Power Measured**” has the meaning set forth in Exhibit N.

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

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

“**Buyer**” means East Bay Community Energy Authority, a California joint powers authority.

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

“**CAISO**” means the California Independent System Operator Corporation.

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

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

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

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

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEQA**” means the California Environmental Quality Act.

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

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

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

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

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

“**CIL Adjustment Factor**” has the meaning set forth in Section 3.5(c).

“**Claim**” has the meaning set forth in Section 16.2(a).

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

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

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

“**Commercial Operation Delay Damages**” or “**COD Delay Damages**” means an amount equal to [\$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“**Compliance Action**” has the meaning set forth in Section 3.6.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.6.

“**Compliance Showings**” means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Delay Damages**” means an amount equal to [\$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

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

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

“**Contract Price**” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Storage Rate[and, if applicable, the Tolling Rate].

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

“**Contract Year**” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

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

“**CPUC System RA Penalty**” has the meaning set forth in the Resource Adequacy Rulings.

“**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.

“**Cycle**” or “**Full Cycle Equivalent**” means a quantity of Discharging Energy (in MWh) equal to the Storage Contract Output.

“**Damage Payment**” means the dollar amount that equals the amount of the Development Security.

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

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

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

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

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

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

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

“**Discharging Energy**” means all Energy delivered to the Delivery Point from the Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures.

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

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

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

“**Efficiency Rate**” means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy

In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, losses of Energy within the Facility’s energy storage equipment along with all transmission or transformation losses (a) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy and (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy In**” has the meaning set forth in Part II.B of Exhibit M.

“**Energy Management Software**” has the meaning set forth in in Exhibit A.

“**Energy Out**” has the meaning set forth in Part II.B of Exhibit M.

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

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

“**Excused Event Hours**” has the meaning set forth in Exhibit N.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including the Energy Management Software and related storage and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes but is not limited to transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

“**Facility Energy**” means the Discharging Energy during any Settlement Interval or Settlement Period.

[“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.]

“**FERC**” means the Federal Energy Regulatory Commission.

“**Financial Close**” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

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

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

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

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

“**Full Cycle Equivalent**” means either (a) a Cycle or (b) the sum of more than one Partial Cycles that equal the Discharging Energy in one Cycle.

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

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

“**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.

“**Guaranteed Commercial Operation Date**” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Construction Start Date**” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Efficiency Rate**” means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet

“**Guaranteed RA Amount**” means the amount of Resource Adequacy Benefits (in MW) from the Facility as set forth on the Cover Sheet.

“**Guaranteed Storage Availability**” has the meaning set forth in Section 4.5.

“**Guarantor**” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit J.

“**Hour**” has the meaning set forth in Exhibit N.

“**Indemnifiable Loss(es)**” has the meaning set forth in Section 16.1.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Facility Energy to the Delivery Point.

“**Installed Capacity**” means the maximum dependable operating capability of the Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit G hereto.

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

“Interconnection Agreement” means the interconnection agreement or agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. 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 Exhibit I.

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

“**Local RAR**” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

“**Losses**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes, and Standalone Energy Storage Incentives.

“**Major Subcontractors**” means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of Ten Million Dollars (\$10,000,000) for performance of any part of the work at the Site.

“**Maximum Charging Capacity**” has the meaning set forth in Exhibit A.

“**Maximum Discharging Capacity**” has the meaning set forth in Exhibit A.

“**Maximum Stored Energy Level**” has the meaning set forth in Exhibit O.

“**Meter Service Agreement**” has the meaning set forth in the CAISO Tariff.

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

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet.

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

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

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

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

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

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

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

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

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by electronic mail (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 16.2.

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

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

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

“**Partial Cycle**” means a quantity of Discharging Energy (in MWh) that is less than one hundred percent (100%) of the Storage Contract Output.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

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

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

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

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“Planned Outage” has the meaning set forth in Section 4.4(a).

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

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

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

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

“Qualified Energy” has the meaning set forth in Part III.C of Exhibit M.

“Qualified Power Capacity” has the meaning set forth in Part III.B of Exhibit M.

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.5(b).

“RA Guarantee Date” means the date that is sixty (60) days after Commercial Operation Date.

“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be

shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the Guaranteed RA Amount of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, or (c) the CAISO’s reduction in the Net Qualifying Capacity of the Facility due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any month commencing after the RA Guarantee Date during which there is an RA Shortfall Amount.

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

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

“**Reduced MNQC**” has the meaning set forth in Section 3.5(c).

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

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

“**Replacement RA**” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and, to the extent that Facility was eligible for Local RAR, located within NP 15 or Greater Bay Area Local Capacity Area Resource.

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

“**Resource Adequacy Requirements**” or “**RAR**” means the resource adequacy requirements established for Buyer pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“**Round-Trip Efficiency Factor**” means (a) if the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, one hundred percent (100%), (b) if the Efficiency Rate is less than the Guaranteed Efficiency Rate but greater than or equal to the Minimum Efficiency Rate,

the Actual Round-Trip Efficiency, or (c) if the Actual Round-Trip Efficiency is less than the Minimum Efficiency Rate, zero percent (0%).

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

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

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

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

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

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

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

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

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

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

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit H to Buyer.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to

lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Standalone Energy Storage Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction or ownership from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Future Environmental Attribute.

“Station Use” means:

(a) any and all Energy that is used within the Facility to power electrical loads that are necessary for operation of the Facility, including information technology, telecommunications lights, motors, cooling and other thermal management equipment, control systems including battery management systems, and inverters; and

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

“Storage Capacity” means (a) the maximum dependable operating capability of the Facility to discharge Energy that can be sustained for [two (2)][four (4)] consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to discharge Energy.

“Storage Capacity Test” or **“SCT”** means any test or retest of the capacity of the Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.6 and Exhibit M.

“Storage Contract Capacity” or **“Contract Capacity”** means the total capacity (in MW) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.6 and Exhibit M to reflect the results of the most recently performed Storage Capacity Test.

“Storage Contract Output” means the product of the Storage Contract Capacity multiplied by [two (2)/four (4)] hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility

Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location or locations of the Storage Facility Meter shown on Exhibit P.

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

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

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

“Supplementary Storage Capacity Test Protocol” has the meaning set forth in Part II.I of Exhibit M.

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

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

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

“Termination Payment” has the meaning set forth in Section 11.3.

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

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

“Ultimate Parent” means _____, a [State of organization] [Type of entity].

“Uninstructed Imbalance Energy” or **“UIE”** has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

(e) a reference to a document or agreement, including this Agreement 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; and

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit F and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit G setting forth the Installed Capacity on the Commercial Operation Date;

(b) A [Participating Generator Agreement and/or a Participating Load Agreement] and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition; Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(e) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

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

3.2 **Ownership of Standalone Energy Storage Incentives.** Seller will own any Standalone Energy Storage Incentives, subject to a price reduction pursuant to Exhibit C.

3.3 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.3(a), and Sections 3.3(b) and 3.6, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.3(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

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

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

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

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

3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

(c) **Change in Law.** Notwithstanding anything in this Agreement to the contrary, if, in any given month following the Effective Date, a change in Law occurs that reduces the maximum Resource Adequacy Capacity that the Facility is eligible to provide, thereby reducing the maximum achievable Net Qualifying Capacity of the Facility below the Guaranteed RA Amount (such new maximum achievable Net Qualifying Capacity, the “**Reduced MNQC**”), then the RA Shortfall Amount for such month shall be equal to the difference in the Guaranteed RA Amount and the product of the Actual Monthly NQC and the CIL Adjustment Factor. For the purposes of this subsection (c), the “**CIL Adjustment Factor**” means the Guaranteed RA Amount divided by the Reduced MNQC.

3.6 **Compliance Expenditure Cap.**

(a) If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product pursuant to Sections 3.3, 3.4(b) and (c) (any action required to be taken by Seller to comply with such change in Law, a “**Compliance Action**”), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [twenty-five thousand dollars (\$25,000.00)] per MW of Storage Contract Capacity in aggregate at over the Contract Term (the “**Compliance Expenditure Cap**”).

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the “**Accepted**”

Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.6 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller’s actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer’s obligation to pay Seller for any attributes delivered.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with: (i) the acceptance of Charging Energy at the Delivery Point, (ii) the storage of Energy at the Facility, and (iii) the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (x) the delivery of Charging Energy to the Delivery Point and (y) the acceptance and transmission of Discharging Energy at and from the Delivery Point, including without limitation, transmission costs and transmission line losses and imbalance charges with regard to (x) and (y). The Facility Energy will be Scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss.** The risk of loss related to the Energy, including Charging Energy, Discharging Energy, and Energy stored in the battery, will pass and transfer from the Buyer to the Seller when Charging Energy is delivered to Seller at the Delivery Point and the risk of loss will pass and transfer back to the Buyer when the Facility Energy is delivered to Buyer at the Delivery Point. Title to all Energy delivered to Seller as Charging Energy shall remain with Buyer at all times.

4.3 **Charging Energy Management.**

(a) **Generally.** Buyer is solely responsible, at Buyer’s sole cost, for procuring Charging Energy. Buyer is solely responsible, at Buyer’s sole cost, for arranging transmission and wheeling required to deliver Charging Energy to the Delivery Point and to accept Discharging Energy at the Delivery Point. Except as expressly set forth in this Agreement, including Sections

4.3(c) and (e) and Section 4.6(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Facility. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.3(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Facility during the Contract Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Facility in violation of the first sentence of this Section 4.3(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

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

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (i) discharges the Facility other than as provided for in the Discharging Notice or (ii) discharges the Facility in violation of the first sentence of this Section 4.3(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Pre-Commercial Operation Date Period; Coordination Regarding Commissioning and Storage Capacity Tests. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Facility. Seller is responsible to procure, at its own cost, any Energy required for commissioning purposes and to arrange to discharge such Energy into the grid. Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Facility testing for periods prior to the Commercial Operation Date. Both prior to and after the Commercial Operation Date, (i) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility commissioning and Storage Capacity Tests, and (ii) Seller shall reasonably coordinate and cooperate with Buyer with respect to Facility commissioning and Storage Capacity Tests so as to minimize direct and opportunity costs to the Buyer associated with such activities.

4.4 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between [June 1st and September 30th of any calendar year,] Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility (a "Planned Outage").

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

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

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

4.5 Storage Availability and Efficiency.

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-eight percent (98%) (the "Guaranteed Storage Availability"), which Monthly Storage Availability shall be calculated in accordance with Exhibit N.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit N).

(c) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller's payment of liquidated damages made pursuant to Exhibit C.

4.6 **Storage Capacity Tests.**

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller, Seller shall (i) not be entitled to the payment for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, Buyer shall (x) procure the associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.7 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity under the Interconnection Agreement throughout the Delivery Term. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

4.8 **Station Use.** Seller will be responsible for procuring and paying for all necessary retail electricity required to operate the Facility. Neither Charging Energy nor Discharging Energy may be used to provide Energy required for Station Use. Seller shall reimburse Buyer for any costs incurred by Buyer in connection with Station Use.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place

contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if 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 Effective 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.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, 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. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation batteries. Seller shall not (a) replace existing batteries in the Facility unless for critical maintenance purposes or (b) increase the capacity of the Facility without the prior consent of Buyer. Notwithstanding the aforementioned limitation under subclause (a), Seller may without Buyer's prior consent replace batteries in the Facility in order to maintain the Storage Contract Capacity, so long as (i) Seller provides Buyer one-hundred twenty (120) days' prior Notice, and (ii) such replacement does not increase the Storage Contract Capacity of the Facility.

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

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating

Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Storage Contract Capacity.

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit P, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Storage Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meter for the Facility, the Storage Facility Meter, (ii) the CAISO requires the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties is or becomes incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified

seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any), , and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. The invoice shall be delivered by electronic mail in accordance with Exhibit L.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. 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 the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies;

provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (x) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) 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.

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

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

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

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

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

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (“COVID-19”).

(d) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy storage capacity at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

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

not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure**. Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.5 and (2) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.5) 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);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days after the Guaranteed Construction Start Date;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any two consecutive Contract Years, the average Monthly Storage Availability over the two-year period is less than seventy percent (70%);

(vii) if, Seller fails to maintain an average Efficiency Rate of at least seventy percent (70%) over a rolling 12-month period;

(viii) if, Seller fails to maintain a Storage Capacity equal to at least seventy-five percent (75%) of the Storage Contract Capacity for more than three hundred sixty (360) days;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the

event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(x) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with 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;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least BBB by S&P or Baa2 by Moody's;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

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

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

(b) 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 Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(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 to the extent such remedies are expressly limited under this Agreement;

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 monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a

single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of 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.

11.5 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 15.

11.6 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 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 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.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 4.5, 11.2, AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT N THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a [Type of entity], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, 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 [*limited liability company*][*corporate*] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

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

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

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

(a) Buyer is a joint powers authority 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 (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; 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.

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

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

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

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

13.4 **Prevailing Wage.** Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility 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 ("**Prevailing Wage Requirement**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable

provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development and Supplier Diversity.** Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q. In addition, Seller agrees to, or cause its contractors to, complete an annual supplier diversity and labor practices questionnaire provided by Buyer and, upon request of Buyer, to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller 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. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

14.2 **Collateral Assignment.**

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

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

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);;

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

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

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

- (i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause the 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.

14.4 **Permitted Assignment by Buyer.** Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment upon not less than thirty (30) days' notice by delivering a written request for such assignment in the form attached to this Agreement. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 **Purchase Option.** Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator qualified and experienced

in the appraisal of facilities similar to the Facility mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties), and in either case, at Seller's sole cost) of the Facility (the "**Purchase Option**"). The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term.

14.6 Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.

(a) For the duration of the Delivery Term, Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**"). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "**ROFR Offer**"), for Buyer to accept, subject only to finalization and execution of an energy storage agreement for the Expansion Project (the "**Project ESA**") incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "**Material Terms**").

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project ESA for the Expansion Project with a third party (the "**Third-Party Transaction**"); provided, that if such Third-Party Transaction is not consummated within twelve months of the date of the ROFR Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the Right of First Refusal on the terms and conditions of this Section 14.6.

In addition to Buyer's Right of First Refusal, upon request of Buyer, Seller shall provide a written proposal to Buyer to add new storage technologies to the Facility, at a price not to exceed the lesser of (i) current market prices or (ii) Seller's direct cost to add such capacity, plus ten percent (10%).¹

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (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 or the courts of the State of California sitting in the County of Alameda, California.

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

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnity.**

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees (collectively, "**Indemnifiable Losses**") arising out of or relating to or in any way connected with: the Indemnifying Party's or its Affiliates' negligence, willful misconduct or breach of the Agreement.

(b) In those circumstances in which Seller acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify, and hold harmless the Indemnified Party against

¹ NTD: Buyer and Seller to discuss.

Indemnifiable Losses arising out of or relating to or in any way connected with the Indemnifying Party's or its Affiliates' (i) ownership, development, construction, operation or maintenance of the Facility, including the Site(s); (ii) breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility or Site; or (iii) delivery of Energy up to and at the Delivery Point.

(c) In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer's receipt of Energy after the Delivery Point.

16.2 **Claim Notice.**

(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 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim.**" A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Party 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 16.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party 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.

16.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification

hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Amounts Owed.** Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.5 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

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

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

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

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

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

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

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law,

(b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller’s actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party’s consent shall not be unreasonably withheld, conditioned or delayed.

18.6 **Information and Shared Learning.** Seller understands that Buyer is entering into the 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 Contract Term upon Buyer's request, and annually in a written report, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data but excluding cost or similar proprietary information, 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.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any

other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.1 **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, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

19.3 **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.

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

19.5 **Further Assurances.** Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; provided that Seller shall have no obligation to modify this Agreement, or take other

actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement. 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.

[Signatures on following page]

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

[SELLER]

By: _____
Name: _____
Title: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs:

County:

CEQA Lead Agency:

Type of Storage Facility:

Energy Management Software: Remotely operable, 2-4 second timestamps, historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and Buyer's SC, and provides the following Applications/Modes: Frequency Response and Dynamic Voltage Support – for the Facility; Shifting; Regulation; Flexible Ramp; and Spinning Reserve.

Operating Characteristics of Storage Facility: +0.95/-0.95 at Installed Capacity at Delivery Point; set point control +0.90/-0.90.

Operating Restrictions of Storage Facility: See Exhibit O.

Storage Contract Capacity:

Maximum Output:

Maximum Charging Capacity:

Maximum Discharging Capacity:

Delivery Point: PNode

Facility Meter: See Exhibit P.

Storage Facility Meter Location: See Exhibit P.

PNode: [If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Facility commissioning Energy hereunder to reflect the PNode corresponding to the Facility's point of interconnection with the CAISO Grid.]

Participating Transmission Owner:

EXHIBIT B**MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION****1. Construction Start.**

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit H hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
 - b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.
2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit F (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial

Operation has been achieved. The “**Commercial Operation Date**” shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) if Seller provides Buyer at least ninety (90) days’ advance Notice that the Facility will achieve Commercial Operation sooner than the Expected Commercial Operation Date, the date on which Commercial Operation is achieved; provided, that such earlier date of Commercial Operation shall not, absent Buyer’s express written consent, occur earlier than one hundred twenty (120) days before the Expected Commercial Operation Date.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer’s receipt of COD Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis due to a Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the “**Development Cure Period**”). Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period for a Force Majeure Event if the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3.

5. **Failure to Reach Storage Contract Capacity.**

- a. *Storage Contract Capacity.* If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G hereto specifying the new Installed Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Storage Contract Capacity exceeds the Installed Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
COMPENSATION

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

(a) Storage Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month, as adjusted for the Storage Capacity Test, *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit N). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

[Alternate Storage Rate Provision if Storage Rate is based on 200 Cycles per year.]

(b) Storage Rate and Tolling Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit N). In addition (and if applicable), if Buyer dispatches the Facility for more than 200 Cycles, Seller shall receive an additional payment equal to the Tolling Rate *multiplied by* the MWh of Discharging Energy associated with the excess Cycles *multiplied by* the Round-Trip Efficiency Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the simple average of the Day-Ahead Market price for all the hours of the applicable month, as published by the CAISO, for the Delivery Point, provided, that if the foregoing calculation results in a negative value, then Seller shall pay Buyer the absolute value of such result, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(d) Standalone Energy Storage Incentives. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Standalone Energy Storage Incentives, or if any Standalone Energy Storage Incentives expire, are repealed, or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Standalone Energy Storage Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Standalone Energy Storage Incentives or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Standalone Energy Storage Incentives during the Contract Term. Notwithstanding the foregoing, if after the Effective Date of the Agreement, any Standalone Energy Storage Incentive is enacted for standalone energy storage projects, Seller

shall use commercially reasonable efforts to cause such credit to be available for the Facility. Seller shall share with Buyer the value of any credit received by Seller, as follows: Contract Price reduction, per 1%: \$[per bid] per MW-mo/MWh (reduction can be applied to Storage Rate, Tolling Rate, if applicable, or both, if applicable).

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

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

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with Uninstructed Imbalance Energy and delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to

the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

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

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. [Prevailing wage reports as required by Law.]
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated [*DATE*] (“**Agreement**”) by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. The Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Energy Supply Bids into the CAISO Day-Ahead Market and Real-Time Market in respect to the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this [] day of [], 20 [].

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT G

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated [*DATE*] (“**Agreement**”) by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for [two (2)][four (4)] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.6 and Exhibit M (the “**Installed Capacity**”).

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this [] day of [], 20 [].

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated [DATE] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

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
1999 Harrison Street, Suite 800
Oakland, CA 94612

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”), 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 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 [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

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

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

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

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1999 Harrison Street, Suite 800, Oakland, CA 94612. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]

(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, 1999 Harrison Street, Suite 800, Oakland, CA 94612, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (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 Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of East Bay Community Energy 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 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 _____

EXHIBIT J

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “**ESA**”) dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESA, as required by Section 8.8 of the ESA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

Agreement

- 1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESA, Guarantor shall promptly pay such amount as required herein.
- 2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the ESA. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure

(the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the ESA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the ESA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*]/[*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
 Attn:
 Fax:

If delivered to Guarantor, to it at
 Attn:
 Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. 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 Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly

as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT K**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT L**NOTICES**

| | |
|--|--|
| [REDACTED] ("Seller") | EAST BAY COMMUNITY ENERGY AUTHORITY ("Buyer") |
| All Notices: Street: City: Attn: Phone: Email: | All Notices: 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: powernotices@ebce.org |
| Reference Numbers: Duns: Federal Tax ID Number: | Reference Numbers: Duns: 08-110-3072 Federal Tax ID Number: 82-2262960 |
| Invoices: Attn: Phone: Email: | Invoices: Attn: Power Resources Phone: (510) 827-2051 Email: ap@ebce.org ; powersettlements@ebce.org |
| Scheduling: Attn: Phone: Email: | Scheduling: Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: powerscheduling@ebce.org |
| Confirmations: Attn: Phone: Email: | Confirmations: Attn: Power Resources Phone: (510) 361-6247 Email: powernotices@ebce.org ; powersettlements@ebce.org |
| Payments: Attn: Phone: Email: | Payments: Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: AP@ebce.org ; |
| Wire Transfer: BNK: ABA: ACCT: | Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: *****7551 |
| Credit and Collections: Attn: Phone: Email: | Credit and Collections: Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: powersettlements@ebce.org ; powernotices@ebce.org ; ap@ebce.org |

| | |
|--|--|
| [REDACTED] ("Seller") | EAST BAY COMMUNITY ENERGY AUTHORITY ("Buyer") |
| With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email: | With additional Notices of an Event of Default to: Attn: Power Resources 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email: powernotices@ebce.org ; legal@ebce.org With an additional copy to: Wilson Sonsini Attn: Peter Mostow Phone: (206) 883-2541 pmostow@wsgr.com |

EXHIBIT M

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit M and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice to Seller of such test. At least twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.6(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit M. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit M as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Storage Contract Capacity;
- (2) Determine the amount of Energy required to fully charge the Facility;
- (3) Determine the Facility charge ramp rate;
- (4) Determine the Facility discharge ramp rate;
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) (“**Energy In**”);
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system (“**Energy Out**”);
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Facility’s electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility’s electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

- (1) discharge time (minutes);
- (2) charging energy (MWh);

- (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and
 - (3) Ambient air temperature (°F).
- E. Test Showing. Each SCT must demonstrate that the Facility:
- (1) successfully started;
 - (2) operated for at least [two (2)][four (4)] consecutive hours at Maximum Discharging Capacity;
 - (3) operated for at least [two (2)][four (4)] consecutive hours at Maximum Charging Capacity;
 - (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit O);
 - (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for [two (2)][four (4)] consecutive hours at a rate equal to the Maximum Discharging Capacity; and
 - (6) has an Actual Round-Trip Efficiency of at least the Minimum Efficiency Rate, as measured at the Delivery Point associated with Charging Energy, provided that if the Actual Round-Trip Efficiency is less than the Minimum Efficiency Rate, the Round-Trip Efficiency Factor shall be subject to adjustment in accordance with the definition thereof until the next SCT completed in accordance with the terms of this Agreement.
- F. Test Conditions.
- (i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
 - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may

postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

H. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Charging Capacity, Actual Round-Trip Efficiency, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

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

I. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit M with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test").

Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit M.

- J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first [two (2)][four (4)] hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) [two (2)][four (4)] hours), shall be divided by [two (2)][four (4)] hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.6(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.
- K. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The storage facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer’s RTU and the storage facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer’s RTU and Seller’s control system interface and the ability to record SCADA data.
- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the

battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

- The following Commercial Operation tests will be repeated annually:
 - PMAX Capacity Test
 - Round-Trip Efficiency and Energy Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the storage facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes ("**Qualified Power Capacity**").
2. Procedure:
 - i. System starting state: The storage facility will be in the on-line state with each battery subsystem at 100% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
 - ii. Record the storage facility active power level at the Storage Facility Meter.
 - iii. Command the storage facility to follow a signal equal to the storage facility's maximum operating level for five (5) minutes.
 - iv. Record and store the storage facility active power response. Measurements will be made at the point of interconnection (POI) and by the control system with a recording in the storage facility historian.
 - v. System end state: The storage facility will be in the on-line state and at a commanded active power level of 0 MW.

| Pass/Fail Criteria | | |
|---|--------|-------|
| The storage facility active power response and the commanded level shall be within $\pm 2\%$ as measured by the sum of values at the POI. The time to full output shall be less than 100 ms. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian. | | |
| Passed | Failed | Date: |
| | | |
| Test Performed by: | | |
| Test Witnessed by: | | |

Notes/Test Conditions:

C. Round-Trip Efficiency and Energy Test

1. The following test demonstrates the updated Efficiency Rate and amount of Energy required to fully charge the Facility (when performed annually or ad hoc).
 - i. The resulting quantity of Discharging Energy is the Energy Out (as reported in Part II.B above) and the resulting quantity Charging Energy is the Energy In (as reported in Part II.B above).
 - ii. The Qualified Energy is the sum of the total quantity of Discharging Energy at the Storage Facility Meter.

2. The storage facility will be operated in both the charge and discharge directions in the following order:
 - i. [Seller to specify, example language below]
 - ii. *[Set each Battery Subsystem to [3%] SOC.*
 - iii. *Allow each Battery Subsystem to enter background cell balancing mode by maintaining a SOC of [3% for 20 minutes]. After the background cell balancing mode begins the system can be operated as normal. Allow the cell balancing function to operate in the background for at least 24 hours to allow the automatic cell balancing procedure to reach completion. This time may be reduced based on equipment suppliers' recommendations.*
 - iv. *Discharge each Battery Subsystem to 0% SOC.*
 - v. *Immediately perform the Round-Trip Efficiency and Capacity Test set forth below.]*

3. To be valid, the SCT must be started within twenty-four (24) hours of the end of the period (greater than four days) during which cell balancing was completed. For the duration of the SCT, the control system will be configured to have the power limiting mechanisms disabled, and each battery subsystem shall be configured to follow the charge and discharge current limits specified by their respective battery management system.

4. Procedure:
 - i. System Starting State: The storage facility will be in the on-line state with each Battery Subsystem at 0% SOC.

- ii. Verify that in the previous twenty-four (24) hour period, each Battery Subsystem completed the cell balancing procedure allowing full cell balancing to occur, as described in steps i-iv.
- iii. Verify that ambient temperature measurements at all Battery Subsystems are between [18 °C and 28 °C] throughout this test.
- iv. Record initial values of each Battery Subsystem SOC.
- v. Command a real power charge that results in an AC power of facility's full charging power and continue the charge until the power is 2% different.
- vi. Record and store the AC energy charged to the system as measured at the POI meter. Measurements will be made by the POI meter with recording in the storage facility historian.
- vii. Within 5 minutes, command a real power discharge that results in an AC power output of the storage facility's maximum discharge power.
- viii. Maintain the discharging until the power is 2% different.
- ix. Record and store the AC energy discharged as measured at the facility meter. Measurements will be made by the Storage Facility Meter with recording in the storage facility historian.

| Pass/Fail Criteria | | |
|---|--------|-------|
| The measured Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate. The Qualified Energy is greater than or equal to the Storage Contract Output. | | |
| Passed | Failed | Date: |
| | | |
| Test Performed by: | | |
| Test Witnessed by: | | |

Notes/Test Conditions:

EXHIBIT N

STORAGE AVAILABILITY

Monthly Storage Availability

Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” by dividing the sum of the minimum of the Available Energy Measured (AEM) and the Available Power Measured (APM) of every hour in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{1}{H_M - H_E} * \sum_{h=1}^{H_M - H_E} \text{MIN}[(AEM(h)), (APM(h))]$$

where:

$H_M(h)$ = The number of hours in the month.

$H_E(h)$ = The number of Excused Event Hours.

$AEM(h)$ = For any Hour (h), AEM is calculated in accordance with the following formula.

$$AEM = \text{MIN} \left[1, \frac{\text{Available Energy (h)}}{\text{Storage Contract Output(h)}} \right]$$

$APM(h)$ = For any Hour (h), APM is calculated in accordance with the following formula.

$$APM = \text{MIN} \left[1, \frac{\text{Available Power (h)}}{\text{Storage Contract Capacity (h)}} \right]$$

Hour = The consecutive sixty-minute period commencing on the hour, every hour, using local time at the storage facility.

Available Power (h) = For any Hour (h), the average percentage of available inverters multiplied by the Qualified Power Capacity; provided, that the number of inverters corresponding to capacity in excess of the Qualified Power Capacity shall be removed from the denominator for purposes of this calculation

Available Energy (h) = For any Hour (h), the average percentage of available racks multiplied by the Qualified Energy; provided, that the number of racks corresponding to energy storage capability in excess of the Qualified Energy shall be removed from the denominator for purposes of this calculation

Qualified Power Capacity shall be assessed at least annually and is the P_{MAX} value determined in the P_{MAX} capacity test within Exhibit M.

Qualified Energy shall be assessed at least annually and is performed according to the Round-Trip Efficiency and Energy Test within Exhibit M.

Excused Event Hours means, with respect to the applicable month, the sum of all Hours during which the storage facility is operating below one hundred percent (100%) of Installed Capacity as result of Force Majeure Events, System Emergencies, or the Operating Restrictions in Exhibit O. All Excused Event Hours are removed from the calculation. Any unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

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

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

Availability Adjustment

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

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

$$AA = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 95%, then:

$$AA = 100\% - [(98\% - \text{Monthly Storage Availability})]$$

- (iii) If the Monthly Storage Availability is less than 95% but greater than or equal to 70%, then:

$$AA = 100\% - 3\% - [(95\% - \text{Monthly Storage Availability}) \times 2]$$

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

$$AA = 0$$

EXHIBIT O**OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit O, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and Communications Protocols.

1. XXXX
2. XXXX

SAMPLE OPERATING RESTRICTIONS

| | |
|--|--|
| Maximum Stored Energy Level: | [XX] MWh [number in MWh representing maximum amount of energy that may be charged to the Facility] |
| Minimum Stored Energy Level: | [XX] MWh [number in MWh representing the lowest level to which the Facility may be discharged] |
| Maximum Charging Capacity: | [XX] MW [number in MW representing the highest level to which the Facility may be charged] |
| Minimum Charging Capacity: | [XX] MW [number in MW representing the lowest level at which the Facility may be charged] |
| Maximum Discharging Capacity: | [XX] MW [number in MW representing the highest level at which the Facility may be discharged] |
| Minimum Discharging Capacity: | [XX] MW [number in MW representing the lowest level at which the Facility may be discharged] |
| Maximum State of Charge (SOC) during Charging: | [100]% |
| Minimum State of Charge (SOC) during Discharging: | [0]% |
| Ramp Rate: | The Facility shall have the ability to discharge at the Maximum Discharging Capacity in two seconds. |
| Annual Cycles: | Maximum of 365 Full Cycle Equivalentents per Contract Year with no monthly cap. |

| | |
|---|--|
| Daily Dispatch Limits: | Charging: [2 per day] Discharging: [2 per day] Partial Charging/Discharging: [maximum number of times per day Buyer may begin charging or discharging the Facility without reaching either the Maximum SOC or Minimum SOC, respectively] |
| Maximum Time at Minimum Storage Level: | [Seller-specified, if applicable] |
| Other Operating Limits: | The average resting state of charge per Contract Year must be below forty five percent (50%). |
| Ancillary Services Capability: | [Seller-specified, if applicable] |

EXHIBIT P
METERING DIAGRAM

EXHIBIT Q
WORKFORCE DEVELOPMENT