

# ENERGY STORAGE SERVICE AGREEMENT

## COVER SHEET

**Seller:** Trolley Pass Project LLC (“**Seller**”)

**Buyer:** Northern California Power Agency, a joint powers agency of the State of California (“**Buyer**”)

**Description of Facility:** A 316.00 MWAC / 1,264.00 MWh-AC grid-connected battery energy storage facility as further described below (the “**Facility**”), located in San Bernardino County, in the State of California, as further described in Exhibit A.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	Complete
Executed Interconnection Agreement	August 1, 2025
Financing	September 1, 2028
Procure Major Facility Equipment	December 15, 2027
Expected Construction Start Date	September 1, 2028
Initial Synchronization	January 15, 2029
Expected Commercial Operation Date	June 1, 2029
Guaranteed Commercial Operation Date	As Set Forth in <u>Exhibit B</u>

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.

**Storage Contract Capacity:** 316.00 MW for four (4) hours

**Storage Contract Output:** 1,264.00 MWh

**Guaranteed Efficiency Rate:**

Contract Year	Guaranteed Efficiency Rate
1	84.50%
2	84.30%
3	84.10%
4	83.90%

5	83.70%
6	83.50%
7	83.30%
8	83.10%
9	82.90%
10	82.70%
11	82.50%
12	82.30%
13	82.10%
14	81.90%
15	81.70%
16	81.50%
17	81.30%
18	81.10%
19	80.90%
20	80.70%

**Minimum Round-Trip Efficiency:** Seventy percent (70.00%)

**Dedicated Interconnection Capacity:** 316.00 MW<sub>AC</sub>

**Contract Price:**

Contract Year	Storage Rate
1 – 20	\$12.71/kW-month (flat) with no escalation

**Proposed Contract Price Increase Cap:** 6.00% of the Contract Price, in aggregate

**Metering Arrangement:** The Facility will be registered as a CAISO Metered Entity

**Delivery Point:** Facility PNode, as further described in Exhibit A

**Product:**

- ☒ Discharging Energy
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)

- ☐ Energy Only Status
- ☒ Full Capacity Deliverability Status
- ☒ Ancillary Services

**Scheduling Coordinator:** Buyer or Buyer's agent

**Development Security:** \$62.5/kW of Storage Contract Capacity, provided such amount shall be increased to \$125/kW on January 1, 2028.

**Performance Security:** \$100/kW of Storage Contract Capacity

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## ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2025 (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 or as otherwise set forth in 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:

“**AC**” means alternating current.

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

“**Actual Contract Price Increase**” has the meaning set forth in Section 2.5(b).

“**Administrative NQC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility able to be shown for each hour of the Resource Duration due to a reduction that has been (i) generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates or (ii) specifically applied to the Facility based on the operational characteristics of the Facility (e.g. any changes with respect to unforced capacity) to the extent such reduction is not caused by Seller’s failure to meet its obligations under this Agreement.

“**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” and “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%)



of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, “Affiliates” shall mean Ultimate Parent and any of its subsidiaries that satisfy the requirements set forth in this definition; provided, however, that the term “Affiliate,” when used with respect to Seller shall not include any direct or indirect tax equity investor.

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

“**Ancillary Services**” means all ancillary services, products and other attributes, that can be produced by the Facility, as listed in Exhibit Q, and any other ancillary services added to the Agreement in accordance with Section 4.5(g).

“**Approved Maintenance Hours**” means up to one hundred twenty (120) hours of full capacity equivalent hours of Planned Outages each Contract Year during the calendar months November through May, provided that such Planned Outages are scheduled in accordance with Section 4.6(a).

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

“**Availability Notice**” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Storage Capacity, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).

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

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

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

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

“**Buyer Credit Support**” has the meaning set forth in Section 8.9.

**“Buyer Delay”** means Buyer has not made all necessary arrangements to deliver Charging Energy to, and receive Discharging Energy at, the Delivery Point in accordance with Exhibit D, and such failure is not the result of a Seller delay or Seller failure to satisfy its obligations in accordance with Exhibit D.

**“Buyer Dispatched Test”** has the meaning set forth in Section 4.9(a).

**“Buyer Downgrade Event”** will have occurred if (A) (i) Buyer does not have or loses its Investment Grade Credit Rating, and (ii) if Buyer fails to maintain Days of Cash on Hand, or (B) (i) the Third Phase Agreement is terminated for any reason or becomes legally unenforceable, or (ii) any of the Participating Members’ payment obligations under the Third Phase Agreement (including the obligation to post security) are materially amended such that collection of payment hereunder or remedies related to default become legally unenforceable, except in the case of B(ii) no Buyer Downgrade Event will have occurred if the other Participating Members assume the Participating Members payment and/or security obligations under this Agreement and Buyer maintains Days of Cash on Hand. Buyer shall provide notice to Seller no later than five (5) Business Days after the occurrence of a Buyer Downgrade Event.

**“Buyer Failure”** means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer, as specified in a Notice from Seller to Buyer, which has a causal effect that limits or reduces the Charging Energy or Discharging Energy. Notwithstanding any provision of this Agreement to the contrary, and without the intent of creating the requirements of more than one notice provision related to an Event of Default in general, Buyer Failure shall not become effective without Notice to Buyer from Seller no later than ten (10) Business Days following Seller’s knowledge of the occurrence of such Buyer Failure.

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time Charging Energy and Discharging Energy.

**“CAISO Certification”** means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including but not limited to, certification and testing for all applicable Ancillary Services, PMAX, and PMIN.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D-1.

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

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

**“CAISO Operating Order”** means the Operating Instruction or Dispatch Instruction 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 (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO 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 generate and 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 Attributes are measured in MW and shall exclude energy and any Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

**“CEQA”** means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq. and Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

**“CEQA Approval(s)”** has the meaning set forth in Section 2.7(a).

**“CEQA Completion Date”** has the meaning set forth in Section 2.7(a).

**“CEQA Documents”** means an initial study, categorical exemption, negative declaration, environmental impact report or equivalent document (as applicable) relied upon by the Lead Agency in connection with the CEQA environmental review for the Facility, including but not limited to any addendum, supplement, or subsequent negative declaration or environmental impact report.

**“Change in Law”** means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law (including but not limited to any Laws related to tariffs, import duties or fees, and/or tax credits); (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority (including but not limited to any changes to the applicable rates of any tariffs, import duties or fees, and/or tax credits); (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling, (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, or (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC.

**“Change in Tax Law”** means, after the Effective Date, (i) any change in or amendment to the Code that substantively impacts any tax credit for the Facility or available to Seller with respect to the Facility, (ii) the issuance, promulgation or change in, or of, any temporary, proposed, or final Treasury Regulations promulgated under the Code with respect to any tax credits for the

Facility or available to Seller with respect to the Facility, or (iii) any notice, announcement, court decision, revenue ruling, revenue procedure, or other official guidance published in the Internal Revenue Bulletin that applies, advances, or articulates a new or different interpretation or analysis of any tax credit or incentives for the Facility or available to Seller with respect to the Facility.

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

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

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider and any trustee or agent or similar representative thereof acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

**“Charging Energy”** means the energy delivered to the Facility pursuant to a Charging Notice, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practice, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the purpose of clarity, pursuant to Section 4.11 Seller will be responsible for procuring and paying for all Station Use; therefore, Charging Energy stored in the Facility shall not be used to supply Station Use.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC, or by the CAISO based on Bids submitted by Buyer or Buyer’s SC, to Seller, directing the Facility to charge with Charging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) any such “Charging Notice” may be adjusted in accordance with Section 4.5. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall be considered a Charging Notice.

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

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

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

**“Code”** means the U.S. Internal Revenue Code, as amended.

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

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

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

**“Communications Protocols”** means certain procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

**“Compliance Actions”** has the meaning set forth in Section 3.11(b).

**“Compliance Costs”** has the meaning set forth in Section 3.11(a).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.11(a).

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

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

**“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. For clarity, the Contract Price is the Storage Rate.

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

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

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

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

**“COVID-19”** has the meaning set forth in Section 10.1(b).

**“CPM Soft Offer Cap”** has the meaning set forth in the CAISO Tariff, including its functional successor.

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

**“CPUC Master Resource Database”** means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits capacity to load serving entities.

**“CPUC System RA Penalty”** means the Tier 1 System RA Penalties assessed against Load Serving Entities (as defined in the CAISO Tariff) by the CPUC for RA deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against Load Serving Entities for RA deficiencies.

**“Credit Rating”** means, with respect to an entity other than Buyer, the current rating then assigned to that entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if that 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, Fitch or Moody’s. With respect to Buyer, the long term issuer rating assigned by S&P, Moody’s, and Fitch. If Buyer does not have a long term issuer rating, then the highest rating assigned to Buyer’s revenue bonds (not supported by third party credit enhancements).

**“Curtailment Order”** means any of the following:

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

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

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission system that prevent (i) Buyer from receiving or (ii) Seller from delivering Charging Energy to the Facility and/or Discharging Energy to the Delivery Point; or

(d) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

**“Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

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

**“Damage Payment”** means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

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

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

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

**“Days of Cash on Hand”** means, with respect to Buyer, the amount of the required security deposits under the Third Phase Agreement which shall be no less than the amount of Buyer’s estimated full payments for three (3) months of Product under the Agreement.

**“Dedicated Interconnection Capacity”** has the meaning set forth in Section 4.10.

**“Deemed Delivered RA”** means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered, but for (a) the failure of Buyer to (i) obtain any rights or capacities that Buyer is required to obtain, or take any other action that Buyer is required to take, in order for Seller to provide or Buyer to make use of the Capacity Attributes of the Facility, (ii) timely submit a Supply Plan for the Facility after the Facility has received a Net Qualifying Capacity from CAISO, in each case as may be required under applicable Law and as may change from time to time, (b) a Force Majeure Event as provided in Section 4.6(e), and (c) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.

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

**“Delivered RA”** means, in the applicable Showing Month, the sum, in MW, of (a) the Net Qualifying Capacity of the Facility for such month able to be shown for each hour of the Resource Duration on Buyer’s monthly or annual Resource Adequacy Plan and/or RA Compliance Showing to the CAISO and CPUC (as applicable) and counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Replacement RA, and (c) Deemed Delivered RA.

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

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

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

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

**“Discharging Energy”** means all energy delivered to the Delivery Point from the Facility, net of Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practice, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. 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 or Buyer’s SC, or by the CAISO based on Bids submitted by Buyer or Buyer’s SC, to Seller or Sellers Agent, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) any such “Discharging Notice” may be adjusted in accordance with Section 4.5(d). For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

**“Disclosing Party”** has the meaning set forth in Section 18.1.

**“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 in accordance with Exhibit O.

**“Electrical Losses”** means all transmission or transformation losses between the Facility Meter and the Delivery Point for the receipt of Charging Energy and delivery of Discharging Energy, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

**“Energy In”** has the meaning set forth in Exhibit O.

**“Energy Out”** has the meaning set forth in Exhibit O.

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

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

**“Executed Interconnection Agreement Milestone”** means the date for completion of execution of the Interconnection Agreement by Seller (or Seller’s Affiliate) and the PTO as set forth on the Cover Sheet.

**“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.

**“Export and Import Costs”** means all export (including any withholding tax in the country of origin) and import customs and other similar taxes, tariffs and duties and other charges or fees levied or assessed by any jurisdiction (including, without limitation, current and future anti-dumping duty, countervailing duty, Section 301 of the Trade Act of 1974 or other duties or tariffs imposed by any jurisdiction, including the country of manufacture, the country in which the Facility is located and any other country through which the Facility equipment or material is transported or stored), or other costs that may be assessed or incurred in connection with the import and export of the Facility equipment or material, including any such costs associated with any Change in Law, provided, however, that Export and Import Costs shall exclude (i) any costs, fees, duties, tariffs, penalties or other amounts that result from Seller’s failure to properly declare, classify, label, document or otherwise comply with applicable import or export requirements or customs regulations, (ii) any costs that could have been minimized through commercially reasonable alternative sourcing arrangements, shipping routes or methods provided that (x) Seller is not obligated to terminate any existing supply contracts and (y) “costs” as referred to within (ii) shall be the aggregate of all of Seller’s material and equipment costs for the Facility), (iii) any penalties, fines or similar charges resulting from Seller’s negligence or willful misconduct in complying with customs requirements, (iv) any costs or penalties arising from Seller’s failure to maintain required import or export licenses or permits, and (v) any costs or charges that were known or reasonably foreseeable to Seller as of the Effective Date based on then-existing Laws.

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

**“Facility Meter”** means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, 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 and Discharging Energy.

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

**“Final Independent Report”** has the meaning set forth in Section 2.5(b).

**“Financing Milestone”** means the date upon which Seller has notified Buyer of the financing arrangements for the financing of the construction of the Facility.

**“Fitch”** means Fitch Ratings Ltd., or its successor.

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

**“Forecasting Penalty”** has the meaning set forth in Section 4.3(f).

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

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from receiving Charging Energy or making Discharging 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 Network Model”** has the meaning set forth in the CAISO Tariff.

**“Gains”** means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, regardless of whether Buyer enters any such replacement transactions, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement, regardless of whether Seller enters any such replacement transactions, and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting 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” for purposes of this Agreement shall not in any event include any Party.

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

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

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

**“Guaranteed RA Amount”** means an amount of Resource Adequacy Benefits equal to the Qualifying Capacity, in MW, of an energy storage facility with an installed capacity equal to the Storage Contract Capacity that is able to be shown for each hour of the Resource Duration, minus Administrative NQC Reductions for the applicable Showing Month.

**“Guaranteed Storage Availability”** has the meaning set forth in Section 4.8(a).

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

**“Import Restriction Action”** means any import or customs-related action by a Governmental Authority that, directly or indirectly, delays the delivery of major equipment procured by Seller to be used in the Facility, including, without limitation, a U.S. Customs and Border Protection withhold release order, issuance of a CF28 or CF29 instrument or seizure or enforcement action, provided, that an Import Restriction Action shall not include (i) any action resulting from Seller’s or its suppliers’ failure to comply with applicable Law, (ii) any action that could have been prevented through reasonable due diligence by Seller in its supplier selection and procurement processes, (iii) any action arising from Seller’s failure to maintain required import licenses, permits or certifications, (iv) any action targeting specific suppliers due to their prior violations of trade laws or regulations that were known or should have been known to Seller at the time of procurement, (v) any routine customs inspection or documentation request that does not result in an extraordinary delay, (vi) any action arising from Seller’s failure to provide accurate or complete information to customs authorities, or (vii) any action that was reasonably foreseeable based on published governmental policies, regulations or enforcement priorities as of the Effective Date.

**“Incentives”** means: (a) any federal, state, or local tax benefits, credits or other incentives, including depreciation, associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); and (b) any federal, state, or local cash payments, grants, subsidies or other like benefits relating in any way to the Facility.

**“Indemnifiable Event”** has the meaning set forth in Section 16.1.

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

**“Initial Independent Report”** has the meaning set forth in Section 2.5(a).

**“Initial Synchronization”** means the earlier of (a) initial delivery of Discharging Energy to the Delivery Point or (b) the initial receipt of Charging Energy at the Delivery Point.

**“Installed Battery Capacity”** means the maximum dependable operating capability of the Facility to discharge electric energy as measured in MW at the Delivery Point, that achieves Commercial Operation, (up to but not in excess of the Storage Contract Capacity set forth on the Cover Sheet), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Interconnection Agreement”** means that certain Large Generator Interconnection Agreement associated with CAISO Queue position 2032 among Seller or Seller’s Affiliate, the CAISO, and the Participating Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the 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.

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

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

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

**“Inter-SC Trade”** or **“IST”** 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 Fitch or Baa3 or higher by Moody’s.

**“Joint Powers Act”** means the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et seq.

**“Joint Powers Agreement”** means the Amended and Restated Northern California Power Agency Joint Exercise of Power Agreement dated as of January 31, 2008, as such agreement may be further amended or amended and restated from time to time, under which Buyer is organized as a Joint Powers Agency in accordance with the Joint Powers Act.

**“kW”** means kilowatts in alternating current, unless expressly stated in terms of direct current.

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

**“Lead Agency”** means the public agency with the principal responsibility for approving the Facility or relevant portion thereof as defined pursuant to CEQA, 14 C.C.R. § 15367.

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity, or tax equity, tax credit or cash 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 Person (including 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 the U.S. branch of a foreign bank, having assets of at least Ten Billion Dollars (\$10,000,000,000), and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

**“Letter of Credit Default”** means with respect to a Letter of Credit, the occurrence of any of the following events:

- (a) The issuer of the Letter of Credit fails to comply with or perform its material obligations under such Letter of Credit;
- (b) The issuer of the Letter of Credit disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, the Letter of Credit;
- (c) The Letter of Credit fails or ceases to be in full force and effect at any time;
- (d) The Party providing the Letter of Credit fails to provide an extended or replacement Letter of Credit within twenty (20) days before the Letter of Credit expires or terminates;
- (e) The issuer of the Letter of Credit become Bankrupt; or
- (f) The issuer has a Letter of Credit Derating; provided, no Letter of Credit Default will be treated as having occurred or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

**“Letter of Credit Derating”** means the issuer of a Letter of Credit fails to maintain a Credit Rating of at least (a) “A-”, or equivalent, from S&P; or (b) “A3”, or equivalent, from Moody’s, if such entity is rated by only one of the ratings agencies.

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

**“Limited Assignee”** has the meaning set forth in Section 14.4.

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

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

**“Losses”** means, with respect to any 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 (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, regardless of whether Buyer enters any such replacement transactions, and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement, regardless of whether Seller enters any such replacement transactions. Factors used in determining economic loss to a Non-Defaulting 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, as applicable, and must include the value of Capacity Attributes and Incentives (calculated on an after-tax basis).

**“Major Subcontractors”** means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of One Million Dollars (\$1,000,000) for performance of any part of the work at the Site.

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

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

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

**“Meter Service Agreement for CAISO Metered Entities”** or **“MSA”** has the meaning set forth in the CAISO Tariff.

“**Meter Service Agreement for Scheduling Coordinators**” or “**MSA SC**”, or as may otherwise be referred to herein as a “**Scheduling Coordinator Metered Entity**”, 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.

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

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

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

“**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.

“**Negative LMP**” means, in any Settlement Interval, the Real-Time Market at the Facility’s PNode is less than Zero Dollars (\$0).

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

“**Non-Dispatchable Capacity**” has the meaning set forth in Section 4.9(d).

“**Non-Material Deviations**” means deviations from a Charging Notice in a Settlement Interval of less than 0.75 MWh.

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

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

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

“**On-Peak Hour**” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding NERC holidays.

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

**“Outage Management System”** or **“OMS”** has the meaning set forth in the CAISO Tariff.

**“Participating Generator Agreement”** has the meaning set forth in the CAISO Tariff.

**“Participating Member”** means a member of Buyer that is signatory to the Third Phase Agreement. The Participating Members are the Cities of Santa Clara for 200.00 MW, Alameda for 10.00 MW, Lompoc for 3.00 MW, Palo Alto for 50.00 MW, Redding for 45 MW, Shasta Lake for 5 MW, and Ukiah for 3.00 MW. Buyer may provide written notice to Seller requesting consent from Seller to change the then-current list of Participating Members and/or volumes that are signatory to the Third Phase Agreement such consent not to be unreasonably withheld. Upon consent from Seller, such written notice shall not be considered to be an amendment to this Agreement.

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

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

(a) A tangible net worth of not less than One Hundred Fifty Million Dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) is a Qualified Operator, or has retained a third-party to operate the Facility that is a Qualified Operator.

**“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 4.6(a).

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

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



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

**“Posting Party”** has the meaning set forth in Section 8.10.

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.4.

**“Procure Major Facility Equipment Milestone”** means the date upon which Seller has notified Buyer of the schedule, selection and procurement of the major equipment comprising the Facility.

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

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

**“Proposed Contract Price Increase”** has the meaning set forth in Section 2.5(a).

**“Proposed Contract Price Increase Cap”** has the meaning set forth on the Cover Page.

**“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 any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice 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.

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

**“Qualified Power Capacity”** has the meaning set forth in Exhibit O.

**“Qualified Operator”** means Seller (either itself or through the engagement of an Affiliate) or an operator of a battery energy storage system that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery energy storage systems under its control, each having a nameplate capacity rating of twenty (20) MW or more, for not less than two (2) years.

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

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

**“RA Guarantee Date”** means the sooner of (a) the date that the Facility is first able to be included on a Supply Plan by both the CPUC and CAISO for Buyer, and (b) the date that is (i) ninety (90) days after Commercial Operation Date, if the Commercial Operation Date occurs on or after the eleventh (11th) day of a month, or (ii) sixty (60) days after the Commercial Operation Date if the Commercial Operation Date occurs prior to the eleventh (11th) day of a month.

**“RA Shortfall Amount”** shall, for a given Showing Month, be determined by calculating the difference of the Guaranteed RA Amount minus the Delivered RA, which shall be the “RA Shortfall Amount” for purposes of calculating an RA Deficiency Amount under Section 3.8(b) for such Showing Month; provided, if the CPUC or CAISO adopts another methodology for calculating a load serving entity’s procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

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

**“Real-Time Forecast”** means any Notice of any change to the Storage Capacity delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

**“Receiving Party”** has the meaning set forth in Section 18.1.

**“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 all respects, including, as applicable, Flexible RAR, and any successor criteria applicable to the

Facility, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

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

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

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

**“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 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings or Laws may be amended or modified from time to time throughout the Delivery Term.

**“Resource Duration”** means four (4) hours.

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

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

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

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

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

**“Scheduling Coordinator Metered Entity”** has the meaning set forth in the CAISO Tariff.

**“Security Interest”** has the meaning set forth in Section 8.10.

**“Secured Party”** has the meaning set forth in Section 8.10.

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

**“Seller Initiated Test”** has the meaning set forth in Section 4.9(a).

**“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 RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, the Site must be within the boundaries of the previously identified Site. Seller will be permitted to remove parcels that are not included in the Site, if any, at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; such update, if any, will be automatically incorporated into Exhibit A and replace the information set forth as of the Effective Date without any further action of the Parties.

**“Site Control”** means that, on and after the Construction Start Date, Seller (or, prior to the Construction Start Date, its Affiliate): (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (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; or (d) has rights to control the Site through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

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

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

“**Station Use**” means energy (including produced or discharged by the Facility) that is used within the Facility when the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility. Any energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice is not Station Use; except that solely for the purposes of the calculation of the Energy In and Energy Out as set forth Exhibit O, any energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility shall be considered Station Use for purposes of conducting such calculation of Energy In or Energy Out, as applicable, and shall not be considered end use consumption.

“**Storage Capacity**” means (a) the maximum dependable operating capability of the Facility to discharge electric energy that can be sustained for 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 electric energy as the same shall be determined pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test, in either case (a) or (b) up to but not in excess of the Storage Contract Capacity.

“**Storage Capacity Test**” or “**SCT**” means any test or retest of the Storage Capacity of the Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage 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 of Exhibit B.

“**Storage Contract Output**” means the total output (product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh) 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 of Exhibit B.

“**Storage Product**” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services, 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 electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh-AC.

“**Subsequent Purchaser**” means the purchaser of Capacity Attributes from Buyer in a re-sale of such Capacity Attributes by Buyer in accordance with Section 3.7(a).

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

“**Supply Chain Event**” means any material delay or failure in Seller’s performance of its obligations hereunder arising out of any of the following, notwithstanding the foreseeability or anticipation thereof at any time: (X) changes in Export and Import Costs, or (Y) any Import Restriction Action; provided that a Supply Chain Event shall not include any delay or failure (i) caused directly or indirectly by any action or inaction of Seller or its Affiliates (including any failure to timely order equipment or make required payments, or any failure to implement reasonable mitigation measures) that could have been prevented or mitigated through the exercise of commercially reasonable efforts or Prudent Operating Practice, or (ii) resulting from any economic or market conditions generally affecting the industry (except to the extent directly resulting from clauses (X) or (Y) above).

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

“**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) 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.

“**Third Phase Agreement**” means the agreement between Buyer and the Participating Members that sets forth the terms and conditions under which Buyer is authorized to enter into this Agreement on behalf of the Participating Members.

“**Transformer Failure**” means failure of all or part of the main power transformer that results in the Facility being unable to charge and discharge Energy during such failure, and such failure is not caused directly or indirectly by Seller’s failure to comply with Prudent Operating Practice or applicable Law or otherwise by the fault or negligence of Seller. Seller may claim a Transformer Failure only once during the Contract Term, and the claimed impact associated with such Transformer Failure shall not exceed twelve (12) months.

**“Transmission Provider”** means any entity or entities transmitting or transporting the Charging Energy and Discharging 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 within the CAISO grid from the Delivery Point.

**“Ultimate Parent”** means Aypa Power Holdings, LP.

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

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

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

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

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

(e) a reference to a document or agreement, including this Agreement 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 terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

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

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); provided, 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 two (2) years following the termination of this Agreement.

#### **2.2 Conditions Precedent.**

(a) Subject to Exhibit B, the Delivery Term shall not commence until Seller completes each of the following conditions:

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



(ii) A Participating Generator Agreement and a Meter Service Agreement for CAISO Metered Entities 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;

(iii) An Interconnection Agreement between Seller (or Seller's Affiliate) and the PTO for the Facility shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(iv) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided that Seller will be permitted to redact any confidential pricing or commercial terms and provided further that such information shall be subject to Article 18 of this Agreement;

(v) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer;

(vi) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, including but not limited to applicable laws, ordinances codes and standards regarding fire safety and attaching a copy of the applicable fire inspection and signoff, and shall be in full force and effect (including but not limited to CEQA approvals), and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition set forth in this Section 2.2(a)(iv);

(vii) Seller has completed CAISO Certification of the Facility, and a copy of the CAISO Certification has been delivered to Buyer;

(viii) Seller has provided notice that Seller (either itself or through the engagement of an Affiliate) will act as the Qualified Operator for the Facility, or Seller has entered into one or more agreements providing for the operation and maintenance of the Facility with one or more other Qualified Operators;

(ix) Seller, with the reasonable cooperation of Buyer, has taken all actions and executed and delivered to Buyer and the CAISO all documents that are reasonably capable of being completed prior to the Commercial Operation Date necessary to register and qualify the Facility to participate and operate in the CAISO markets, as set forth in the CAISO Tariff, including satisfying and completing the CAISO New Resource Implementation process (commonly referred to as the "**NRI Process**") with respect to the Facility;

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

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

(xii) The Facility has obtained Full Capacity Deliverability Status for the Storage Contract Capacity.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled telephonic or video-conferenced meetings (unless otherwise agreed to by the Parties) between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, 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 any one (1) Milestone by more than fifteen (15) days, except as the result of Force Majeure Event or Buyer Delay, Seller shall submit to Buyer, within thirty (30) days after the missed Milestone 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, if known (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 (including any extension thereof); 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 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 because of missing any Milestone.

2.5 **Storage Rate Adjustment Event.**

(a) If after June 1, 2026, a Change in Tax Law or Supply Chain Event occurs that increases Seller's cost to develop, finance and construct, own or operate the Facility, then, subject to the remainder of this Section 2.5, Seller shall see no compensation from Buyer to mitigate such Change in Tax Law or Supply Chain Event. Notwithstanding the foregoing or anything contrary in this Agreement, at any time prior to June 1, 2026, Seller may, in its sole discretion provide written notice to Buyer of a proposed contract price increase to keep Seller whole with respect to any estimated cost increases that Seller anticipates it will incur, as determined in a commercially reasonable manner, as a result of such Change in Tax Law or Supply Chain Event (the "**Proposed Contract Price Increase**"); provided, in which case Seller shall also deliver to Buyer a report from an independent retained consultant or other qualified person not employed by or affiliated with Seller or Buyer, and where such independent consultant or other qualified person is approved by Buyer, where such Buyer approval cannot be unreasonably

withheld, conditioned or delayed, that includes (i) analysis with comprehensive supporting documentation of all increased costs directly attributable to such Proposed Contract Price Increase resulting from the applicable Change in Tax Law or Supply Chain Event, and (ii) a report demonstrating how the Proposed Contract Price Increase was determined (“**Initial Independent Report**”). Estimated cost impacts shall be shown in the Initial Independent Report in terms of \$/WAc to explain changes to the Contract Price.

(b) So long as the Proposed Contract Price Increase is equal to or less than the Proposed Contract Price Increase Cap, then such Proposed Contract Price Increase shall be deemed accepted by Buyer; provided, however, that the Proposed Contract Price Increase shall be subsequently revised and trued up to be reflect Seller’s actual cost increases as a result of such Change in Tax Law or Supply Chain Event (the “**Actual Contract Price Increase**”); provided further that such Actual Contract Price Increase shall be supported by a Final Independent Report, except that in no event shall the Actual Contract Price Increase exceed the Proposed Contract Price Cap, subject to Section 2.5(c). Upon the completion of the Facility, but no later than ninety (90) days following the Commercial Operation Date, Seller shall deliver to Buyer a report (the “**Final Independent Report**”) from an independent retained consultant or other qualified person not employed by or affiliated with Seller or Buyer, and where such independent consultant or other qualified person is approved by Buyer, where such Buyer approval cannot be unreasonably withheld, conditioned or delayed, that includes (i) analysis with comprehensive supporting documentation of all increased costs directly attributable to such Actual Contract Price Increase resulting from the applicable Change in Tax Law or Supply Chain Event, and (ii) how the Actual Contract Price Increase was determined. Actual cost impacts shall be shown in the Final Independent Report in terms of \$/WAc to explain changes to the Contract Price. Upon Buyer’s approval of the Final Independent Report, which approval shall not be unreasonably withheld, conditioned or delayed, the Parties shall amend the Contract Price in the Agreement so that the Contract Price increases by the applicable Actual Contract Price Increase; provided that such amended Contract Price shall not exceed the sum of (i) the original Contract Price and (ii) the Proposed Contract Price Increase Cap. Any disputes regarding the Actual Contract Price Increase or the Final Independent Report shall be subject to the dispute resolutions procedures contained in this Agreement.

(c) If the Proposed Contract Price Increase and/or Actual Contract Price Increase is greater than the Proposed Contract Price Increase Cap, Seller may, in its sole discretion provide written notice to Buyer of a Proposed Contract Price Increase and/or Actual Contract Price Increase, and if Buyer does not provide written acceptance of the Proposed Contract Price Increase or Actual Contract Price Increase to Seller within sixty (60) days after Buyer’s receipt of the Proposed Contract Price Increase and/or Actual Contract Price Increase notice from Seller, then Seller may terminate this Agreement upon written notice to Buyer; provided, if such termination Notice is not provided by Seller within thirty (30) days after the sixty (60) day period has ended, such termination right under this paragraph is forfeited and the terms and conditions of this Agreement will remain unchanged, including the Contract Price. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement under this Section 2.5, and within ten (10) Business Days thereafter each Party shall return any Development Security or Buyer Security then held by such Party to Seller or Buyer, as applicable.

2.6 **[Reserved]**.

2.7 **CEQA**.

(a) The Parties agree that Buyer has no obligation to accept or pay for any Product under this Agreement until the date on which all of the following have occurred (such date, the “**CEQA Completion Date**”): (a) any applicable review under CEQA has been completed by the Lead Agency and all necessary CEQA approval(s) for the Facility have been issued by the Lead Agency (the “**CEQA Approval(s)**”); and (b) (i) the applicable period for any judicial challenges to the CEQA Approval(s) relating to the Facility has expired without any such challenge having been filed in court, or (ii) in the event of any such challenge, the challenge has been dismissed. The Delivery Term shall not occur without the occurrence of the CEQA Completion Date.

(b) Buyer reserves the right, but not the obligation, to participate in the CEQA review of the Facility by the Lead Agency.

### **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 of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder, including under Section 5.2, or modify any of Seller’s obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

3.2 **[Reserved]**.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Buyer.

3.4 **[Reserved]**.

3.5 **[Reserved]**.

3.6 **[Reserved]**.

3.7 **Capacity Attributes**. Seller or an Affiliate of Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process and the Facility shall obtain Full Capacity Deliverability Status by the Commercial Operation Date. 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; *provided*, Buyer may re-sell all or part of the Capacity Attributes to a Subsequent Purchaser. If Seller fails to deliver Capacity Attributes in accordance with this Agreement, Seller shall be liable to Buyer for the liquidated damage amounts set forth in this Agreement regardless of whether Buyer has sold all or part of the Capacity Attributes to a Subsequent Purchaser.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to 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 commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates it will have an RA Deficiency Amount in any month of the Delivery Term, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the anticipated RA Shortfall Amount; provided, any Replacement RA capacity shall be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month.

### 3.8 **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 and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. 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) CPM Soft Offer Cap.

### 3.9 **[Reserved].**

### 3.10 **[Reserved].**

### 3.11 **Compliance Expenditure Cap.**

(a) If a Change in Law occurs after the Effective Date that affects the Facility's eligibility to qualify for or maintain Resource Adequacy Benefits that comply with the Resource Adequacy Requirements or to provide Ancillary Services, then Seller shall use commercially reasonable efforts to comply with such Change in Law as necessary to maintain the Product eligibility described above. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Storage Contract Capacity with respect to Change in Law occurring after the Effective Date that affects the Facility's eligibility to qualify for or maintain Resource Adequacy Benefits that comply with the Resource Adequacy Requirements or to provide Ancillary Services (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**." Compliance Actions shall not include any requirement of Seller to increase the Storage Capacity beyond the Storage Contract Capacity.

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within ninety (90) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If (i) Buyer does not pay any Accepted Compliance Costs within the timeline required by Section 3.11(e), (ii) does not agree to pay the Compliance Costs in excess of the Compliance Expenditure Cap within the timeline required by Section 3.11(d), or (iii) it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (A) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (B) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues so long as such reduction in revenue is directly attributed to the Change in Law, and (C) with respect to Resource Adequacy Benefits, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the Change in Law.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver Discharging Energy to Buyer at the Delivery Point, and Buyer shall take delivery of Discharging Energy at the Delivery Point 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 the delivery of Discharging Energy to the Delivery Point, any costs associated with delivering the Charging Energy from the Delivery Point to the Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Discharging Energy at and after the Delivery Point and Charging Energy to the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D-1 and Exhibit D-2.

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

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practice.

(a) **Reserved.**

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

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer and the SC (if applicable) with a non-binding forecast of Storage Capacity for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Storage Capacity for each hour of each applicable day. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed

file format delivered to Buyer's SC and Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit D-2. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in Storage Capacity, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Seller, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer and the SC (if applicable).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure with respect to Charging Energy or Discharging Energy during such hour, Seller shall be responsible for any penalties, imbalance energy charges, or other costs from CAISO resulting from Seller's failure to provide the forecast required in Section 4.3(d) ("**Forecasting Penalty**"). Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

#### 4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order; provided, Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating



Restrictions; provided, further, Seller shall notify Buyer as soon as reasonably practicable, but in no event less than one (1) Business Day, if the CAISO's Master Data File for the Facility is inconsistent with the Operating Restrictions such that a failure to follow a Curtailment Order is due the limitations of the Facility set out in the Operating Restrictions.

(b) [Reserved].

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is the sum, for all Settlement Intervals with a Negative LMP during the Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval and (B) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Curtailment Order. Such calculations shall exclude failures to comply with a Curtailment Order to the extent such failure to comply is consistent with the CAISO Tariff.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment as are required under the CAISO Tariff, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies applicable to the Facility and required by CAISO, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Curtailment Order during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies applicable to the Facility. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

#### **4.5 Charging Energy Management**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy from the Delivery Point to the Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility.

(b) 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, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to Seller's obligations to comply with the CAISO

Tariff and Section 4.5(e), Seller may provide notice to Buyer or Buyer's SC that it must adjust a Charging Notice from Buyer to the extent necessary to maintain compliance with the Operating Restrictions, the CAISO Tariff, or in accordance with Section 4.5(e), and upon Buyer's receipt of such notice, a Charging Notice from Buyer will be deemed to have been adjusted as provided in such notice. 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.

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or in accordance with Section 4.5(e). If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(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. Seller will not be in violation of the first sentence of this Section 4.5(c) for Non-Material Deviations in Charging Energy typical of battery storage facilities operating in the CAISO consistent with Prudent Operating Practices.

(d) 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 Restrictions. Subject to Seller's obligations to comply with the CAISO Tariff and Section 4.5(e), Seller may provide notice to Buyer or Buyer's SC that it must adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions, CAISO Tariff, or in accordance with Section 4.5(e), and upon Buyer's receipt of such notice, a Discharging Notice from Buyer will be deemed to have been adjusted as provided in such notice. 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) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders, Curtailment Orders and any other orders from the Governmental Authority or the PTO or the Transmission Provider applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order, or Curtailment Order consistent with the Operational Restrictions.

(f) Charging Energy Cost. The Facility shall be capable of receiving Charging Energy from the CAISO Grid in accordance with Section 4.5(a); provided, Buyer shall be

responsible for all Charging Energy costs related to charging of the Facility.

(g) Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide the Ancillary Services listed in Exhibit Q and in accordance with the specifications set forth in the Facility's CAISO Certification associated with the Installed Capacity, adjusted to reflect the Storage Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

(h) Pre-Commercial Operation Date Period, Etc. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Facility, and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility shall be for Seller's account. 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. Upon the Commercial Operation Date, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer's account.

#### 4.6 Reduction in Delivery Obligation.

(a) Facility Maintenance. Between June 1 and October 31, Seller shall not schedule non-emergency maintenance that reduces the Storage Capacity of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1 to October 31, (iii) such outage is required in accordance with Prudent Operating Practice, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “Planned Outage”). To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof.

(b) Between November 1 and May 30, Seller may, without Buyer's consent, perform routine maintenance and undertake augmentation, improvement or modification of the Facility, including repairs and replacements of all or portions thereof with newer technology, if such work is done in accordance with Prudent Operating Practice and does not negatively impact the Facility's ability to meet the availability and performance specifications of this Agreement or the Operating Requirements and the implementation of such repair does not have any adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Facility in the manner provided for in this Agreement; provided, (i) Seller shall provide Buyer with prior

written notice before undertaking any of the foregoing that would result in any reduction in the availability of the Facility, and (ii) all outages and derates associated with the foregoing shall count toward the maximum Approved Maintenance Hours in accordance with Exhibit P.

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

(d) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product except Capacity Attributes during any period of System Emergency, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

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

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

4.7 Interconnection Costs. As between Buyer and Seller, Seller is responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility.

4.8 Storage Availability.

(a) During the Delivery Term, the Facility shall maintain a Rolling Monthly Average Storage Availability of no less than ninety-six percent (96.0%) (the “**Guaranteed Storage Availability**”), which Rolling Monthly Average Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Rolling Monthly Average 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 P).

4.9 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O. Any testing of the Facility requested by Buyer after the Commercial Operation Date shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, all required annual tests pursuant to Section B (“Subsequent Storage Capacity Tests”) in Exhibit O, any Storage Capacity Test conducted if the Storage Capacity immediately prior to such Storage Capacity Test is below seventy-five percent (75%) of the Storage Contract Capacity, any test required by CAISO (including any test required to maintain CAISO Certification), and other

Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a “**Seller Initiated Test**”. For all Seller Initiated Tests, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy. For any Buyer Dispatched Test, Buyer shall (x) pay for all CAISO costs and charges for associated Charging Energy, and (y) be entitled to any CAISO revenues associated with associated Discharging Energy. Any Storage Capacity Test shall be deemed an Excused Event for the purposes of calculating the Monthly Storage Availability.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the Site, and (ii) conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site. 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. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage 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.

(d) It is acknowledged that Seller shall have the right and option in its sole discretion to install capacity in excess of the Storage Contract Capacity (“**Non-Dispatchable Capacity**”); provided, for all purposes of this Agreement the amount of Installed Battery Capacity and Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and (for the avoidance of doubt) (i) any Non-Dispatchable Capacity shall not be included in the CPUC Master Resource Database or CAISO Master Data File, (ii) Buyer shall have no rights to instruct Seller to (A) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Installed Battery Capacity or Storage Capacity, or (B) charge the Facility to a level (in MWh) in excess of the lesser of the Installed Battery Capacity or Storage Capacity times four (4) hours, (iii) Buyer shall have no obligation to dispatch such Non-Dispatchable Capacity on behalf of Seller, or to make payment to Seller for such Non-Dispatchable Capacity, (iv) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such Non-Dispatchable Capacity will not be considered in such calculations, and (v) Seller shall have no right to dispatch such Non-Dispatchable Capacity.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term the Facility will have an Interconnection Agreement providing for interconnection capacity

available or allocable to the Facility that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible ("**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity.

4.11 **Station Use.** Seller will be responsible for procuring and paying for, or reimbursing Buyer for (to the extent Buyer pays for any Station Use), all Station Use (including Station Use provided through retail service to Seller). Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

#### 4.12 **Facility Operations and Maintenance.**

(a) Seller shall comply with Law and Prudent Operating Practice, and to the extent applicable the CAISO Tariff and the Interconnection Agreement, relating to the operation and maintenance of the Facility and the generation and sale of Product. Seller shall be responsible for maintenance of the Facility, and Buyer shall have no responsibility or liability for the maintenance of the Facility. Seller shall be responsible for the operation of the Facility, and Buyer shall have no responsibility or liability for the operation of the Facility other than with respect to its role as Scheduling Coordinator. Seller will maintain 24-7 remote monitoring of the Facility. This includes advanced alarm management, data analytics, emergency response, scheduling of preventative and corrective maintenance, troubleshooting, remote resets and dispatch of on-site resources.

(b) Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any requirement of Law.

(c) Without regard to whether or not there is any applicable Law requiring decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

## 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 Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), and with respect to Charging Energy prior to its delivery to Seller at the Delivery Point, 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 and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N 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 Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third

parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements shall (i) ensure that the Facility shall be separately metered from any other generation or storage facility and all of the output and services available from the Facility shall be conveyed to Buyer under this Agreement, (ii) ensure that the Facility has its own CAISO Resource ID, and (iii) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing for interconnection capacity available or allocable to the Facility that is no less than the Storage Contract Capacity.

## **ARTICLE 7 METERING**

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practice, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each 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 becomes aware of a broken 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 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.

The Parties intend as of the Effective Date that the applicable MSA will be a CAISO Metered Entity; provided, however, Seller may decide that the Facility should be a Scheduling Coordinator Metered Entity or the CAISO may require the Facility to be a Scheduling Coordinator Metered Entity, and in either case Seller, with the reasonable cooperation of Buyer, shall be responsible for the retention of a third-party qualified meter data management agent to perform any such required activities and functions on behalf of the Scheduling Coordinator including in connection with the development of a SQMD Plan and the collection, validation and submission of meter data to the CAISO in accordance with the CAISO Tariff. If Seller decides that the Facility should be a Scheduling Coordinator Metered Entity, or if CAISO requires the Facility to be a Scheduling Coordinator Metered Entity, Buyer or Buyer's agent, in its role as Scheduling Coordinator for the Facility, shall reasonably cooperate with Seller and any meter data management agent retained by Seller to perform functions on behalf of the Scheduling Coordinator to enable Seller or such meter data management agent to submit the SQMD Plan and Facility



Settlement Quality Meter Data to the CAISO, including granting Seller or any meter data management agent retained by Seller access to applicable CAISO system for such purpose (e.g., the CAISO Market Results Interface – Settlements or successor system) to comply with applicable Scheduling Coordinator Metered Entity requirements as set forth in the CAISO Tariff.

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. If a meter is inaccurate by more than one point two percent (1.2%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) days after, but not prior to, the end of each month of the Delivery Term. Each invoice shall include (a) records of metered data, including CAISO metering and transaction data to the extent then available (but excluding any missing interval data that is not available from CAISO) 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 charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point (in each case, as read by the Facility Meter) the amount of Replacement RA delivered to Buyer (if any), the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after

receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the Secured Overnight Financing Rate (SOFR) published on the date of the invoice plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Payment Adjustments; Billing Errors.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing 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 (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 due to good faith inaccuracies in invoicing shall not be subject to interest, but any other adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and a Letter of Credit Default occurs, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller's replenishment obligation in addition to the initial Development Security amount with respect to the Development Security shall be limited to \$37,500,000 in the aggregate.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect 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. Within five (5) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet. If the Performance Security is a Letter of Credit and a Letter of Credit Default occurs, 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. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.8 or elsewhere in this Agreement, Seller's replenishment obligation in addition to the initial Performance Security amount with respect to the Performance Security

shall be limited to \$30,000,000 in the aggregate. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **Buyer Credit Support.** In the event of a Buyer Downgrade Event, within five (5) Business Days of such Buyer Downgrade Event occurring, Buyer shall provide and maintain for the benefit of Seller credit support in the form of cash or a Letter of Credit (with appropriate modifications to make Seller the beneficiary thereof) in the amount of one-hundred dollars (\$100)/kW (the “**Buyer Credit Support**”) multiplied by the Storage Contract Capacity if prior to the Commercial Operation Date and the Installed Battery Capacity if on or after the Commercial Operation Date. Buyer shall maintain the Buyer Credit Support in full force and effect; *provided, however*, that if after posting the Buyer Credit Support, Buyer demonstrates to Seller that Buyer is no longer subject to a Buyer Downgrade Event, then Buyer shall no longer be required to post the Buyer Credit Support and Seller shall return the Buyer Credit Support to Buyer. Return of any Buyer Credit Support shall not prejudice or diminish Seller’s rights or Buyer’s obligations with respect to any subsequent Buyer Downgrade Events, which subsequent Buyer Downgrade Events shall trigger the requirement for Buyer to repost the Buyer Credit Support in accordance with the terms of this Section 8.9. Subject to this Section 8.9 and the other terms of this Agreement governing the Buyer Credit Support requirements, Buyer may change the type and/or issuer (as applicable) of the Buyer Credit Support from time to time and at any time. If the Buyer Credit Support is a Letter of Credit and a Letter of Credit Default occurs, Buyer shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Buyer Credit Support. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.9 or elsewhere in this Agreement, Buyer shall have no replenishment obligation with respect to the Buyer Credit Support. Buyer shall not terminate or rescind the Third Phase Agreement, or waive or amend any material payment right or obligation (including the obligation to post security) due to it thereunder, in each case, without prior written consent of Seller.

8.10 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, each Party (the “**Posting Party**”) hereby grants to the other Party (the “**Secured Party**”) 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, Buyer Credit Support, or any other cash collateral and cash equivalent collateral posted by the Posting Party pursuant to Sections 8.7, 8.8, and/or 8.9, as applicable, 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 the Secured Party, and the Posting Party agrees to take all action as the Secured Party reasonably requires in order to perfect the Secured Party’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 the Posting Party, an Early Termination Date resulting from an Event of Default caused by the Posting Party, or an occasion provided for in this Agreement where the Secured Party is authorized to retain all or a portion of the Development Security, Performance Security, or Buyer Credit Support, as applicable, the Secured Party may do any one or more of the following (in each case subject to the final sentence of this Section 8.10):

(a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, and Buyer Credit Support, 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 the Secured Party as Development Security, Performance Security, or Buyer Credit Support; and

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

The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under this Agreement; *provided*, that the Posting Party shall remain liable for any amounts owing to the Secured Party after such application, except to the extent limited in this Agreement, subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.11 **Buyer Statements**. Buyer shall provide to Seller the location where Buyer publishes its unaudited quarterly and audited annual financial statements of the Buyer (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**. Except as provided in Exhibit D-1, 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 N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery without any bounce back or rejection; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests and Replacement RA Notices, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 Definition.

(a) “**Force Majeure Event**” means any act or event occurring after the Effective Date 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 or pandemic; quarantine; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; cyber-attack; 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. 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 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**”). For the period of time prior to the Commercial Operation Date, a Force Majeure Event includes delays caused by the PTO that result in the Interconnection Facilities not being complete and ready for the Facility to connect and sell Product to Buyer at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller.

(c) 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 electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order except to the extent caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force

Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. 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 unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described herein that disables physical or electronic facilities necessary to transfer funds to the payee Party or renders payee staff unavailable to make payment, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 **Notice.** Within two (2) Business Days of obtaining knowledge 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 obtaining knowledge 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; *provided* that the failure of the claiming Party to notify the other Party within such two (2) Business Day period will not preclude the claiming Party from claiming a Force Majeure Event hereunder but for any Force Majeure Event notification provided after the two (2) Business Day period, the Force Majeure Event will be deemed to have commenced as of the date of such notice. 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.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, 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.

## **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 unless such failure is the subject of a Force Majeure Event;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8; and (2) failures related to the Rolling Monthly Average Storage Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.8), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; 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) The failure of Seller to achieve Construction Start within one hundred eighty (180) days after the Guaranteed Construction Start Date;



(ii) the failure by Seller to achieve Commercial Operation within one hundred eighty (180) days after the Guaranteed Commercial Operation Date;

(iii) if, in any two (2) consecutive Contract Years, the average Rolling Monthly Average Storage Availability over the two-year period is less than seventy percent (70%) and the Facility was not subject to a Transformer Failure;

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

(v) if, Seller fails to maintain a Storage Capacity (as determined pursuant to Exhibit O) equal to at least seventy-five percent (75%) of the Storage Contract Capacity set forth on the Cover Sheet for longer than three hundred sixty (360) consecutive days and the Facility was not subject to a Transformer Failure during such period, provided, that if a Transformer Failure occurred during such period, the Transformer Failure must be cured within eighteen (18) months;

(vi) 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;

(vii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice and expiration of the cure periods set forth therein; or

(viii) the occurrence of a Letter of Credit Default and 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 a Letter of Credit Default.

(c) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) failure by Buyer to satisfy the collateral requirements pursuant to Section 8.9 within five (5) Business Days after Notice and expiration of the cure periods set forth therein, with respect to the Buyer Credit Support amount in accordance with this Agreement in the event of a Buyer Downgrade Event; or

(ii) the occurrence of a Letter of Credit Default and the failure by Buyer to provide for the benefit of Seller 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 Buyer receives Notice of the occurrence of a Letter of Credit Default.

**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)(i), 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 remedy for the Terminated Transaction and the Event of Default related thereto.

**11.3 Termination Payment.** The termination payment (“**Termination Payment**”) for the 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. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. 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. 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 the 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 the 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, as applicable, and whether, in the case of a Termination Payment, the Termination Payment is due to 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 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 liquidated 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.

11.7 **Seller's Pre-COD Liability Limitation.** Notwithstanding any other provision of this Agreement, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for any Event of Default other than arising due to fraud, misrepresentation, or willful misconduct shall be limited to an amount equal to two hundred percent (200%) of the amount of Development Security.

## **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, BY STATUTE, IN TORT OR CONTRACT.

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

OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY INCENTIVES, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S EVENT OF DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALY REASONABLE EFFORTS), AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE BY THE INTERNAL REVENUE SERVICE DUE TO A DEFAULT BY BUYER OF ANY INCENTIVES PREVIOUSLY RECEIVED BY SELLER, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.8, 11.2, 11.3 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct

business in 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, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

(e) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference, and conflict of interest.

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

(g) Seller shall obtain or cause to be obtained any and all applicable permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act ("CEQA") or other environmental law, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

(h) Seller shall source and install batteries from a manufacturer that has at least one (1) gigawatt (GW) of utility scale batteries installed and in operation.

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

(a) Buyer is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to

perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(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.

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, approvals and permits necessary for the operation of the Facility and for Seller 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 and Workforce Development.**

Seller shall 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 in which the Facility is located in accordance with the prevailing wage requirements for eligibility for increased tax credits under Sections 45(b)(6)-(7) or

Sections 48(a)(9)-(10), as applicable, of the United States Internal Revenue Code of 1986, or any successor statute (“**Prevailing Wage Requirement**”). To the extent applicable to the construction of the Facility, Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller or its construction contractor for the Facility may either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility, or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity’s existing labor agreements.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, 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. Except as provided in this Article 14, 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, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall reasonably cooperate with Seller or any Lender, to execute or arrange for the delivery of consents (subject to Section 14.2), and estoppels reasonably requested (where “reasonably” and “reasonable” means that no additional burdens other than noticing are placed upon Buyer) by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender’s security interest and provide notice of default as may be reasonable requested by Seller, such Lender or potential Lender; *provided, however*, Buyer will have no obligation to provide any consent, or enter into any agreement, that adversely affects any of Buyer’s rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

### **14.2 Collateral Assignment.**

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld, conditioned or delayed. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender.

(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 any cure period specific in this Agreement shall not commence as to Lender until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition, but in no event shall the cure period exceed two hundred and seventy (270) days;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller (or Lender, if Lender has provided the notice set forth in subsection (b) above) to provide to Buyer a report concerning:

(i) The status of efforts by Seller to 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;

(d) If this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; provided, before such assumption, if Buyer advises Lender that Buyer will require the Lender to cure (or cause to be cured) any Event of Default (other than any Events of Default which relate (i) to Seller's bankruptcy or similar insolvency proceedings, or (ii) to Seller's representations and warranties that are strictly personal to Seller and, by their nature, incapable of being performed or remedied by any party other than Seller; provided, however, that nothing in



this clause shall relieve Lender of any other obligations under this Agreement, including without limitation any payment or performance obligations, or any responsibility for the failure of the Facility to perform in accordance with the terms of this Agreement) existing as of the transfer date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default), then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement.

(e) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee. Lender shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any transfer of this Agreement by Lender, including without limitation reasonable attorneys' fees.

**14.3 Permitted Assignments by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of, the Political Reform Act (Cal. Gov. Code Section 81000 *et seq.*) or the regulations thereto, California Government Code Section 1090, 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 (a) an Affiliate of Seller, or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) In the case of (b) only, the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

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

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

**14.4 Buyer Limited Assignment Right.** Notwithstanding anything to the contrary in this Agreement, Buyer may make a limited assignment of Buyer's right to receive all or a portion of the Product that would otherwise be delivered to Buyer hereunder to an entity ("**Limited**

**Assignee**”) that has, or provides a parent guaranty, in form and substance reasonably acceptable to Seller from an entity with a credit rating equal to or greater than an Investment Grade Credit Rating of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee’s timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days’ Notice by delivering a written request for such assignment. In connection with any such assignment, Buyer and Seller agree to execute a limited assignment agreement in a form that is reasonably acceptable to Buyer, Seller, and each Party’s respective Lenders and financing parties. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so and (ii) any damages associated with such assignee’s failure to take any such Product. Buyer shall be responsible for Seller’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Buyer, including without limitation reasonable attorneys’ fees.

## **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 Placer County, California.

15.2 **[Reserved].**

15.3 **[Reserved].**

15.4 **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 and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

## **ARTICLE 16 INDEMNIFICATION**

16.1 **Indemnification.** Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees (collectively, “**Indemnifiable Event**”) arising from negligence,

willful misconduct, or breach of the Agreement (collectively, “**Indemnifiable Losses**”).

16.2 **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, Buyer will promptly provide Notice to Seller in writing of any damage, claim, loss, liability or expense which Buyer 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 Buyer regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in Section 16.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

16.4 **Defense of Claims**. If, within thirty (30) Business Days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 16.2, Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim, Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; *provided, however*, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within thirty (30) Business Days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; *provided, however*, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within thirty (30) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to Buyer under such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Seller will, to the extent of such indemnity payment, be subrogated to all rights of Buyer against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; *provided* that until Buyer recovers full payment of its Indemnifiable Loss, any and all claims of Seller against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Buyer’s rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and

subordination rights.

16.6 **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 sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through primary and excess policies.

(b) **Employers' Liability Insurance.** Seller shall maintain, or cause to be maintained at its sole expense Employers' Liability insurance with 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 this Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility 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 the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry Construction All-Risk 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 the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, 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 or conveyed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"): (a) the terms and conditions of, and proposals and negotiations related to, this Agreement (except that this Agreement shall be disclosable upon its approval by Buyer), 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. Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, and with respect to Buyer as the Receiving Party Buyer's Participating Members, in each case who reasonably need to know it and are bound by confidentiality provisions

no less stringent than those in this Article 18; and (c) use such Confidential Information for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information will retain its character as Confidential Information but may be disclosed by 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; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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 applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of 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. The Parties acknowledge and agree that this Agreement or its performance, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.) and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure under the California Public Records Act.

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 in this Article 18. 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 except as otherwise limited under this Agreement (but notwithstanding any prohibition contained in the last paragraph of Section 12.2), in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages or the posting of any bond.

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 investor or any of their Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions no less stringent than those in this Article 18.

18.5 **Public Announcements.** Except as may otherwise be required by applicable Law, neither Party will, nor will it allow its affiliates, contractors and vendors to, make any public

announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is approved in advance by the other Party, in its reasonable discretion.

## **ARTICLE 19 MISCELLANEOUS**

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, 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; Electronic Signatures.** 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. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

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

19.11 **Forward Contract.** The Parties intend 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.

19.12 **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended.

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



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

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

*[Signatures on following page]*

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

**Trolley Pass Project LLC**

**NORTHERN CALIFORNIA POWER  
AGENCY, a California Joint Action Agency**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### FACILITY DESCRIPTION

**Name of Facility:** Trolley Battery Energy Storage Project

**Owner:** Seller

**Type of Facility:** Battery Energy Storage System

**Qualified Operator:** Seller shall provide notice of the initial Qualified Operator(s) to Buyer at least thirty (30) days prior to Initial Synchronization

**Site Address:** 8996 Etiwanda Ave, Rancho Cucamonga, CA 91739 (new address to be created during subdivision process)

**Site includes all or some of the following APNs:** Portion of APN 022928379 (new APN to be created during subdivision process)

**County:** San Bernardino County

**CEQA Lead Agency:** City of Rancho Cucamonga

**Delivery Point:** Facility PNode described in the CAISO Full Network Model.

**Facility P-node:** To be established prior to the Commercial Operation Date at the Southern California Edison Etiwanda Substation 230 kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

**Facility Meter:** CAISO Metered Entity

**Facility Interconnection Point:** The Facility shall interconnect to the Etiwanda Substation 230 kV Substation (the “**Interconnection Point**”)

**Participating Transmission Owner:** Southern California Edison Company

**Energy Management Software:** Seller must provide remotely operable, 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve

**Operating Characteristics of Facility:**

**Maximum Stored Energy Level at COD:** 1,264.00 MWh

**Maximum Charging Capacity at COD:** 316.00 MW  
**Maximum Discharging Capacity at COD:** 316.00 MW

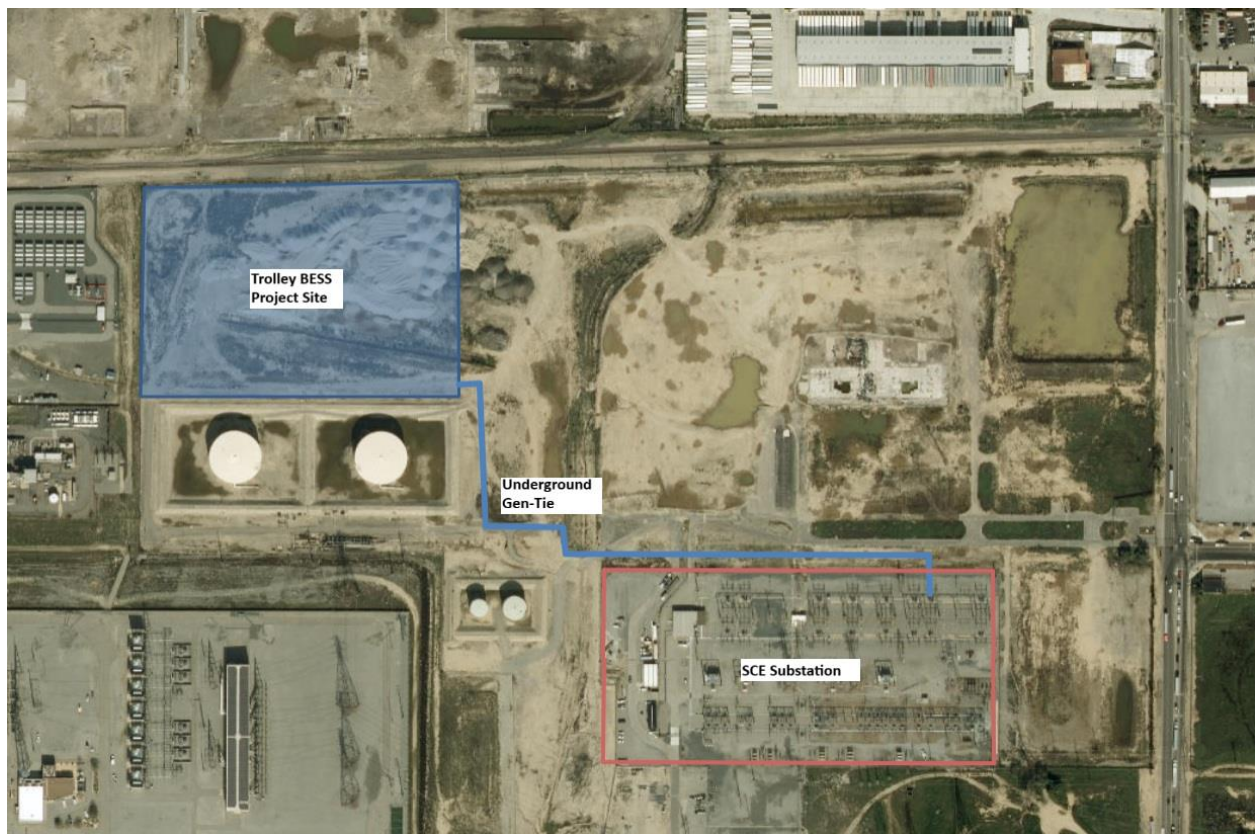
**Operating Restrictions of Facility:** See Exhibit D-2 and Exhibit Q

**Storage Contract Capacity:** See definition in Section 1.1

**Facility Battery Manufacturer/Make/Model:** Canadian Solar (E-storage) Solbank 3.0 provided Seller may update in its sole discretion

**Facility Battery Warranty:** 20-years provided Seller may update in its sole discretion

**Site Map:**



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Facility Construction.

(a) “**Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The “**Guaranteed Construction Start Date**” means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c) If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer for each day of delay in achieving Construction Start. Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. 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 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 (other than set forth in (y) below) for Seller’s unexcused delay in achieving Construction Start 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)(i) 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 (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (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. Buyer shall respond to Seller’s notification that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation within five (5) Business Days of receipt of Notice or be deemed to have accepted such Notice. The “**Commercial Operation Date**” shall be the date on which Commercial Operation is achieved; *provided*, the Commercial Operation Date shall not be earlier than the date that is one hundred twenty (120) days prior to 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 by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller minus an amount (but not exceeding the amount of Construction Delay Damages paid by Seller) equal to the commercially reasonable and documented costs actually incurred by Buyer to procure products in substitution for the Product as a result of such delay. 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 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 (other than set forth in (y) below) 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 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.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within one hundred eighty (180) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and Section 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis due to delays arising out of the following circumstances to the extent such circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements herein:

- (a) Force Majeure Event;
- (b) Buyer Delay.

Notwithstanding the foregoing, the cumulative day-for-day extensions granted above (other than extensions granted pursuant to clause 4(b) above) shall not exceed a period of up to one-hundred eighty (180) days on a cumulative basis (the “**Development Cure Period**”). No extension shall be given under the Development Cure Period if, and to the extent that (a) the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or, with respect to a Force Majeure Event, does not otherwise satisfy the requirements of a Force

Majeure Event, (b) Seller failed to provide requested documentation as provided below, or (c) with respect to a Force Majeure Event, Seller failed to provide written notice of such Force Majeure Event to Buyer as required under this Agreement. Upon written request from Buyer, Seller shall promptly provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was the result of one of the circumstances set forth above and did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery 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 Battery 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 I hereto specifying the new Installed Battery 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 Battery 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 1,000, multiplied by* the Storage Capacity for such month, as adjusted for the most recent Storage Capacity Test, *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Storage Capacity is adjusted pursuant to a Storage Capacity Test on any day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Capacity is applicable.

(b) 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 On-Peak Hour Day-Ahead Market LMP 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 shall be credited by Seller against amounts owed by Buyer in the applicable monthly invoice.

(c) Incentives. Other than as provided in Section 2.5, the Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Incentives, or if any 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 Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Incentives during the Contract Term.



## EXHIBIT D-1

### 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 the delivery of 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. Prior to the Commercial Operation Date, Buyer as Scheduling Coordinator shall reasonably assist with the need for the Facility to test, commission and to timely achieve the Commercial Operation Date, and Buyer shall not provide any scheduling instructions which interferes with those purposes. Buyer (as the Facility's Scheduling Coordinator) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and the Scheduling and operating procedures developed under Exhibit D-2 for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices, information and updates in accordance with the applicable requirements of the CAISO Tariff and the Scheduling and operating procedures developed under Exhibit D-2. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below or elsewhere in this Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be liable for and reimburse Buyer for any and all CAISO costs and penalties incurred by Buyer in its role as Scheduling Coordinator under a CAISO settlement statement because of Seller's failure to perform any covenant or obligation set forth in this Agreement, or Seller's failure

to comply with applicable provisions of the CAISO Tariff or the outage notification requirements set forth in this Agreement (each except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

(e) Dispute Costs. If requested by Seller, Buyer (as the Facility's SC) shall 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 or earlier termination date.

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

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards. Buyer (as Scheduling Coordinator) shall be responsible for Buyer's compliance with NERC reliability standards related to Scheduling Coordinators. Unless otherwise specifically provided for herein, the Parties acknowledge that Buyer and Seller are both individually responsible for compliance with the WECC and NERC reliability standards and criteria applicable to the functions for which each Party is respectively registered with NERC. The reference to WECC and NERC reliability standards, if any, throughout this Agreement does not make any alteration to, or enlargement of, the requirements or standards applicable to each Party beyond their individual registrations with NERC; provided, however, each Party shall perform certain functions on behalf of, or in coordination with, the other Party, as further set forth in this Exhibit D-2.

(i) Settlement Quality Meter Data (SQMD) Reporting. If Seller elects, or is required by the CAISO, to register the Facility as a Scheduling Coordinator Metered Entity, and therefore is required to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan, and pursuant to Section 7.1, Seller shall provide or cause to be provided to Buyer (or Buyer's designee including any Buyer Scheduling Coordinator) Settlement Quality Meter Data for the Facility Meter(s) no later than eight (8) Business Days after the relevant flow date. In connection with any SQMD Plan or designation of the Facility as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller and any meter data management agent retained by Seller to perform on behalf of the Scheduling Coordinator the SQMD Plan submission and approval process and the obligations required by the SQMD Plan or the CAISO Tariff applicable to a Scheduling Coordinator Metered Entity, including the submission of Settlement Quality Meter Data to the CAISO by the meter data management agent retained by Seller on behalf of Buyer, and such meter data management agent shall assist and support the Scheduling Coordinator with respect to any the submission of required affirmations and attestations by the Scheduling Coordinator (if any). To enable Seller or Seller's meter data management agent to submit Settlement Quality Meter Data to the CAISO, Buyer shall grant Seller or Seller's meter data management agent access to use the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer (as Scheduling Coordinator) as a result of the failure of Seller or any meter data management agent retained by Seller to submit or cause to be submitted Settlement Quality Meter Data for the Facility Meter(s) consistent with the SQMD Plan to the CAISO, with respect to the Facility Meter(s).

## **EXHIBIT D-2**

### **BUYER AND SELLER OPERATING COORDINATION**

The Parties shall work together after the Effective Date to develop Scheduling and operating procedures, which the Parties shall finalize no later than thirty (30) days prior to the Commercial Operation Date, or such other date agreed to by the Parties. Procedures may be reviewed annually (date and time to be mutually agreed), or as needed to account for actual Scheduling and operating requirements, to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement such procedures. Such procedures to be developed may pertain to the following subjects or as otherwise agreed by the Parties: (i) voice and data communications; (ii) outage management and operational reliability data; (iii) event reporting; (iv) operating instructions and emergency assistance; and (v) Scheduling and bidding.

**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, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month as applicable.
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. The utilization of union labor by Seller's principal EPC contractor.
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. Any other documentation reasonably requested by Buyer.

## EXHIBIT F

### FORM OF MONTHLY FORECAST

Storage Capacity, MW Per Hour – [*Insert Month*]

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

**EXHIBIT G**  
**[RESERVED]**

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to Northern California Power Agency, a California joint powers agency (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] (“**Seller**”) and Buyer (“**Agreement**”). 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, 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 Facility 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 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 PTO has provided notification supporting Commercial Operation, in accordance with the PTO Tariff, as applicable.
9. Seller shall have caused the Facility to be included in the Full Network Model (as defined in the CAISO Tariff) and has the ability to offer Bids (as defined in the CAISO Tariff) into the CAISO Day-Ahead Market and Real-Time Market.



EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By:\_\_\_\_\_

Its:\_\_\_\_\_

Date:\_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to Northern California Power Agency, a California joint powers agency (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] (“**Seller**”) and Buyer (“**Agreement**”). 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 operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of MW to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Battery Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Northern California Power Agency, a California joint powers agency ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). 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: \_\_\_\_\_ (such description shall amend the description of the Site in Exhibit A of the Agreement).

4. Seller or its construction contractor for the Facility has either (i) executed a project labor agreement with the appropriate building or construction trade unions for construction of the Facility, or (ii) awarded the contract for construction to a union signatory entity which will employ a union workforce governed by that entity's existing labor agreements and provided reasonably requested documentation demonstrating such compliance.

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

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT K

### FORM OF LETTER OF CREDIT (issued on behalf of Seller for the benefit of Buyer)

[BANK NAME and ADDRESS]

Irrevocable Standby Letter of Credit No: Date of Issuance: [INSERT ISSUANCE DATE]  
[INSERT REFERENCE]

**Beneficiary:** Northern California Power Initial Expiration Date: [Must be at least one  
Agency year after date of issuance]

Applicant: [INSERT APPLICANT DETAILS]

As the Issuing Bank ("Issuer"), we, [Bank Name], hereby establish this irrevocable Standby Letter of Credit No. [INSERT REFERENCE] (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$ \_\_\_\_\_ (\_\_\_\_\_ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit.

All Sight Drafts must be purportedly signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty-four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at , [Bank Address] or any other full service office of the Issuer with our close of business on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary. FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY BY PRESENTATION IN STRICT COMPLIANCE WITH THE TERMS AND

CONDITIONS OF THIS LETTER OF CREDIT ON OR BEFORE 5:00 P.M., NEW YORK TIME, ON OR BEFORE A BUSINESS DATE OF THE EXPIRATION DATE.

FOR THE PURPOSES OF THIS LETTER OF CREDIT, "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR OTHER DAY ON WHICH COMMERCIAL BANKS ARE AUTHORIZED OR REQUIRED TO CLOSE IN THE STATE OF NEW YORK.

This Letter of Credit is issued pursuant to the provisions of that certain Energy Storage Service Agreement between Beneficiary and Applicant dated as of \_\_\_\_\_, 20\_\_ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a successive period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON WITH WHICH U.S. PERSONS ARE PROHIBITED FROM DOING BUSINESS UNDER U.S. FOREIGN ASSETS CONTROL REGULATIONS OR OTHER APPLICABLE U.S. LAWS AND REGULATIONS

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

All commissions, expenses, and charges incurred with this Letter of Credit are for the account of the Applicant.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LETTER OF CREDIT, BENEFICIARY SHALL HAVE THE OPTION TO PRESENT TO US EACH DOCUMENT REQUIRED UNDER THIS LETTER OF CREDIT AS AN ELECTRONIC OR PORTABLE DOCUMENT FORMAT (".PDF") ATTACHMENT TO AN EMAIL. TRANSMISSION MADE

FROM BENEFICIARY'S EMAIL ADDRESS TO US AT OUR EMAIL ADDRESS [INSERT]; PROVIDED THAT SUCH EMAIL TRANSMISSION MUST CONTAIN THE FOLLOWING CERTIFICATION "(I) WE CERTIFY THAT WE ARE THE BENEFICIARY OF THE LETTER OF CREDIT INDICATED IN THE .PDF ATTACHMENT(S) AND (II) EACH DOCUMENT WE HAVE TRANSMITTED TO YOU VIA ELECTRONIC MEANS RATHER THAN IN THE FORM OF A PHYSICAL DOCUMENT REPRODUCES ALL TEXT, IMAGES AND OTHER FEATURES OF THE ORIGINAL DOCUMENT (INCLUDING ANY SIGNATURES AND ANY UNIVERSALLY UNIQUE IDENTIFIER OR OTHER UNIQUE STRING OF CHARACTERS, MARKS OR OTHER IDENTIFYING INFORMATION APPEARING ON SUCH DOCUMENT) AND HAS NOT BEEN ALTERED." ANY SUCH EMAIL TRANSMISSION SHALL BE DEEMED A SITE DRAFT.

THIS PRESENTATION MAY BE DELIVERED TO US IN ELECTRONIC FORM, AND SUCH ELECTRONIC COPY SHALL BE DEEMED TO BE THE ORIGINAL AND VALID FOR PURPOSES OF PRESENTATION HEREUNDER. IN THE EVENT A REQUEST IS PRESENTED VIA EMAIL TO THE ISSUER, IT IS UNDERSTOOD AND AGREED THAT THE ISSUER MAY ACT ON SUCH REQUEST WITHOUT THE NEED OR THE OBLIGATION TO SECURE THE ORIGINAL. IN ANY EVENT, THE ISSUER SHALL NOT BE LIABLE FOR ANY DISCREPANCY THAT MAY ARISE BETWEEN THE REQUEST TRANSMITTED BY EMAIL AND THE ORIGINAL REQUEST DELIVERED AS PROVIDED HEREIN.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO THE CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

VERY TRULY YOURS,

[BANK NAME]

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AUTHORIZED SIGNATURE

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AUTHORIZED SIGNATURE

**(CONFIDENTIAL) EXHIBIT "A"**

**TO LETTER OF CREDIT**

**SIGHT DRAFT**

Draft Number \_\_\_\_\_

\$ \_\_\_\_\_

At sight (or electronic format as authorized in the Letter of Credit), pay to the order of [Name of Beneficiary to be inserted], the amount of USD \$ \_\_\_\_\_ ( \_\_\_\_\_ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [BANK NAME and ADDRESS]. Drawn under [BANK NAME] Standby Letter of Credit No. [INSERT REFERENCE]

Dated: \_\_\_\_\_

Northern California Power Agency

By: \_\_\_\_\_

[name and title]

Account: [Applicant to be inserted]

**EXHIBIT "B"**  
**TO LETTER OF CREDIT**

**FORM OF TRANSFER REQUEST**

Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Current Beneficiary:

Applicant:

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To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

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From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: \_\_\_\_\_

Northern California Power Agency

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

**EXHIBIT L**  
**[RESERVED]**

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [Entity name, state of formation, type of entity] (“**Seller**”) to Northern California Power Agency, a California joint powers agency (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). 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 3.7(d) of the Agreement, Seller hereby provides the below Replacement RA product information:

#### **Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

## EXHIBIT N

### NOTICES

<b>Trolley Pass Project LLC</b> ("Seller")	<b>Northern California Power Agency</b> ("Buyer")
<b>All Notices:</b> 11801 Domain Blvd, Suite 450 Austin, TX 78758 Attn: Tim Fagan, EVP Asset Management Phone: (201) 669 - 9942 Email: <a href="mailto:tfagan@aypa.com">tfagan@aypa.com</a>	<b>All Notices:</b>  Street: 651 Commerce Drive City: Roseville, CA 95678 Attn: Contract Administration Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a> Email: <a href="mailto:mike.whitney@ncpa.com">mike.whitney@ncpa.com</a>
<b>Reference Numbers:</b> Duns: To be provided separately Federal Tax ID Number: To be provided separately	<b>Reference Numbers:</b> Duns: To be provided separately Federal Tax ID Number: To be provided separately
<b>Invoices:</b> Attn: Accounting Department Phone: (647) 982 -9296 E-mail: <a href="mailto:accounting@aypa.com">accounting@aypa.com</a>	<b>Invoices:</b> Attn: Accounts Payable Phone: 916-781-4221 / 4230 Email: <a href="mailto:AcctsPayable@ncpa.com">AcctsPayable@ncpa.com</a> Facsimile: 916-781-4255
<b>Scheduling:</b> Attn: Director of Operations Phone: TBD Email: <a href="mailto:ops@aypa.com">ops@aypa.com</a>	<b>Scheduling:</b> Attn: NCPA Scheduling Desk Phone: (DA CAISO Desk) 916-781-4290 Phone: (Real Time Desk) 916-781-4237 Email: <a href="mailto:Preschedulers@ncpa.com">Preschedulers@ncpa.com</a>
<b>Confirmations:</b> Attn: Tim Fagan Email: <a href="mailto:tfagan@aypa.com">tfagan@aypa.com</a>	<b>Confirmations:</b> Attn: Tony Zimmer Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a>
<b>Payments:</b> Attn: See Invoices Phone: See Invoices E-mail: See Invoices	<b>Payments:</b> Attn: See Invoices Phone: See Invoices Email: See Invoices

<b>Trolley Pass Project LLC</b> ("Seller")	<b>Northern California Power Agency</b> ("Buyer")
<b>Wire Transfer:</b> [Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date.] BNK: ABA: ACCT:	<b>Wire Transfer:</b> BNK: Information provided upon request ABA: ACCT:
<b>Notices of an Event of Default:</b>  Attn: General Counsel 11801 Domain Blvd, Suite 450 Austin, TX 78758 Phone: (416) 779 -6681 Email: <a href="mailto:legal@aypa.com">legal@aypa.com</a>  With copy to: Attn: Tim Fagan Phone: (201) 669 – 9942 Email: <a href="mailto:tfagan@aypa.com">tfagan@aypa.com</a>	<b>Notices of an Event of Default to:</b>  Attn: Jane Luckhardt, General Counsel Phone: 916-781-4268 Facsimile: 916-781-7693 Email: <a href="mailto:jane.luckhardt@ncpa.com">jane.luckhardt@ncpa.com</a>  With copy to: Attn: Tony Zimmer Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a>  And  Attn: Mike Whitney Phone: 916-781-4205 Email: <a href="mailto:mike.whitney@ncpa.com">mike.whitney@ncpa.com</a>
<b>Emergency Contact:</b>  Attn: Tim Fagan Phone: (201) 669 - 9942 Email: <a href="mailto:tfagan@aypa.com">tfagan@aypa.com</a>	<b>Emergency Contact:</b> Attn: Dispatch and Scheduling Phone: 916-781-4281 / 4237 Email: <a href="mailto:Dispatch&amp;Scheduling@ncpa.com">Dispatch&amp;Scheduling@ncpa.com</a>

## EXHIBIT O

### STORAGE CAPACITY TESTS

#### **Storage Capacity Test Notice and Frequency**

(a) Commercial Operation Date Storage Capacity Test. Upon no less than ten 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 O and shall establish the initial Storage Capacity and Efficiency Rate hereunder based on the actual capacity and measured round-trip efficiency 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 of such test. Up to 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 Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.9(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 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.

(d) Buyer's Right to Witness Storage Capacity Tests. Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

#### **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 Practice and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a “**SCT**”. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

- (a) Purpose of Test. Each SCT shall:
  - i. Determine an updated Storage Capacity;
  - ii. Determine the amount of energy required to fully charge the Facility;
  - iii. Determine the Facility charge ramp rate;
  - iv. Determine the Facility discharge ramp rate;
  - v. Determine an updated Efficiency Rate.
- (b) Test Elements. Each SCT shall include the following test elements:
  - i. The measurement of charging energy exclusive of Station Use (for clarity, Station Use during an SCT shall not be subject to the carveout for energy consumed by end uses during charging and discharging) and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level (as set forth in Exhibit Q) not to exceed the Storage Contract Output (MWh) (“**Energy In**”);
  - ii. The measurement of discharging energy exclusive of Station Use (for clarity, Station Use during an SCT shall not be subject to the carveout for energy consumed by end uses during charging and discharging) and Electrical Losses, as measured by the 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**”);
  - iii. Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
  - iv. Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
  - v. Amount of time between the Facility’s electrical output going from 0 to Maximum Discharging Capacity;
  - vi. Amount of time between the Facility’s electrical input going from 0 to Maximum Charging Capacity;

- vii. 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:
- i. discharge time (minutes);
  - ii. charging energy (MWh);
  - iii. discharging energy (MWh);
  - iv. 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:
- i. Relative humidity (%);
  - ii. Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and
  - iii. Ambient air temperature (°F).
- (e) Test Showing. Each SCT must demonstrate that the Facility:
- i. successfully started;
  - ii. operated for at least four (4) consecutive hours at Maximum Discharging Capacity +/- 2%;
  - iii. operated for at least four (4) consecutive hours at Maximum Charging Capacity +/- 2%;
  - iv. has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as set forth in Exhibit Q); and
  - v. is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity +/-2%.
- (f) Test Conditions.
- i. General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practice 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:

- i. a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- ii. the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- iii. the level of Storage Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- iv. 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 O 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 O.

(j) Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh-AC) during each of the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the Storage Contract Capacity set forth on the Cover Sheet, as such Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Capacity, which shall be expressed in MW, and shall be the new Storage Capacity in accordance with Section 4.9(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), measured at the Facility Meter location, 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 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.

- i. Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the 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.
- ii. 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.
- iii. 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.
- iv. The following Commercial Operation tests will be repeated annually and to the extent feasible may be conducted simultaneously with any other tests:

- PMAX Capacity Test
- Round-Trip Efficiency and Energy Test

(b) PMAX Capacity Test

- i. Purpose: This test will demonstrate the PMAX and will hold the Facility's maximum operating level (MW), up to the Storage Capacity, for up to five (5) minutes ("**Qualified Power Capacity**").
- ii. Procedure:
  - a. System starting state: The 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.
  - b. Record the Facility active power level at the Facility Meter.
  - c. Command the Facility to follow a signal equal to the Facility's maximum operating level for five (5) minutes.
  - d. Record and store the Facility active power response. Measurements will be made at the Facility Meter and by the control system with a recording in the Facility historian.
  - e. System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The Facility active power response and the commanded level shall be within $\pm 2\%$ as measured by the sum of values at the Facility Meter. The time to full output shall be less than 2 seconds subject to CAISO or Transmission Owner limitations to the contrary. 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:		

(c) Round-Trip Efficiency and Energy Test

- i. The following test demonstrates the updated Efficiency Rate and amount of energy required to fully charge the Facility (when performed annually or ad hoc).

- a. The resulting quantity of discharging energy is the Energy Out (as reported in Part II.B above) and the resulting quantity of charging energy is the Energy In (as reported in Part II.B above).
- b. The Qualified Energy is the sum of the total quantity of Discharging Energy at the Facility Meter.
- c. The Facility will be operated in both the charge and discharge directions in the following order:
- d. [Seller to specify, example language below]
- e. *[Set each Battery Subsystem to [3%] SOC.*
- f. *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.*
- g. *Discharge each Battery Subsystem to 0% SOC.*
- h. *Immediately perform the Round-Trip Efficiency and Capacity Test set forth below.]*
- i. To be valid, the SCT must be started within twenty-four (24) hours of the end of the period (greater than four (4) 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.

(d) Procedure:

- i. System Starting State: The 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. Record initial values of each Battery Subsystem SOC.
- iv. 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.

- v. Record and store the AC energy charged to the system as measured at the Facility Meter. Measurements will be made by the Facility Meter with recording in the Facility historian.
  - 1. Within 30 minutes, command a real power discharge that results in an AC power output of the Facility's maximum discharge power.
- vi. Maintain the discharging until the power is 2% different.
- vii. Record and store the AC energy discharged as measured at the Facility Meter. Measurements will be made by the Facility Meter with recording in the 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:		

## EXHIBIT P

### STORAGE FACILITY AVAILABILITY

#### **Rolling Monthly Average Storage Availability and Monthly Storage Availability**

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

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

where:

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

$\text{MNTHHRS}_m$  is the total number of hours for the month.

$\text{UNAVAILHRS}_m$ , is the total number of hours in the month during which the Facility was unavailable to deliver Storage Product as reported in either (a) Seller’s most recent Availability Notice or (b) by Seller’s real-time EMS data feed to Buyer for the Facility, for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Approved Maintenance Hours, Curtailment Orders, Buyer Failure, Storage Capacity Tests, System Emergencies, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in  $\text{UNAVAILHRS}_m$  for such month. Any other event that results in unavailability of the Facility for less than a full hour (as reported in either (a) or (b) above) will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Capacity, the  $\text{UNAVAILHRS}_m$  for such hour, or partial hour, shall be calculated by multiplying such  $\text{UNAVAILHRS}_m$  by a percentage determined by dividing by (b); where (a) is the lower of such capacity amount reported as unavailable by (i) Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3(d)), and (b) is the then effective Storage Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Availability Notice indicating the Facility is available for that hour or part of an hour prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is reported as available in Seller’s real-time EMS data feed to Buyer for the Facility for such hour, or partial hour, the Facility will be deemed to be available to the extent set forth in the revised Availability Notice.

(b) **Rolling Monthly Average Storage Availability**. Seller shall calculate an “**Rolling Monthly Average Storage Availability**” for each month of the Delivery Term by averaging the Monthly Storage Availabilities for each of the prior twelve (12) months; *provided*, for each month of the first (1<sup>st</sup>) Contract Year, Seller shall calculate the Rolling Monthly Average Storage Availability

utilizing a Monthly Availability of 96% for any months that do not have a Monthly Storage Availability.

#### Availability Adjustment

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

- i. If the Rolling Monthly Average Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

- ii. If the Rolling Monthly Average Storage Availability is less than the Guaranteed Storage Availability, then:

$$AA = 100\% - (\text{the Guaranteed Storage Availability} - \text{Rolling Monthly Average Storage Availability})$$

## EXHIBIT Q

### 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 Q, (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.

<b>Interconnection Capacity Limit:</b>	316.00 MW
<b>Maximum Stored Energy Level:</b>	1,264.00 MWh
<b>Minimum Stored Energy Level:</b>	0 MWh
<b>Maximum Charging Capacity:</b>	316.00 MW
<b>Minimum Charging Capacity:</b>	0.01 MW
<b>Maximum Discharging Capacity:</b>	316.00 MW
<b>Minimum Discharging Capacity:</b>	0.01 MW
<b>Maximum State of Charge (SOC) during Charging:</b>	100%
<b>Minimum State of Charge (SOC) during Discharging:</b>	0%
<b>Ramp Rate:</b>	The Facility shall have the ability to discharge at Maximum Discharging Capacity in two seconds and shall reflect this ability in the Facility Master File submitted to the CAISO to the extent CAISO does not generally limit the ability to do so.
<b>Annual Cycles per Contract Year:</b>	365 cycles with no monthly cap
<b>Daily Dispatch Limits:</b>	Charging: 1.5 per day Discharging: 1.5 per
<b>Maximum Time at Minimum Stored Energy Level:</b>	N/A
<b>Grid Charging of Facility:</b>	Yes



<b>Response Time:</b>	The Facility shall have the ability to execute the commanded power within two (2) seconds and shall reflect this ability in the Facility Master File submitted to the CAISO to the extent CAISO does not generally limit the ability to do so.
<b>Ancillary Services Capability:</b>	The Facility shall be able to provide the following Ancillary Services: spinning reserve, non-spinning reserve, regulation up, and regulation down; <i>provided</i> , Ancillary Services may be expanded in accordance with <u>Section 4.5(g)</u> .

**EXHIBIT R**  
**METERING DIAGRAM**

