***Note from Buyers’***

***This form PPA was drafted under the assumption that the Generating Facility and Energy Storage Facility will be separately metered onto the grid, and charging energy into the Energy Storage Facility would only be from the grid.***

***Bidders have the option to propose a Hybrid Energy Storage Generating Facility metering configuration, and revise this form PPA accordingly. See section 7.1***

***Buyers are continuing to review this form PPA and if, and when, substantive changes are made, Buyers will notify Bidders of the updated form.***

**----------------**

**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

**Seller**: [***Seller name***], [***Entity Type***]

**Buyer**: [***Buyer name***], [***Entity Type***]

**Description of Generating Facility**:

**Description of Energy Storage Facility**:

**Guaranteed Commercial Operation Date (**Should be the later of expected Commercial Operation Date for the Generating Facility or Energy Storage Facility, as indicated in Exhibits B-1 and B-2**)**: [***Date***]

**Delivery Term**: The period for Product delivery will be for [***Number of years: 10, 15, or 20***] Contract Years.

**Contract Capacity**:

Generating Facility Contract Capacity: [\_\_\_\_\_\_\_\_\_\_\_] MW

Energy Storage Facility Dmax: [\_\_\_\_\_\_\_\_\_\_\_\_] MW

Energy Storage Facility Discharge Duration: [\_\_\_\_\_\_\_] Hours

**Contract Price**:

Generating Facility Price: $[\_\_\_\_\_\_\_\_\_\_\_]/MWh

Energy Storage Facility Price: $[\_\_\_\_\_\_\_\_\_\_\_\_]/kW-year plus any other components

OR

All-In Price for both Facilities and Product: $[\_\_\_\_\_\_\_\_\_\_\_]/MWh

**Product**:

Carbon Free Energy

Green Attributes/Renewable Energy Credit (Bucket 1)

Capacity Attributes

Ancillary Services

Energy Storage Services

**Scheduling Coordinator**: Buyer/Buyer Third-Party

**Development Security**:

Generating Facility Development Security:

Energy Storage Facility Development Security:

[***To equal $60/kW for Generating Facility and $90/kW for Energy Storage Facility.***]

**Performance Security**:

Generating Facility Performance Security:

Energy Storage Facility Performance Security:

[***To be determined by Buyer after evaluation of Seller’s creditworthiness, likely to be 5% of expected revenues during the Delivery Term***]

**Notice Addresses**:

Seller:

[Seller]

[Address]

[Address]

Attention: [\_\_\_\_\_\_\_\_\_]

Phone No.: [\_\_\_\_\_\_\_\_\_]

Fax No.: [\_\_\_\_\_\_\_\_\_]

With a copy to:

[Name]

[Address]

[Address]

Attention: [\_\_\_\_\_\_\_\_\_]

Phone No.: [\_\_\_\_\_\_\_\_\_]

Fax No.: [\_\_\_\_\_\_\_\_\_]

Scheduling:

[Name]

Email: [\_\_\_\_\_\_\_\_\_]

Phone No.: [\_\_\_\_\_\_\_\_\_]

Fax No.: [\_\_\_\_\_\_\_\_\_]

Buyer:

[Name], [Title]

[Buyer]

[Address]

[Address]

Fax No: [\_\_\_\_\_\_\_\_\_\_\_]

Phone No: [\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_]

With a copy to:

Troutman Sanders LLP

100 SW Main Street, Suite 1000

Portland, Oregon 97204

Attention: Stephen Hall

Fax No.: (503) 290-2405

Phone No.: (503) 290-2336

Email: stephen.hall@troutmansanders.com

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

|  |  |
| --- | --- |
| SELLER[Seller]By: Name: Title:  | BUYER[Buyer]By: Name: Title:  |

[ARTICLE 1 DEFINITIONS 1](#_Toc493163643)

[1.1 Contract Definitions 1](#_Toc493163644)

[1.2 Rules of Interpretation. 18](#_Toc493163645)

[ARTICLE 2 TERM; CONDITIONS PRECEDENT 20](#_Toc493163646)

[2.1 Contract Term. 20](#_Toc493163647)

[2.2 Conditions Precedent 20](#_Toc493163648)

[2.3 Progress Reports 21](#_Toc493163649)

[ARTICLE 3 PURCHASE AND SALE 22](#_Toc493163650)

[3.1 Sale of Product. 22](#_Toc493163651)

[3.2 Sale of Green Attributes 22](#_Toc493163652)

[3.3 Generating Facility Compensation. 22](#_Toc493163653)

[3.4 Energy Storage Facility Compensation. 23](#_Toc493163654)

[3.5 Imbalance Energy 24](#_Toc493163655)

[3.6 Ownership of Renewable Energy Incentives 25](#_Toc493163656)

[3.7 Future Environmental Attributes. 25](#_Toc493163657)

[3.8 Test Energy 25](#_Toc493163658)

[3.9 Capacity Attributes 25](#_Toc493163659)

[3.10 CEC Certification and Verification 26](#_Toc493163660)

[3.11 Eligibility 26](#_Toc493163661)

[3.12 California Renewables Portfolio Standard 26](#_Toc493163662)

[ARTICLE 4 OBLIGATIONS AND DELIVERIES 27](#_Toc493163663)

[4.1 Delivery. 27](#_Toc493163664)

[4.2 Title and Risk of Loss. 27](#_Toc493163665)

[4.3 Scheduling Coordinator Responsibilities. 28](#_Toc493163666)

[4.4 Generating Facility Forecasting 30](#_Toc493163667)

[4.5 Dispatch Down/Curtailment of Generating Facility. 31](#_Toc493163668)

[4.6 Reduction in Generating Facility Delivery Obligation. 31](#_Toc493163669)

[4.7 Generating Facility Expected Energy and Guaranteed Energy Production 31](#_Toc493163670)

[4.8 Charging Energy Obligations for Energy Storage Facility. 32](#_Toc493163671)

[4.9 Station Use for Energy Storage Facility. 32](#_Toc493163672)

[4.10 Energy Storage Facility Scheduling. 33](#_Toc493163673)

[4.11 Energy Storage Facility Outage Notifications and Costs. 35](#_Toc493163674)

[4.12 Energy Storage Facility Operating Procedures 37](#_Toc493163675)

[4.13 Changes to Scheduling and Outage Reporting Procedures for Energy Storage Facility 37](#_Toc493163676)

[4.14 Energy Storage Facility Performance Testing. 38](#_Toc493163677)

[ARTICLE 5 TAXES 41](#_Toc493163678)

[5.1 Allocation of Taxes and Charges 41](#_Toc493163679)

[5.2 Cooperation 41](#_Toc493163680)

[ARTICLE 6 MAINTENANCE OF EACH FACILITY 42](#_Toc493163681)

[6.1 Maintenance of each Facility 42](#_Toc493163682)

[6.2 Maintenance of Health and Safety 42](#_Toc493163683)

[ARTICLE 7 METERING 42](#_Toc493163684)

[7.1 Metering. 42](#_Toc493163685)

[7.2 Meter Verification 43](#_Toc493163686)

[7.3 Real-Time Data Information Systems. 43](#_Toc493163687)

[ARTICLE 8 INVOICING AND PAYMENT; CREDIT 44](#_Toc493163688)

[8.1 Invoicing 44](#_Toc493163689)

[8.2 Payment 44](#_Toc493163690)

[8.3 Books and Records 45](#_Toc493163691)

[8.4 Payment Adjustments; Billing Errors 45](#_Toc493163692)

[8.5 Billing Disputes 45](#_Toc493163693)

[8.6 Netting of Payments 46](#_Toc493163694)

[8.7 Seller’s Development Security 46](#_Toc493163695)

[8.8 Seller’s Performance Security 46](#_Toc493163696)

[ARTICLE 9 NOTICES 47](#_Toc493163697)

[9.1 Addresses for the Delivery of Notices 47](#_Toc493163698)

[9.2 Acceptable Means of Delivering Notice 47](#_Toc493163699)

[ARTICLE 10 FORCE MAJEURE 47](#_Toc493163700)

[10.1 Definition. 47](#_Toc493163701)

[10.2 No Liability If a Force Majeure Event Occurs 48](#_Toc493163702)

[10.3 Notice 48](#_Toc493163703)

[10.4 Termination Following Force Majeure Event 48](#_Toc493163704)

[ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION 49](#_Toc493163705)

[11.1 Events of Default 49](#_Toc493163706)

[11.2 Remedies; Declaration of Early Termination Date 51](#_Toc493163707)

[11.3 Termination Payment 52](#_Toc493163708)

[11.4 Notice of Payment of Termination Payment 52](#_Toc493163709)

[11.5 Disputes with Respect to Termination Payment 52](#_Toc493163710)

[11.6 Rights And Remedies Are Cumulative 53](#_Toc493163711)

[11.7 Mitigation 53](#_Toc493163712)

[ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES. 53](#_Toc493163713)

[12.1 No Consequential Damages 53](#_Toc493163714)

[12.2 Waiver and Exclusion of Other Damages 53](#_Toc493163715)

[ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY 54](#_Toc493163716)

[13.1 Seller’s Representations and Warranties 54](#_Toc493163717)

[13.2 Buyer’s Representations and Warranties 55](#_Toc493163718)

[13.3 General Covenants 56](#_Toc493163719)

[ARTICLE 14 ASSIGNMENT 56](#_Toc493163720)

[14.1 General Prohibition on Assignments 56](#_Toc493163721)

[14.2 Permitted Assignment; Change of Control of Seller 56](#_Toc493163722)

[14.3 Change of Control of Buyer 57](#_Toc493163723)

[ARTICLE 15 LENDER ACCOMMODATIONS 57](#_Toc493163724)

[15.1 Granting of Lender Interest 57](#_Toc493163725)

[15.2 Rights of Lender 58](#_Toc493163726)

[15.3 Cure Rights of Lender 58](#_Toc493163727)

[ARTICLE 16 DISPUTE RESOLUTION 58](#_Toc493163728)

[16.1 Governing Law 58](#_Toc493163729)

[16.2 Dispute Resolution 58](#_Toc493163730)

[16.3 Attorneys’ Fees 59](#_Toc493163731)

[ARTICLE 17 INDEMNIFICATION 59](#_Toc493163732)

[17.1 Indemnification. 59](#_Toc493163733)

[17.2 Claims 59](#_Toc493163734)

[ARTICLE 18 INSURANCE 60](#_Toc493163735)

[18.1 Insurance. 60](#_Toc493163736)

[ARTICLE 19 CONFIDENTIAL INFORMATION 61](#_Toc493163737)

[19.1 Definition of Confidential Information 61](#_Toc493163738)

[19.2 Duty to Maintain Confidentiality 61](#_Toc493163739)

[19.3 Irreparable Injury; Remedies 62](#_Toc493163740)

[19.4 Disclosure to Lender 62](#_Toc493163741)

[ARTICLE 20 MISCELLANEOUS 62](#_Toc493163742)

[20.1 Entire Agreement; Integration; Exhibits 62](#_Toc493163743)

[20.2 Amendments 62](#_Toc493163744)

[20.3 No Waiver 62](#_Toc493163745)

[20.4 No Agency, Partnership, Joint Venture or Lease 62](#_Toc493163746)

[20.5 Severability 63](#_Toc493163747)

[20.6 Mobile-Sierra 63](#_Toc493163748)

[20.7 Counterparts 63](#_Toc493163749)

[20.8 Facsimile or Electronic Delivery 63](#_Toc493163750)

[20.9 Binding Effect 63](#_Toc493163751)

[20.10 No Recourse to Members of Buyer 63](#_Toc493163752)

**Exhibits**:

Exhibit A-1 Description of Generating Facility

Exhibit A-2 Description of Energy Storage Facility

Exhibit B-1 Generating Facility Construction and Commercial Operation

Exhibit B-2 Energy Storage Facility Construction and Commercial Operation

Exhibit C Contract Price

Exhibit D Emergency Contact Information

Exhibit E Energy Storage Facility-Scheduling, Outage Reporting, Performance Testing Protocol and Operating Procedures

Exhibit F Guaranteed Energy Production Damages Calculation

Schedule F-1 Expected Energy

Exhibit G Buyout Option

Exhibit H Milestone Progress Reporting Form

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_\_\_\_\_(the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate the [***Generating Facility name***] to be located in [State] in the location identified in Exhibit A-1, having a Guaranteed Capacity to Buyer of [\_\_] MW AC (the “**Generating Facility**”);

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Generating Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

WHEREAS, Seller intends to develop, design, construct, and operate the [***Energy Storage Facility name***] to be located in [State] in the location identified in Exhibit A-2, having a Guaranteed Capability to Buyer of [\_\_] MW AC (the “**Energy Storage Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy Storage Services provided by the Energy Storage Facility.

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:

# DEFINITIONS

## **Contract Definitions**

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

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

“**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, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

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

“**Available Capability**” means the available Cmax and Dmax, expressed in whole MWs, that the Energy Storage Facility is capable of accepting Charging Energy and providing Delivered Discharge Energy, respectively.

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

“**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 sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. 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 Bid Curtailment**” means the occurrence of all of the following:

### the CAISO provides notice to a Party or Buyer’s SC, requiring the Party to produce less Energy from the Generating Facility than forecasted to be produced from the Generating Facility for a period of time;

### for the same time period as referenced in (a), Buyer or Buyer’s SC:

#### did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

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

#### submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Generating Facility; and

### no other circumstances exist that constitute a Scheduled Maintenance Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce generation from the Generating Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Scheduled Maintenance Outage, Forced Outage, Force Majeure and/or Curtailment Order.

“**Buyer Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Scheduled Maintenance Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period.

“**Buyer’s Charging Schedule**” means the portion of Buyer’s Schedule that calls for the Energy Storage Facility to receive Energy from the CAISO Grid.

“**Buyer’s Discharge Schedule**” means the portion of Buyer’s Schedule that calls for the Energy Storage Facility to discharge Energy to the CAISO Grid.

“**Buyer’s Schedule**” has the meaning set forth in Section 4.10(a)(iv) for the Energy Storage Facility, and has the meaning of Scheduled Energy for the Generating Facility.

“**Buyout Payment**” has the meaning set forth in Exhibit G.

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

“**CAISO Charges Invoice**” has the meaning set forth in Section 4.3(d).

“**CAISO Global Resource ID**” means the number(s) or name(s) assigned by the CAISO to the Generating Facility or the Energy Storage Facility, in the aggregate or individually.

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

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

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capability**” means the Dmax, Cmax, and Storage Energy for the Energy Storage Facility.

“**Capability Damages**” has the meaning set forth in Exhibit B-2.

“**Capability Payment Price**” or “**CPP**” is set forth in Section 3.4 and Exhibit C.

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

 “**Capacity Damages**” has the meaning set forth in Exhibit B-1.

“**Carbon Free Energy**” means Energy deliveries from Carbon Free Sources AND meets the Renewable Energy Credit (Bucket 1) definition.

“**Carbon Free Source**” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the Generating Facility has been constructed, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Generating Facility.

“**Charge Duration**” is the time from 0% State of Charge to 100% State of Charge when charging at Cmax, understanding that charging may curtail as the State of Charge approaches 100%. The Charge Duration should be interpreted as the fastest charging time from 0% State of Charge to 100% State of Charge under normal operation.

“**Charging Energy**” means the amount of Energy withdrawn from the Participating Transmission Owner’s electrical system or the CAISO Grid to be stored by the Energy Storage Facility and discharged at a later time as measured in MWh by the Electric Revenue Meter. Charging Energy never includes Station Use or Energy required to charge the Energy Storage Facility for the purposes of an Outage or Seller’s Performance Tests.

“**Cmax**” is the maximum steady state power the Energy Storage Facility can continuously charge from 0% State of Charge to 100% State of Charge measured by the Electric Revenue Meter.

“**Cmax Duration**” is the amount of time the Energy Storage Facility is able to charge at Cmax, measured in MW, exclusive of charging station load.

“**Cmin**” is the minimum steady-state power the Energy Storage Facility can continuously charge measured by the Electric Revenue Meter, measured in MW, exclusive of charging station load. Cmin is the point below which the facility cannot charge on a sustained basis.

“**Commercial Operation**” has the meaning set forth in Exhibit B-1 for the Generating Facility, and B-2 for the Energy Storage Facility.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B-1 for the Generating Facility, and B-2 for the Energy Storage Facility. For the avoidance of doubt, should Generating Facility and Energy Storage Facility achieve Commercial Operation on different dates, Buyer will recognize the later date as the date Seller met the contractual Commercial Operation Date.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“**Confidential Information**” has the meaning set forth in Section 19.1.

“**Contract Price**” has the meaning set forth in Section 3.3.

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

“**Contract Year**” means each calendar year during the Contract Term, commencing on the Commercial Operation Date, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

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

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

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

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to [***xx hours times Installed Capacity.***]

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

1. the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;
2. a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) 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;
3. a curtailment ordered by the CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or
4. a curtailment in accordance with Seller’s obligations under its 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 Generating Facility pursuant to a Curtailment Order.

“**Daily Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.4(c).

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

“**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Point, but that is not produced by the Generating Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Generating Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Generating Facility, the Deemed Delivered Energy shall be zero (0).

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

“**Delivered Discharge Energy**” means all Energy discharged from the Energy Storage Facility, as measured in MWh at the CAISO revenue meter based on a power factor of precisely one (1) and net of all Electrical Losses.

“**Delivered Energy**” means all Energy produced from the Generating Facility as measured in MWh at the CAISO revenue meter of the facility based on a power factor of precisely one (1) and net of all Electrical Losses.

“**Delivery Point**” means the [***Generating Facility Pnode or Energy Storage Facility PNode or Pnode of Hybrid Energy Storage Generating Facility***] [***NP15 Trading Hub as defined by the CAISO [TH\_NP15\_GEN-APND]***].

“**Delivery Term**” shall mean the period of **[\_\_\_\_\_]** Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, should Generating Facility and Energy Storage Facility achieve Commercial Operation on different dates, Buyer will recognize the later date as the date Seller met the contractual Commercial Operation Date to begin the Delivery Term.

“**Development Cure Period**” has the meaning set forth in Exhibits B-1 and B-2.

“**Development Security**” means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, in the amount equal to **[*$60/kW for Generating Facility; $90/kW for Energy Storage Facility***].

“**Distribution Loss Factor**” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

“**Dmax**” is the maximum steady state power the Energy Storage Facility can continuously discharge from 100% State of Charge to 0% State of Charge measured by the Electric Revenue Meter, measured in MW, exclusive of discharge station load.

“**Dmax Duration**” is the amount of time the Energy Storage Facility is able to discharge at Dmax.

“**Dmin**” is the minimum steady-state power the Energy Storage Facility can continuously discharge measured by the Electric Revenue Meter, measure in MW, exclusive of discharge station load. Dmin is the point below which the Energy Storage Facility cannot discharge on a sustained basis.

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

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

“**Electric Revenue Meter**” means the measurement device(s) used to measure deliveries of Product from the Generating Facility and the Energy Storage Facility for the purpose of billing, AND meet(s) the requirements used by the interconnecting Transmission Provider to measure deliveries of Product at the Electrical Delivery Point.

“**Electrical Delivery Point**” shall be the PNode designated by the CAISO for the Generating Facility and the Energy Storage Facility, and is identified in Exhibits A-1 and A-2.

“**Electrical Losses**” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“**Energy**” means metered electrical energy, measured in MWh, which is produced by the Generating Facility, or accepted as charging or provided as discharge by the Energy Storage Facility.

“**Energy Storage Facility**” means all of the Unit(s) and the Site at which the energy storage facility is located and the other assets, tangible and intangible, that compose the storage facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Exhibit A-2.

“**Energy Storage Facility Guaranteed Commercial Operation Date**” has the meaning set forth in Exhibit B-2.

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

“**Energy Storage Facility Guaranteed Energy Production**” has the meaning set forth in Section 4.7.

“**Energy Storage Services**” means, collectively or individually, the acceptance of Charging Energy at the Energy Storage Facility, the storing of Energy in the Energy Storage Facility, and the delivery of Energy at the Electrical Delivery Point from the Energy Storage Facility, all in accordance with Buyer’s Schedule and the terms of this Agreement.

“**Event of Default**” means either a Seller Default or Buyer Default as specified in Article 11.

“**Excused Event**” means the time during which (a) Buyer fails to make Charging Energy available to Seller at the Electrical Delivery Point for the Energy Storage Facility, (b) Buyer fails to take Product from and after the Electrical Delivery Point, and (c) Buyer claims an event of Force Majeure.

“**Excused Hours**” means the number of hours equal to (a) the maximum number of Excused Scheduled Maintenance Outage hours permitted pursuant to Section 4.11(e)(ii) beginning with the start of the Delivery Term and continuing through the date on which the determination is made less the number of hours used for Excused Scheduled Maintenance Outages or Force Majeure during such period; plus (b) at Seller’s option and upon Notice by Seller to Buyer, an additional number of “borrowed” hours to be designated by Seller that does not exceed a cumulative amount of one thousand (1000) hours per Force Majeure event, nor exceed, cumulatively, the number of hours for Excused Scheduled Maintenance Outages available under Section 4.11(e)(ii) remaining, as of the date of the Notice, in the lesser of the five (5) years following the date of the Notice or the remaining years of the Delivery Term, provided that the number of hours permitted pursuant to Section 4.11(e)(ii) for Excused Scheduled Maintenance Outages in each of the five (5) calendar years following the date on which such Notice is received by Buyer shall be reduced by (i) one-fifth of the total amount of “borrowed” hours as set forth in such Notice or, (ii) if less than five (5) years are remaining in the Delivery Term as of the date of such Notice, then by one (1) divided by the remaining years in the Delivery Term as of the date of the Notice.

“**Excused Scheduled Maintenance Outage**” is a Scheduled Maintenance Outage taken by Seller that (a) complies with the requirements set forth in Section 4.11, (b) Buyer has approved via Notice, and (c) was not modified less than ninety (90) days prior to the calendar month of delivery except (i) as permitted under Section 4.11 or (ii) if shortened within the previously approved Excused Scheduled Maintenance Outage window. Any Scheduled Maintenance Outage that is not an Excused Scheduled Maintenance Outages will be considered an Unexcused Scheduled Maintenance Outage.

“**Exigent Circumstance**” means actual or imminent harm to life or safety, public health, third-party owned property, or the environment due to or arising from the Energy Storage Facility or Generating Facility.

“**Expected Energy**” has the meaning set forth in Exhibit F, Schedule F-1.

“**Facility**” means the Generating Facility and/or Energy Storage Facility described more fully in Exhibits A-1 and A-2 attached hereto.

“**Fair Market Value**” has the meaning set forth in Exhibit G.

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

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

“**Forced Outage**” means (a) any unplanned outage in response to (i) a mechanical, electrical, or hydraulic control system trip, (ii) operator-initiated trip in response to an alarm or equipment malfunction, or (iii) Exigent Circumstance, (b) any other unavailability of the Energy Storage Facility or Generating Facility, in whole or in part, for testing, maintenance, or repair that is not a Scheduled Maintenance Outage, or (c) unavailability to Buyer of key operational data, pursuant to the terms of Section 7.3.

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that each Facility is eligible for Full Capacity Deliverability Status.

“**Future Environmental Attributes**” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Generating Facility or to the Energy Storage Services provided by the Energy Storage Facility.

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

“**Generating Facility**” means all the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Exhibit A-1.

“**Generating Facility** **Guaranteed Commercial Operation Date**” has the meaning set forth in Exhibit B-1.

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

“**Generating Facility** **Guaranteed Energy Production**” has the meaning set forth in Section 4.7.

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

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;[[1]](#footnote-2) (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, or the Energy Storage Facility (ii) production tax credits associated with the construction or operation of the Generating Facility, or the Energy Storage Facility and other financial incentives in the form of credits, reductions, or allowances associated with each Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facility, or the Energy Storage Facility for compliance with local, state, or federal operating and/or air quality permits.

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

“**Guaranteed Capability**” means **[\_\_\_\_\_ (\_\_)]** MW AC Dmax measured at [***Insert location.***] for the Energy Storage Facility.

“**Guaranteed Capacity**” means **[\_\_\_\_\_ (\_\_)]** MW AC capacity measured at [***Insert location.***]. for the Generating Facility.

“**Guaranteed Commercial Operation Date**” shall be the later of a) Generating Facility Guaranteed Commercial Operation Date, and b) Energy Storage Facility Guaranteed Commercial Operation Date.

“**Guarantor**” means, with respect to Seller, any person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of **[\_\_\_\_]** or better from S&P or a Credit Rating of **[\_\_\_\_]** or better from Moody’s, (d) has a tangible net worth of at least **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**, (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer in a form reasonably acceptable to Buyer. ***[Buyer will consider accepting a Guaranty based on each Facility, the amount of Performance Security, and the identity of the Seller and Guarantor.]***

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer in a form reasonably acceptable to Buyer. ***[Buyer will consider accepting a Guaranty based on each Facility, the amount of Performance Security, and the identity of the Seller and Guarantor.]***

“**Imbalance Energy**” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy for the Generating Facility, or by which the amount of Delivered Discharge Energy deviates from the amount of Scheduled Discharge Energy for the Energy Storage Facility or by which the amount of Charging Energy deviates from the amount of Buyer’s Charging Schedule for the Energy Storage Facility.

“**Indemnified Party**” has the meaning set forth in Section 17.1.

“**Indemnifying Party**” has the meaning set forth in Section 17.1.

“**Installed Capability**” means the sum of the actual Dmax capability of the Energy Storage Facility, not to exceed [***Dmax capability expressed in MW AC***].

“**Installed Capacity**” means the sum of the actual generating capacity of the Generating Facility, not to exceed [***generating capacity expressed in MW AC***].

“**Instructed Operation(s)**” means (a) an Operational Order, (b) a mandatory direction of the Transmission Provider, (c) as required pursuant to the Seller’s CAISO Participating Generator Agreement (explicitly incorporating the CAISO Tariff), or (d) a directive from the CAISO, Reliability Coordinator, Scheduling Coordinator, or any other entity having similar authority or performing similar functions during the Delivery Term, to charge, curtail or increase output for reasons including, (i) Emergencies, (ii) System Emergencies, (iii) reliability needs including voltage support, or (iv) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, such as an overgeneration, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected.

“**Integral Station Use**” is that subset of Station Use that is metered through the Electric Revenue Meter for Station Use components that are so integrated with the Energy Storage Facility design that it is not feasible to meter such Energy separately and that is described in Exhibit A-2.

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

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

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect each Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

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

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

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of each Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for each Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent 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 and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to each Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form reasonably acceptable to Buyer.

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

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

“**Lost Output**” has the meaning set forth in Exhibit F.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth in Exhibit H.

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

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour.

“**Negative Imbalance Energy**” has the meaning set forth in Section 3.5.

“**Negative LMP**” means, in any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars ($0).

“**Negative LMP Costs**” has the meaning set forth in Section 3.3(c).

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

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

“**Output Event of Default**” has the meaning set forth in Exhibit F.

“**Participating Intermittent Resource Protocol**” or “**PIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where each Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is [***name of utility***].

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

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash, or (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, in an amount and form acceptable to Buyer.

“**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.

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

“**Positive Imbalance Energy**” has the meaning set forth in Section 3.5.

“**Product**” means (i) Carbon Free Energy, (ii) Green Attributes/Renewable Energy Credit (Bucket 1), (iii) Capacity Attributes, (iv) Energy Storage Services, and (v) Ancillary Services.

“**Prudent Operating Practice**” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“**Qualified Assignee**” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

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

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

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

“**Renewable Energy Incentives**” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Generating Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Generating Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Generating Facility that are not a Green Attribute or a Future Environmental Attribute.

“**Resource Adequacy Benefits**” means the rights and privileges attached to each Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with each Facility.

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

“**Schedule**” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“**Scheduled Energy**” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“**Scheduled Maintenance**” means an outage (a) resulting from removal of equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (i) necessary to reliably maintain the Energy Storage Facility or Generating Facility, and (ii) cannot be reasonably conducted during the Energy Storage Facility’s or Generating Facility’s operations, AND (b) for which Seller has given Buyer Notice prior to the CAISO deadline for planned outage submittals, and approved by the CAISO as a planned outage.

“**Scheduled Maintenance Outage**” is the period in which there is Scheduled Maintenance. A Scheduled Maintenance Outage can be either an Excused Scheduled Maintenance Outage or an Unexcused Scheduled Maintenance Outage.

“**Scheduled Maintenance Outages Restricted Period**” means hours ending 0700 through 2200 every day

“**Scheduled Operations**” means operation of the Energy Storage Facility as required to satisfy Buyer’s Schedule (including Instructed Operations) and/or a Buyer’s Performance Test.

“**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.

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

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

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

“**State of Charge**” or “**SOC**” means the amount of Delivered Discharge Energy stored in the Energy Storage Facility expressed as a percent of the maximum amount of Delivered Discharge Energy the Energy Storage Facility is capable of storing (e.g., 80% SOC).

“**Storage Energy**” means the Delivered Discharge Energy the Energy Storage Facility can deliver from 100% State of Charge to 0% State of Charge.

“**System Emergency**” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“**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.

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

“**Terminated Transaction**” has the meaning set forth in Section 11.2.

“**Tested Duration Energy**” means the Delivered Discharge Energy the Energy Storage Facility delivers when discharging at Dmax during the Design Dmax Duration following charging starting at 0% State of Charge during the Design Charge Duration, provided that Cmax during the Design Charge Duration may not exceed the Design Cmax.

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

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

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

“**Unexcused Scheduled Maintenance Outage**” has the meaning set forth in Section 4.11(g).

“**WECC**” means the Western Electricity Coordinating Council or its successor.

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.2(b)(ii).

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

## **Rules of Interpretation**.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

### 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;

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

### 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;

### a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

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

### a reference to a Person includes that Person’s successors and permitted assigns;

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

### 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;

### 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;

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

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

### 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

### 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.

# TERM; CONDITIONS PRECEDENT

## **Contract Term**.

### The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

### Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive written Notice of such extension at least two (2) years before the end of the initial Contract Term.

### 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 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

### Buyer may elect to purchase both Facilities during the Delivery Term in accordance with Exhibit G.

## **Conditions Precedent**

. Subject to Section 3.7, Buyer shall have no obligation whatsoever to purchase the Product from each Facility under this Agreement until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

### All Generating Facility and Energy Storage Facility systems necessary for continuous operation and metering have been installed and are tested and certified;

### All applicable agreements between Seller and CAISO required for the performance of Seller’s obligations under this Agreement have been executed, delivered and shall remain in full force and effect, including a Participating Generator Agreement, a Meter Service Agreement, Participating Load Agreement, and a Scheduling Coordinator Agreement and a copy of each agreement delivered to Buyer;

### All applicable agreements between Seller and the PTO, including an Interconnection Agreement, have been executed, delivered and shall remain in full force and effect and a copy of each agreement delivered to Buyer;

### The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of each Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

### All applicable regulatory authorizations, approvals and permits for the continuous operation of each Facility have been obtained and all conditions thereof completed and shall remain in full force and effect;

### Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for each Facility have been completed;

### Seller has received documentation from the CAISO that each Facility has received a Full Capacity Deliverability Status Finding, either in the aggregate or individually, as applicable;

### Seller has received the requisite pre-certification of the CEC Certification and Verification (and will reasonably expect to receive in no more than ninety (90) days from the Commercial Operation Date the final CEC Certification and Verification) for Generating Facility;

### Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Generating Facility, QRE service agreements, and other appropriate documentation required to effect Generating Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements;

### Seller successfully completes an initial Generating Facility performance test, using industry accepted testing procedures, which demonstrates peak facility electrical output of no less than ninety percent (90%) of the Installed Capacity, as adjusted for ambient conditions, on the date of the performance test, which shall not be less than [\_\_] MW. Seller has delivered to Buyer a certification of a licensed professional engineer certifying that ninety percent (90%) of the Installed Capacity is capable of generating energy in accordance with the manufacturer’s specifications;

### Seller successfully completes an initial Energy Storage Facility performance test, using industry accepted testing procedures, which demonstrates peak facility electrical output of no less than ninety percent (99%) of the Installed Capability, as adjusted for ambient conditions, on the date of the performance test, which shall not be less than **[\_\_]** MW. Seller has delivered to Buyer a certification of a licensed professional engineer certifying that ninety percent (99%) of the Installed Capability is capable of delivering energy in accordance with the manufacturer’s specifications; and

### Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

## **Progress Reports**

. Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports is set forth as Exhibit H.

# PURCHASE AND SALE

## **Sale of Product**.

### Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Generating Facility and Energy Storage Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Generating Facility and Energy Storage Facility for resale in the market, and retain and receive any and all related revenues.

Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Generating Facility or Energy Storage Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Generating Facility and Energy Storage Facility for sale or delivery to Buyer under this Agreement.

## **Sale of Green Attributes**

. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by the Generating Facility.

## **Generating Facility Compensation**.

### Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Delivered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

### If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for each Settlement Interval.

### If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

### Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price.

### If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller, as Seller’s sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

## **Energy Storage Facility Compensation**.

### During each month of the Delivery Term, Buyer shall pay Seller for Energy Storage Services provided to Buyer, in arrears, the total compensation (TC*m*) calculated pursuant to the equation below using the component parts described in detail in this Article Three:

TC*m* = MFP*m* + MVP*m* + Other Payment Adjustments

#### Monthly Fixed Payment. The monthly fixed payment for the subject month (“Monthly Fixed Payment” or “MFP*m*”) will be calculated as follows:

MFPm = CPP × MAFm × MCCm × AAm

where:

CPP is the Capability Payment Price, as set forth in Exhibit C.

MAF*m* is the monthly allocation factor set forth in Exhibit C for such month; provided that at least ninety (90) days prior to the start of any Contract Year, Buyer may Notify Seller of modifications to Exhibit C. Buyer may not modify Exhibit C such that (1) any individual month has a percentage allocation of less than four percent (4%) or greater than fifteen percent (15%) and (2) Seller would receive less than the full Capability Payment Price in any Contract Year due solely to the modification. The sum of the twelve (12) monthly allocation factors in any calendar year shall equal one hundred percent (100%).

MCC*m* is the Monthly Contract Capability in Contract Year “y” corresponding to month “m”, as listed in Exhibit C; and

AA*m* is the Availability Adjustment for such month, determined pursuant to section in Exhibit C.

#### Monthly Variable Payment. The monthly variable payment for the subject month (“Monthly Variable Payment” or “MVP”) will be calculated as follows:

MVP*m* = ∑ min (Delivered Discharge Energy*i*, Buyer’s Discharge Schedule*i*) × VOMP*y*

where:

∑ is the sum from *i*=1 to *n*;

*m* = relevant month “m” in which a MVP payment is made;

*i* = the Settlement Interval in month “*m*”;

*n* = total number of Settlement Intervals in month “*m*”;

VOMP*y* = The Variable O&M Price (“VOMP”) in Contract Year “y” corresponding to month “m”, as listed in Exhibit C.

#### Other Payment Adjustments. These other compensatory requirements are listed in Exhibit C.

## **Imbalance Energy**

. Seller shall use commercially reasonable efforts to deliver, or receive, Energy in accordance with Buyer’s Schedule for either the Generating Facility or the Energy Storage Facility. Buyer and Seller recognize that from time to time the amount of Energy delivered, or received, will deviate from the amount of Buyer’s Schedule. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

### “Positive Imbalance Energy” refers to the over delivery of Product and is defined as follows; (i) For the Generating Facility, Positive Imbalance Energy is when Delivered Energy minus Scheduled Energy is a positive amount, (ii)For the Energy Storage Facility during discharge operations, Positive Imbalance Energy is when Delivered Discharge Energy minus Buyer’s Discharge Schedule is a positive amount, (iii)For the Energy Storage Facility during charging operations, Positive Imbalance Energy is when the absolute value of Charging Energy minus the absolute value of Buyer’s Charging Schedule is a positive amount.

### “Negative Imbalance Energy” refers to the under delivery of Product and is defined as follows; (i) for the Generating Facility, Negative Imbalance Energy is when Delivered Energy minus Scheduled Energy is a negative amount, (ii) for the Energy Storage Facility during discharge operations, Negative Imbalance Energy is when Delivered Discharge Energy minus Buyer’s Discharge Schedule is a negative amount, (iii)For the Energy Storage Facility during charging operations, Negative Imbalance Energy is when the absolute value of Charging Energy minus the absolute value of Buyer’s Charging Schedule is a negative amount.

### Treatment of Positive Imbalance Energy (Over Deliveries). Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy from the Generating Facility in such CAISO Settlement Interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO in respect of the Positive Imbalance Energy.

### Treatment of Negative Imbalance Energy (Under Deliveries). Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall be responsible for all payments owing to the CAISO in respect of the Negative Imbalance Energy.

## **Ownership of Renewable Energy Incentives**

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

## **Future Environmental Attributes**.

### The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter each Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

### If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.7(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

## **Test Energy**

. If and to the extent the Generating Facility generates, or Energy Storage Facility discharges, Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation for such Test Energy, Buyer shall pass through to Seller any CAISO revenues for such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

## **Capacity Attributes**

. By no later than [***date***], Seller shall have performed, or caused to be performed, all necessary CAISO interconnection studies. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

### For the Energy Storage Facility, Capacity Attributes means current or future defined characteristics, including the ability to generate or charge at given capacity levels, ability to provide Ancillary Services, ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes or any other ability of the Energy Storage Facility that may be recognized by the CAISO and/or FERC as of the Execution Date and during the Contract Term within the Operational Limitations set forth in Exhibit A-2; (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy Requirement or other such products.

### Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Generating Facility and the Energy Storage Facility.

### Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Generating Facility and the Energy Storage Facility from the CAISO and shall perform all actions necessary to ensure that each Facility qualifies to provide Resource Adequacy Benefits to Seller. Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

## **CEC Certification and Verification**

. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Generating Facility.

## **Eligibility**

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

## **California Renewables Portfolio Standard**

. Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

# OBLIGATIONS AND DELIVERIES

## **Delivery**.

### Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis from the Generating Facility and accept all Delivered Discharge Energy from the Energy Storage Facility. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy, and Delivered Discharge Energy, after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy, or Delivered Discharge Energy, up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with each Facility or Seller’s violation of applicable regulatory requirements. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

### Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Generating Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Generating Facility.

## **Title and Risk of Loss**.

### Energy. Title to and risk of loss related to the Delivered Energy, and Delivered Discharge Energy, shall pass and transfer from Seller to Buyer at the Delivery Point, and Title to and risk of loss related to the Charging Energy, shall pass and transfer from Buyer to Seller at the Delivery Point.

### Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

#### Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 8, Buyer shall make an invoice payment for a given month in accordance with Article 8 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 8.

#### A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“**Deficient Month**”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer’s payment(s) to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller’s next monthly invoice to Buyer in accordance with Article 8, and Buyer shall net such amount against Buyer’s subsequent payment(s) to Seller pursuant to Article 8.

## **Scheduling Coordinator Responsibilities**.

### Buyer as Scheduling Coordinator for each Facility. [During the Delivery Term] [Upon initial synchronization of each 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 each Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the [Commercial Operation Date of each Facility] [initial synchronization of each Facility to the CAISO Grid], Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller’s Scheduling Coordinator for each Facility effective as of [the beginning of the Delivery Term] [initial synchronization of each Facility to the CAISO Grid]. [During the Delivery Term] [On and after initial synchronization of each Facility to the CAISO Grid], Seller shall not authorize or designate any other party to act as Seller’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 Seller’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller’s SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller’s SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers’ best estimate based on the information reasonably available to Buyer including Buyer’s forecast whenever PIRP is not applicable.

### Notices. Buyer (as Seller’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 each Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

### CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) in each case, associated with (i) scheduling and Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of each Facility not being available, (ii) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (iii) any other failure by Seller to abide by the CAISO Tariff, and (iv) any other deviations between Delivered Energy, Delivered Discharge Energy, Charging Energy and Buyer’s Schedule that are attributable to Seller, the Generating Facility or Energy Storage Facility, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges or other CAISO charges associated with each Facility not providing sufficient Resource Adequacy capacity are the responsibility of the 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 each Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller’s responsibility.

### CAISO Settlements. Buyer (as Seller’s SC) shall be responsible for all settlement functions with the CAISO related to each Facility. Buyer shall render a separate invoice to Seller for any CAISO 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. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

### Dispute Costs. Buyer (as Seller’s SC) may be required to dispute CAISO settlements in respect of each Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes.

### 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 each Facility as of 11:59 p.m. on such expiration date.

### 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 each Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

## **Generating Facility Forecasting**

. Seller shall provide the Available Capacity forecasts described below. Seller’s Available Capacity forecasts shall include availability and updated status of key equipment for the Generating Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Generating Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

### Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

### Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer’s designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

### Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Generating Facility’s Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy) 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 Schedules 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 Generating Facility’s Available Capacity (or if PIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer’s best estimate.

### Hourly and Sub-Hourly Forecasts of Available Capacity. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer’s on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Generating Facility during or after the end of the outage.

## **Dispatch Down/Curtailment of Generating Facility**.

### General. Seller agrees to reduce the Generating Facility’s generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment.

### Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Generating Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price.

### Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that the Generating Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

## **Reduction in Generating Facility Delivery Obligation**.

 For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

### Generating Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of Scheduled Maintenance previously agreed to between Buyer and Seller.

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

### System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or applicable tariff.

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

## **Generating Facility Expected Energy and Guaranteed Energy Production**

. The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 (“**Expected Energy**”). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods, and Buyer Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

## **Charging Energy Obligations for Energy Storage Facility**.

### Except as set forth here or as expressly set forth in this Agreement, during the Delivery Term, Buyer shall be responsible for delivering all the Charging Energy for the Energy Storage Facility to the Electrical Delivery Point for Scheduled Operations.

### Seller shall take all actions necessary to accept the Charging Energy at and from the Electrical Delivery Point as part of providing the Energy Storage Services in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy to the Energy Storage Facility. Seller shall only use the Charging Energy for Buyer’s benefit in accordance with the terms of this Agreement.

### Buyer shall be responsible for the Energy costs associated with providing the Charging Energy to the Electrical Delivery Point for Scheduled Operations. Once Seller takes title to the Charging Energy, if Buyer then pays any Energy costs which are Seller’s responsibility under this Agreement, Buyer may deduct the amount of such Energy costs from any amounts due to Seller in accordance with Article Eight. Buyer shall be responsible for demand charges associated solely with use of Charging Energy, if any.

### Buyer shall hold title to, possession of, and risk of loss of the Charging Energy up to the Electrical Delivery Point, and Seller shall take title to, possession of, and risk of loss of the Charging Energy at and from the Electrical Delivery Point.

### Seller shall be responsible for any Energy costs required to charge the Energy Storage Facility other than Charging Energy required for Scheduled Operations.

## **Station Use for Energy Storage Facility**.

### Energy Storage Services will not serve Station Use. Seller shall obtain retail service from its load serving entity for Station Use, including Integral Station Use, as applicable.

### Seller shall separately meter Station Use, except for Integral Station Use, with the Station Use Meter. Seller shall cause the installation, maintenance, operation and replacement (as needed) of the Station Use Meter.

### Seller will design, construct, and operate the Energy Storage Facility such that (i) no Station Use is measured and served via the Electric Revenue Meter except Integral Station Use and (ii) Energy Storage Services do not serve Station Use.

## **Energy Storage Facility Scheduling**.

### Buyer’s Exclusive Rights. During the Delivery Term, Buyer has the exclusive right to bid, schedule, or designate the Energy Storage Facility to deliver the Product and/or accept Charging Energy, in accordance with the Operational Limitations set forth in Exhibit A-2, in any CAISO forward, day-ahead, hour ahead, real-time or intra-day markets. The Operational Limitations specified in Exhibit A-2 will allow Buyer to bid and schedule the Energy Storage Facility for all hours of the day, seven (7) days per week for all available components of the Product, unless the Energy Storage Facility is, in whole or in part, incapable of operations due to an Outage or Excused Event.

#### Seller’s Notices. By 5:00 a.m. each day, commencing seven (7) calendar days prior to the start of the Delivery Term and continuing thereafter throughout the Delivery Term, Seller shall provide Buyer (A) a complete and accurate Notice of the expected availability of all relevant components of the Product of the Energy Storage Facility (as reasonably determined at that time) for that day and each of the next thirteen (13) days or such shorter period as the Buyer may specify from time to time and in the format per Buyer’s specification, and (B) a disclosure of the existence and expected duration of any Outage or any Instructed Operation, the amount of Product affected by such Outage and the nature and effect of the Instructed Operation on the Energy Storage Facility’s availability, regardless of whether or the extent to which the Energy Storage Facility is then or may be scheduled for operation; provided that (I) outages not previously Noticed or approved by Buyer pursuant to this Section are not Excused Scheduled Maintenance Outages unless explicitly approved as such by Buyer, and (II) such information shall be required only for days that are part of the Delivery Term. Buyer is authorized to schedule up to and in accordance with the most recent availability Notice received from Seller, provided that Buyer shall not be liable for making or electing not to make changes to the schedule as a result of Seller’s Notices that are not provided in accordance with this subsection (c)(i).

#### Seller’s Continuing Obligations. During the Delivery Term, to the extent not reported in the most recent availability Notice or pursuant to this Section, Seller shall Notify Buyer in accordance with Buyer’s Outage Reporting Protocols, of every outage, change in availability of any Product or Capability, or imposition of an Instructed Operation, whether or not the Energy Storage Facility is scheduled for operation. Seller shall update Buyer periodically through the day as information becomes available through availability Notices, with any revised estimates regarding the Energy Storage Facility’s return to full Capability or release from or change in Instructed Operation. Seller shall promptly provide Buyer Notice of any further change in the Product availability and Capability from that set forth in the last Notice provided, including any developments that will affect the severity or duration of each Outage, Product availability and ability of the Energy Storage Facility to return to service after an Outage, or scope and duration of the Instructed Operation. For Forced Outages, Seller shall Notify Buyer’s Real-Time Desk within ten (10) minutes of the event as specified in Exhibit E. Seller shall comply at all times throughout the Delivery Term with Buyer’s Outage Protocol and Notifications specified in Exhibit E. If Seller becomes aware of an Exigent Circumstance, Seller shall cease the Energy Storage Services and declare a Forced Outage. Seller shall continue such outage due to the Exigent Circumstance until the Exigent Circumstance is resolved in accordance with this Section.

#### Other Reporting Obligations. Each Notice provided pursuant to subsections (c)(i) and (c)(ii) that includes an outage, change or limitation will include all such information concerning such outage, change or limitation as the Transmission Provider may require Seller or Buyer, as SC, to report. Seller will provide Buyer each Notice in accordance with the Buyer’s Outage Reporting Protocols specified in Exhibit E. During the Delivery Term, Buyer will provide the Transmission Provider notice of each outage, change or limitation to the extent required by Law, CAISO Tariff, the tariff of the interconnecting Transmission Provider, or contract. During the Delivery Term, Seller and Buyer shall promptly communicate to the other all information received by it from the Transmission Provider or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller shall provide regulatory bodies such as the FERC and the CPUC with Outage information (for example, NERC outage reporting requirements) as required by Law, tariff or regulation.

#### Buyer’s Schedule. Buyer, as SC, shall bid or schedule the Energy Storage Facility in accordance with Article 6 of this Agreement, CAISO Tariff, and within Operational Limitations as set forth in Exhibit A-2. Any CAISO market awards or schedules, Dispatch Instructions, Instructed Operations, or oral or written notification by Buyer to operate the Energy Storage Facility in the requested manner will be deemed “**Buyer’s Schedule**,” as it may be adjusted from time to time by the CAISO, Buyer, or Instructed Operations. Buyer’s Schedule includes Buyer’s Charging Schedule and Buyer’s Discharge Schedule. Notwithstanding Buyer’s exclusive rights to schedule and require delivery of the Product from the Energy Storage Facility during the Delivery Term, Buyer shall adjust Buyer’s Schedule to the extent necessary to allow Seller to comply with an Instructed Operation.

#### Seller’s Operation. During the Delivery Term, Seller shall operate the Energy Storage Facility to meet Buyer’s Schedule, except when and to the extent (A) a portion of the Energy Storage Facility designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), or (B) operation or dispatch is prevented by an Excused Event. During the Delivery Term, Seller shall not dispatch and operate the Energy Storage Facility other than pursuant to Buyer’s Schedule or the CAISO’s direction except as specifically contemplated herein.

#### Communication. Seller shall acquire and install systems as necessary in accordance with Exhibit E to respond to all electronic signals (including, as applicable, Automatic Generation Control) conveying instructions necessary to participate in the CAISO Day-Ahead and Real-Time Markets for the delivery of Energy, Ancillary Services and Other Products at the request of Buyer, Buyer’s Third-Party SC, or the CAISO, and such systems shall be in place prior to the start of the Delivery Term.

## **Energy Storage Facility Outage Notifications and Costs**.

### Seller’s Cooperation for Outage Submittals to CAISO. Seller shall provide to Buyer, in Buyer’s capacity as the Energy Storage Facility’s SC, all information that Buyer requires to notify and/or secure CAISO approvals and to comply with WECC and CAISO requirements, as applicable, for all Scheduled Maintenance Outages and Forced Outages, including information to secure changes to the proposed Maintenance Outage schedules when CAISO disapproves such schedules or cancels previously approved Scheduled Maintenance Outages.

### Maintenance Outage Notification Timeline. Seller shall Notify Buyer of its proposed Maintenance Outages for the Energy Storage Facility in accordance with Buyer Outage Reporting Protocols in Exhibit E for the specified time frames for periods during the Delivery Term, commencing prior to the start of the Delivery Term if necessary, to meet the Notification timelines as follows:

#### by July 1 of the calendar year, Notifying Buyer of the proposed Maintenance Outage schedule for the next calendar year; and

#### by the earlier of (A) ninety (90) days before the calendar month of delivery, or (B) forty-five (45) days prior to the delivery month’s RA Monthly Compliance Showing, updating to the extent required the Maintenance Outage schedule previously Noticed to Buyer, for the next twelve (12) months starting with the calendar month of delivery.

### Scheduled Maintenance Outages and Excused Scheduled Maintenance Outages. All Seller-proposed Maintenance Outages are subject to Buyer approval, not to be unreasonably withheld. Within twenty (20) Business Days after Buyer’s receipt of Seller’s Maintenance Outage schedule proposal, Buyer shall Notify Seller of Buyer’s approval, or, if Buyer desires to modify a Seller-proposed Maintenance Outage prior to submittal to the CAISO, the Parties shall work together in good faith to accommodate the desired changes. Buyer, as the Energy Storage Facility’s SC, shall then submit the proposed Maintenance Outage schedule to the CAISO, which shall be subject to approval by the CAISO. If such Outage schedule is then approved by the CAISO, it will be deemed a Scheduled Maintenance Outage, and Seller shall adhere to the timelines of the CAISO-approved Scheduled Maintenance Outage. Only those Scheduled Maintenance Outages that (i) meet the submittal timelines in subsection (b) above, (ii) do not violate the hourly limitations set forth in subsection (e) below, (iii) are approved by the CAISO, and (iv) are approved by Buyer in accordance with Exhibit E, will be Excused Scheduled Maintenance Outages. Any change made to a previously approved Excused Scheduled Maintenance Outage outside of the approved window of time is deemed a new Outage request and is subject to re-approval from Buyer.

### Buyer-Requested Changes to Scheduled Maintenance Outages. At any time, Buyer may request that Seller re-schedule a Scheduled Maintenance Outage. Seller shall Notify Buyer of any incremental costs associated with the schedule change and propose an alternative schedule change, if any, that would entail lower incremental costs. If Buyer’s proposed change is feasible and imposes no incremental costs (as compared to Seller’s proposed schedule), or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer’s request and Buyer, as the Energy Storage Facility’s SC, shall communicate the change to the CAISO and seek CAISO approval for the revised schedule. However, unless it is transmitting to Seller a CAISO order, Buyer may not change a Scheduled Maintenance Outage unilaterally. If a previously Excused Scheduled Maintenance Outage is modified at the Buyer’s Request less than ninety (90) days before the calendar month of delivery, the Outage will remain an Excused Scheduled Maintenance Outage.

### Scheduled Maintenance and Excused Scheduled Maintenance Outage Restrictions.

#### Scheduled Maintenance Outages are prohibited during the Scheduled Maintenance Outages Restricted Period, absent written pre-approval by Buyer. At least ninety (90) days prior to a start of the next calendar year, Buyer may Notify Seller of modifications to the Scheduled Maintenance Outages Restricted Period. Buyer may not modify the Scheduled Maintenance Outages Restricted Period such that the total number of months with total Scheduled Maintenance Outage restrictions increases or that the total number of months with partial Scheduled Maintenance Outage restrictions increases.

#### Excused Scheduled Maintenance Outages for the Energy Storage Facility that reduce Delivered Discharge Energy may not exceed 350 hours total in any consecutive twelve (12) month period.

### Short-term Outage Requests. If Seller reasonably concludes that the Energy Storage Facility needs to be shut-down as soon as practicable to conduct maintenance that cannot be delayed until the next Excused Scheduled Maintenance Outage established in accordance with subsections (b) through (e) above, Seller shall Notify Buyer in accordance with the Forced Outage Reporting Protocol specified in Exhibit E. Buyer, at its sole discretion, may deem such outage an Excused Scheduled Maintenance Outage, if these conditions are met: (i) in consultation with Buyer, Seller is able to delay the Outage to occur in its entirety within a period acceptable to Buyer at its sole discretion that is also within seven (7) days, (ii) Seller receives Buyer’s written approval as specified in Exhibit E after the initial notification, and (iii) the outage does not exceed the limitations within this subsection (e)(ii) above.

### Unexcused Scheduled Maintenance Outages. In the event Seller desires to take the Energy Storage Facility out of service in a manner that would be recognized by the CAISO as a planned outage, but does not otherwise comply with the Excused Scheduled Maintenance Outage timelines set forth in the above subsection (b) through (f), Seller shall Notify Buyer of its proposed Maintenance Outage schedule for the Energy Storage Facility by submitting Notice to Buyer in accordance with Buyer’s Outage Reporting Protocols as promptly as possible upon determining the need for such maintenance. Buyer, as the SC, shall submit the proposed Maintenance Outages for the Energy Storage Facility to the CAISO for approval in the form proposed by Seller. If such requested Maintenance Outage is approved by CAISO, it will then be deemed an “**Unexcused Scheduled Maintenance Outage**,” and Seller shall adhere to the schedule approved by the CAISO for that Maintenance Outage. At any time, Buyer may request that Seller re-schedule its Unexcused Scheduled Maintenance Outage, in which case Seller shall Notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer’s proposed change to Seller’s Unexcused Scheduled Maintenance Outage Schedule is feasible and imposes no incremental costs (as compared to Seller’s proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer’s request and Buyer, as the SC, shall communicate the change to the CAISO and seek CAISO approval for the revised Unexcused Scheduled Maintenance Outage. However, unless it is transmitting to Seller a CAISO order, Buyer may not change Seller’s Unexcused Scheduled Maintenance Outage schedule unilaterally.

### Exclusions. Any Unexcused Scheduled Maintenance Outage taken pursuant to subsection (g) above that does not also meet the requirements set forth in subsections (b) through (f) above for an Excused Scheduled Maintenance Outage will be treated as UNAVAILHRS or UNAVAILPRODHRS, as applicable and as specified in Exhibit C.

#### Costs During an Outage. Seller shall bear all costs and receive the revenues for Energy required to charge and discharge the Energy Storage Facility for the purposes of the Outage, including those costs needed to restore the Energy stored in the Energy Storage Facility to the same amount stored in the Energy Storage Facility prior to the start of the Outage.

## **Energy Storage Facility Operating Procedures**

. Prior to the start of Delivery Term, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein, including, but not be limited to, (a) procedures for scheduling and dispatch, (b) methods of day-to-day communications, (c) key personnel lists, (d) record keeping, and (e) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the “**Operating Procedures**”); provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations under this Agreement. The Operating Procedures are provided in Exhibit E.

## **Changes to Scheduling and Outage Reporting Procedures for Energy Storage Facility**

. Notwithstanding Section 4.12, Buyer may, unilaterally and after providing Seller with prior Notice, change scheduling and outage procedures and requirements in Exhibit E to conform to changes instituted by the CAISO. Seller will design, construct, and operate the Energy Storage Facility such that (i) no Station Use is measured and served via the Electric Revenue Meter except Integral Station Use and (ii) Energy Storage Services do not serve Station Use.

## **Energy Storage Facility Performance Testing**.

### Performance Testing Requirement. Seller shall conduct Performance Tests of the Energy Storage Facility prior to and during the Delivery Term as specified in this Section 10.2.

#### Seller shall conduct an Initial Performance Test at least thirty (30) days prior to the Initial Delivery Date. The Initial Performance Test will be used to determine whether Seller has met the criteria for the Energy Storage Facility to be declared Commercially Operable.

#### During each Contract Year of the Delivery Term, Buyer may request Seller to perform up to six (6) Buyer’s Performance Tests and Seller shall conduct such Performance Test as requested by Buyer in accordance with Section 4.14(b). Buyer’s decision to forgo any such test is not a waiver of Buyer’s right to require any subsequent Performance Test.

### Performance Test Procedures. Each Performance Test will be conducted in general accordance with applicable CAISO requirements and ASME and other applicable test codes, depending on the technology, Products, and Operational Limitations, and in accordance with the procedures set forth in subsections (i) through (vi) below, including additional procedures and protocols related to Performance Testing as mutually agreed between Buyer and Seller (“**Test Procedures**”). Buyer and Seller shall mutually develop Test Procedures for a Performance Test. Seller shall prepare proposed Test Procedures and provide these to Buyer for Buyer’s review and approval at least one hundred and eighty (180) days prior to the Initial Delivery Date. The Parties shall finalize mutually acceptable Test Procedures at least thirty (30) days prior to the Initial Performance Test. Buyer and Seller shall mutually develop any changes to the Test Procedures. Seller shall provide such changes to Test Procedures for Buyer review and approval prior to implementation of such changes.

#### All measurable Product, Charging Energy, and, as applicable, Integral Station Use during the Performance Test will be measured by the Electric Revenue Meter. The operating conditions of the Energy Storage Facility, including the bulk temperature of storage elements and the State of Charge, shall be controlled and measured in the same manner during Performance Tests as during Scheduled Operations, unless otherwise agreed to in the Test Procedures.

#### The Party requesting the Performance Test will specify the Energy Storage Facility attributes that will be tested in each Performance Test, including the Tested Duration Energy, Tested Full Duty Cycle Efficiency and/or other Operational Limitations.

#### Buyer must provide notification of no less than fifteen (15) minutes for a Performance Test. Upon Notice of no less than twenty-four (24) hours, Buyer may have a representative present at the Site, and Buyer may require Seller’s test engineer to be at the Site, at any time during a Performance Test. At Buyer’s request, Seller shall provide all necessary and requested test information to Buyer during the test.

#### Buyer may not request that a Performance Test be conducted during a Scheduled Maintenance Outage, Forced Outage or other Outage, provided that Seller has Notified Buyer of such Outage in accordance with Exhibit E.

#### Following a Performance Test, Seller must deliver the Performance Test results to Buyer no later than thirty (30) days after the completion of the Performance Test. Within ten (10) Business Days of receipt of the Performance Test results, Buyer must respond to Seller to either (A) accept those results or (B) specify the reasons why the results cannot be accepted as submitted. If Buyer does not accept those results, then Seller must provide revised results within ten (10) Business Days (the “**Test Results Cycle**”) following receipt of Notice from Buyer that the results were not accepted. The Parties will continue the Test Results Cycle procedures until the earlier of (A) Buyer acceptance of the Performance Test results or (B) sixty (60) days from the date of completion of the Performance Test.

### Cost Responsibility.

#### Prior to the Delivery Term, Seller shall bear all costs and receive the revenues of operations required prior to the Initial Delivery Date, including for the Initial Performance Test. Seller will arrange and pay for Energy required to charge the Energy Storage Facility and schedule deliveries to the Electrical Delivery Point as needed for the Initial Performance Test and prior to the Initial Delivery Date.

#### During the Delivery Term:

##### Buyer shall accept all Energy produced during a Buyer’s Performance Test as part of Scheduled Operations.

##### Buyer shall provide Charging Energy required to carry out Buyer’s Performance Tests and Seller shall bear all other costs required for Buyer’s Performance Tests.

##### Seller shall bear all costs and receive the revenues of operations required for Seller’s Performance Test, including all CAISO charges, including those related to availability, as applicable. Operations during Seller’s Performance Tests are not Scheduled Operations. Seller shall restore the Energy available for dispatch at the end of Seller’s Performance Test to the same level as was stored in the Energy Storage Facility immediately prior to Seller’s Performance Test, and the Seller’s Performance Test shall not be deemed completed until such amount of Energy has been restored. Seller shall bear all costs and receive the revenues for Energy required to charge and discharge the Energy Storage Facility during Seller’s Performance Tests, including those costs needed to restore the Energy stored in the Energy Storage Facility to the same amount the Energy Storage Facility had prior to the start of Seller’s Performance Test.

### Impact of Performance Tests.

#### The Monthly Contract Capability (“**MCC**”) will be adjusted based on the results of Performance Tests described in Section 4.14 as follows:

##### The adjustment to the MCC will be effective as of the first day of the month following the month in which the Performance Test occurred and will continue in effect until another Performance Test is completed, or the next Contract Year MCC, as set forth in Exhibit C, takes effect.

##### If the Tested Duration Energy divided by the Design Dmax Duration of the Energy Storage Facility is less than ninety-nine percent (99%) of the current Contract Year MCC, as set forth in Exhibit C, the adjusted MCC will equal the Tested Duration Energy divided by the Design Dmax Duration.

##### If the Tested Duration Energy of the Energy Storage Facility divided by the Design Dmax Duration is ninety-nine percent (99%) or more than the current Contract Year MCC, as set forth in Exhibit C, there will be no adjustment to the current Contract Year MCC.

#### If the results of a Performance Test are outside the standards specified within the Test Procedures for such test of any Other Product or Ancillary Service, then Buyer may assess a charge in accordance with the UNAVAILPRODHRS term in the Availability compensation calculation in Exhibit C. Any such reduction in Availability due to UNAVAILPRODHRS will be made on the first day after the Performance Test indicates an operational deficiency and such reduction shall continue until the first day after a Performance Test demonstrates the operational deficiency is remedied.

### Seller’s Performance Tests. Seller may request to perform an additional test (“**Seller’s Performance Test**”) (i) if, as a result of a Performance Test, the Monthly Contract Capability is adjusted downward pursuant to Section 4.14, (ii) upon the completion of Scheduled Maintenance, or (iii) if the results of a Buyer’s Performance Test are outside the standards specified in the Test Procedures. A Seller’s Performance Test shall commence no later than ten (10) Business Days after Buyer’s acceptance of the Buyer’s Performance Test showing the low test results pursuant to either Section 4.14(b)(v) or 4.14(f), or the completion of the Scheduled Maintenance, and shall be performed in accordance with the Test Procedures, except that (A) Seller shall provide Buyer with Notice of its request to test and the proposed starting and end times of the Seller’s Performance Test no later than three (3) Business Days before it commences; (B) Buyer shall evaluate Seller’s proposal and, in its sole discretion, either grant such request or identify two alternative start and stop times from which Seller may elect, and to which Buyer will consent; and (C) Buyer shall schedule the Energy Storage Facility with the CAISO accordingly. The Tested Duration Energy as determined through a Performance Test will be used to determine the Monthly Contract Capability.

### Disputes. If Buyer has met its ten (10) Business Day response deadlines as specified in Section 4.14(b), and if Buyer has not accepted the Performance Test results within sixty (60) days from the date of completion of the Performance Test (“Test Results Deadline”), Buyer has the right to withhold ten percent (10%) of each Monthly Fixed Payment from the next payment due after the Test Results Deadline until Buyer has received and accepted the Performance Test results. Buyer’s acceptance of test results may not be unreasonably withheld or delayed. Once Buyer accepts the Performance Test results, invoices will be adjusted to reflect the revised Monthly Contract Capability retroactive to the date on which the Monthly Contract Capability should have been adjusted, and any overpayments or underpayments, with interest calculated at the Interest Rate, will be settled in accordance with Article 8. Disputes shall be resolved in accordance with Article 16 (Dispute Resolution).

# TAXES

## **Allocation of Taxes and Charges**

. Seller shall pay or cause to be paid all Taxes on or with respect to each Facility or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to 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 Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy 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.

## **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 therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy. With regard to Charging Energy, all Energy delivered by Buyer to Seller hereunder shall be a sale made at wholesale, with Seller eventually reselling such Energy back to Buyer.

# MAINTENANCE OF EACH FACILITY

## **Maintenance of each Facility**

. Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of each Facility and the sale of Product.

## **Maintenance of Health and Safety**

. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of each Facility. If Seller becomes aware of any circumstances relating to each Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of each Facility, or suspending the delivery of Product to Buyer.

# METERING

## **Metering**.

**[Seller may propose one of the following metering configurations:**

Generating Facility and Energy Storage Facility are both Grid-connected.

That is, one (1) Electric Revenue Meter located on the high-voltage side of the Energy Storage Facility’s final step-up transformer AND One (1) Electric Revenue Meter located on the high-voltage side of the Generating Facility’s final step-up transformer.

OR

Hybrid Energy Storage Generating Facility

That is, one (1) Electric Revenue Meter located on the high-voltage side of the final step-up transformer AND two (2) Electric Revenue Meters located on the low-voltage side of the final step-up transformer, one dedicated exclusively to the Generating Facility and one dedicated exclusively to the Energy Storage Facility.

### Generating Facility. The Product must be delivered through an Electric Revenue Meter, authorized by the CAISO, dedicated exclusively to the Generating Facility. All measurable Product must be measured by the Generating Facility’s Electric Revenue Meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Generating Facility. 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 the CAISO the CAISO meter data applicable to the Generating Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Generating Facility, if applicable.

### Energy Storage Facility. The Product must be delivered through an Electric Revenue Meter, authorized by the CAISO, dedicated exclusively to the Energy Storage Facility. All measurable Product must be measured by the Energy Storage Facility’s Electric Revenue Meter to be eligible for payment under this Agreement. The Electric Revenue Meter must measure all Charging Energy and must not measure Station Use, other than Integral Station Use. Seller shall bear all costs relating to all metering equipment installed to accommodate the Energy Storage Facility. 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 the CAISO the CAISO meter data applicable to the Energy Storage Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Energy Storage Facility, if applicable.

## **Meter Verification**

. Annually, if Seller has reason to believe there may be a meter malfunction with either the Generating Facility’s Electric Revenue Meter or the Energy Storage Facility’s Electric Revenue Meter, or upon Buyer’s reasonable request, Seller shall test the specified 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 percent (1%) 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.

## **Real-Time Data Information Systems**.

### Seller Data Delivery. Seller shall deliver data to Buyer through a secure communication link installed and paid for by Seller in order to provide Buyer with access to the following data on a real-time and historical basis, as applicable, for the Generating Facility and Energy Storage Facility;

#### electrical output;

#### Charging Energy for the Energy Storage Facility;

#### auxiliary power consumption;

#### net plant electrical output at each Electric Revenue Meter;

#### if requested by Buyer, meteorological and ambient condition data at the Site relevant to performance;

#### State of Charge data for the Energy Storage Facility as specified by Buyer;

#### additional data as specified by Buyer for commercially reasonable purposes; and

#### Seller shall also provide to Buyer, in a form reasonably acceptable to Buyer, read-only access to measurements collected by the supervisory control and data acquisition (“**SCADA**”) system for each Facility commencing on the start of the Delivery Term.

### Data Delivery Requirements. Buyer will specify (i) the format in which Seller is to provide the data and (ii) the software systems that Seller shall use to deliver data to Buyer hereunder. In addition, Seller shall provide all such data as described in this section to Buyer on a daily basis, in a form acceptable to Buyer, not later than one (1) Business Day after each day of Product delivery, or in the case of daily recorded data disruption, no later than five (5) Business Days after the day of Product delivery. A disruption in real-time data access on key operational parameters (e.g. electrical output, State of Charge) of more than ten (10) minutes will be considered a Forced Outage until such time as the real-time data access is restored. Seller shall maintain at least a minimum of one hundred and twenty (120) days historical data for all data required pursuant to this section. If requested by Buyer, Seller shall provide all data described in this section to Buyer real-time at a refresh rate received no later than one (1) minute in a format acceptable to Buyer and conveyed electronically to a data center designated by Buyer.

# INVOICING AND PAYMENT; CREDIT

## **Invoicing**

. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify delivery of Product by each Facility for any Settlement Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by each Facility as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Product produced and the quantity of Product delivered, and the CAISO prices at the Delivery Point for each Settlement Interval; (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 specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

## **Payment**

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

## **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 applicable Law. Upon fifteen (15) days written Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

## **Payment Adjustments; Billing Errors**

. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

## **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 two (2) 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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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.

## **Netting of Payments**

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

## **Seller’s Development Security**

. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount of ***[$60/kW for Generating Facility plus $90/kW for Energy Storage Facility***] within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller’s failure to achieve the Generating Facility Guaranteed Construction Start Date or the Energy Storage Facility Guaranteed Construction Start Date or both, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. Following the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less any amounts drawn. If the Development Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

## **Seller’s Performance Security**

. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount of [***Buyer to determine amount following credit review***]. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. 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 arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) Business Days to either post cash or deliver a substitute letter of credit that meets the requirements set forth in the definition of Development Security.

# NOTICES

## **Addresses for the Delivery of Notices**

. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

## **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, facsimile, 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; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

# FORCE MAJEURE

## **Definition**.

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

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

### 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 Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of each Facility; (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; (iii) a Curtailment Period; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate each Facility; (v) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on each Facility; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

## **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 with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

## **Notice**

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

## **Termination Following Force Majeure Event**

. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to each Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(c).

# DEFAULTS; REMEDIES; TERMINATION

## **Events of Default**

. An “**Event of Default**” shall mean;

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

#### the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

#### 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;

#### 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, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

#### such Party becomes Bankrupt;

#### such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2; or

#### 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.

### with respect to Seller as the Defaulting Party, the occurrence of any of the following:

#### if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Generating Facility or provided by the Energy Storage Facility;

#### the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date set forth on this Cover Sheet;

#### if, in any consecutive six (6) month period, the Adjusted Energy Production amount for the Generating Facility is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

#### failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement;

#### During the Delivery Term, the Energy Storage Facility’s Availability, measured exclusive of unavailability due to Force Majeure, averages less than seventy percent (70%) over a rolling twelve (12) month period;

#### The Tested Duration Energy divided by the Design Dmax Duration of the Energy Storage Facility is less than eighty percent (80%) of the current Contract Year MCC, as set forth in Exhibit C (for a reason other than Force Majeure), unless Seller is able to demonstrate a Tested Duration Energy divided by the Design Dmax Duration of the Energy Storage Facility in excess of eighty-five percent (85%) of the current Contract Year MCC, as set forth in Exhibit C, within six (6) months of the date on which the Tested Duration Energy divided by the Design Dmax Duration of less than eighty percent (80%) was established;

#### During the Delivery Term, the Energy Storage Facility’s Tested Full Duty Cycle Efficiency is less than ninety percent (90%) of the Design Full Duty Cycle Efficiency, unless Seller is able to demonstrate a Tested Full Duty Cycle Efficiency of ninety percent (90%) or greater within six (6) months of the date on which the Tested Full Duty Cycle Efficiency of less than ninety percent (90%) was established;

#### with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

##### if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

##### the Guarantor becomes Bankrupt;

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

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

##### the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

#### with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

##### the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;

##### the issuer of such Letter of Credit becomes Bankrupt;

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

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

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

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

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

## **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 right (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, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) 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.

## **Termination Payment**

. The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 11.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment 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. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

## **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 Termination Payment and whether 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.

## **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 16.

## **Rights And Remedies Are Cumulative**

. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **Mitigation**

. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

# LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

## **No Consequential Damages**

. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

## **Waiver and Exclusion of Other Damages**

.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 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 TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, 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 CONTEXT 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.

# REPRESENTATIONS AND WARRANTIES; AUTHORITY

## **Seller’s Representations and Warranties**

. As of the Effective Date, Seller represents and warrants as follows:

### Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of **[*state*]**, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

### 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 corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

### 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 applicable 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.

### 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.

### [***Select the applicable representations:***]

[The Generating Facility is located in the State of California, and the Energy Storage Facility is located in the State of California].

[Generating Facility has [firm transmission rights] to a first point of interconnection with a California balancing authority, has a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area or are scheduled from the eligible or are scheduled from the Eligible Renewable Energy Resource into a California balancing authority without substituting electricity from another source].

[Generating Facility has an agreement to dynamically transfer electricity to a California balancing authority.]

## **Buyer’s Representations and Warranties**

. As of the Effective Date, Buyer represents and warrants as follows:

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

### 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.

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

### 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.

### Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

## **General Covenants**

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

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

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

### It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

# ASSIGNMENT

## **General Prohibition on Assignments**

. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

## **Permitted Assignment; Change of Control of Seller**

. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided*, *further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller’s assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller’s assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

## **Change of Control of Buyer**

. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer’s assets or business, whether by merger, acquisition or otherwise without Seller’s prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer’s obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer’s obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer’s assignee has the financial capability to perform all of Buyer’s obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer’s assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, 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 by Seller.

# LENDER ACCOMMODATIONS

## **Granting of Lender Interest**

. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party’s obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party’s interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

## **Rights of Lender**

. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

### Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

### The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party 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 such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney’s fees) incurred by Buyer in connection therewith shall be borne by Seller.

### Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party’s obligations under this Agreement.

## **Cure Rights of Lender**

. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

# DISPUTE RESOLUTION

## **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.

## **Dispute Resolution**

. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

## **Attorneys’ Fees**

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

# INDEMNIFICATION

## **Indemnification**.

### Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

### Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

## **Claims**

. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

### If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

# INSURANCE

## **Insurance**.

### General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars ($1,000,000) per occurrence, and an annual aggregate of not less than two million dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars ($5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

### Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than one million dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar ($1,000,000) policy limit will apply to each employee.

### 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 Law.

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

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

### Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

### Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

### Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer’s remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

# CONFIDENTIAL INFORMATION

## **Definition of Confidential Information**

. The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the 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.

## **Duty to Maintain Confidentiality**

. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient 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. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

## **Irreparable Injury; Remedies**

. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

## **Disclosure to Lender**

. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

# MISCELLANEOUS

## **Entire Agreement; Integration; Exhibits**

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

## **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.

## **No Waiver**

. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

## **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 service provider and energy service recipient, 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 each Facility or any business related to each Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

## **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.

## **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, a non-Party or the FERC acting *sua sponte* 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).

## **Counterparts**

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

## **Facsimile or Electronic Delivery**

. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

## **Binding Effect**

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

## **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 in connection with this Agreement.

**EXHIBIT A-1**

**DESCRIPTION OF GENERATING FACILITY, UNITS AND OPERATIONAL LIMITATIONS**

***[Information required in Exhibit A-1 is based on technology and other Generating Facility specific information. Seller will provide any additional information regarding as-built design to Buyer, provided that Seller may not alter any information set forth in Exhibit A-1 without prior written consent of Buyer]***

GENERATING FACILITY DESCRIPTION

Generating Facility name:

Generating Facility Site name:

Generating Facility physical address:

Total number of units at the Generating Facility (committed and not committed to Buyer):

Number of Units at the Generating Facility committed to Buyer:

Generating Facility Facility elevation:

Generating Facility latitude: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(decimal form)

Generating Facility longitude: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(decimal form)

UNIT(S) DESCRIPTION

Units (for each unit committed to Buyer):

Unit name:

Technology type:

Specific Unit description: ***[Provide detailed Unit(s) description, including the nameplate sizing of key equipment.]***

Interconnection. The Electrical Delivery Point for the Generating Facility is described as follows:

Distribution area (e.g. PG&E, SCE, etc):

Existing zone (e.g. NP-15):

Load zone:

Electrical Delivery Point:

CAISO Resource ID:

Delivery Point address:

Substation:

Additional Information:

***[Provide one line diagram for the Generating Facility. Provide diagram of metering (both CAISO and retail) and interconnection.***

OPERATIONAL CHARACTERISTICS

**Buyer Bid Curtailment and Buyer Curtailment Orders.**

Operational characteristics of the Generating Facility for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Generating Facility to reflect the findings of a CAISO audit of the Generating Facility. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Generating Facility are accurate and are based on the true physical characteristics of the resource.

* Nameplate capacity of the Generating Facility: \_\_\_\_MW
* Minimum operating capacity: \_\_\_\_MW
* Ramp Rate: \_\_\_\_MW/Minute
* Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: 5 Minutes or the Dispatch Interval (as defined in the CAISO Tariff), whichever is shorter.
* Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 5 Minutes.
* No maximum limitations on number of Start-ups.

**Other Requirements:**

* The Generating Facility will have \_\_\_\_ hours annually for Buyer Curtailment Periods.
* The Generating Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
* Start-Up Time (if applicable): \_\_\_\_\_Minutes
* Minimum Run Time after Start-Up (if applicable): \_\_\_\_\_Minutes
* Minimum Down Time after Shut-Down (if applicable):\_\_\_\_\_Minutes
* Other-Specify \_\_\_\_\_\_\_\_\_\_

***Note: Sellers should enter the maximum flexibility the Generating Facility can offer given the operational constraints of the technology***

**EXHIBIT A-2**

**DESCRIPTION OF ENERGY STORAGE FACILITY, UNITS AND OPERATIONAL LIMITATIONS**

***[Information required in Exhibit A-2 is based on technology and other Energy Storage Facility specific information. Seller will provide any additional information regarding as-built design to Buyer, provided that Seller may not alter any information set forth in Exhibit A-2 without prior written consent of Buyer]***

ENERGY STORAGE FACILITY DESCRIPTION

Energy Storage Facility name:

Energy Storage Facility Site name:

Energy Storage Facility physical address:

Total number of units at the Energy Storage Facility (committed and not committed to Buyer):

Number of Units at the Energy Storage Facility committed to Buyer:

Energy Storage Facility elevation:

Energy Storage Facility latitude: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(decimal form)

Energy Storage Facility longitude: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(decimal form)

Integral Station Use Components:

UNIT(S) DESCRIPTION

Units (for each unit committed to Buyer):

Unit name:

Technology type:

Specific Unit description: ***[Provide detailed Unit(s) description, including the nameplate sizing of key equipment, including the inverter.]***

1. DC System Block:
2. AC System Block:
3. Medium Voltage Equipment:

Interconnection. The Electrical Delivery Point for the Energy Storage Facility is described as follows:

Distribution area (e.g. PG&E, SCE, etc):

Existing zone (e.g. NP-15):

Load zone:

Electrical Delivery Point:

CAISO Resource ID:

Delivery Point address:

Substation:

Additional Information:

***[Provide one line diagram for the Energy Storage Facility. Provide diagram of metering (both CAISO and retail) and interconnection.***

***[Provide a description of safety-related systems integral to the safe operation of the Energy Storage Facility or the Site.]***

– **Safety-Related Systems (Preliminary)**

| **System** | **Feature** |
| --- | --- |
| **Battery**  |  |
| **Battery Management System (BMS)** |  |
| **Temperature Control System** |  |
| **Fire Suppression and Alarm System** |  |
| **Power Conversion System (PCS)** |  |
| **Electric System Controls** |  |

OPERATIONAL CHARACTERISTICS

**Discharging and Charging *[100% State of Charge (SOC) is defined as the highest state of charge to which the Energy Storage Facility can be consistently charged without damage beyond expected degradation from normal use. 0% SOC is the lowest state of charge to which the Energy Storage Facility can be consistently discharged without damage beyond expected degradation from normal use. If Seller normally specifies highest and lowest SOC values differently, Seller should normalize minimum and maximum SOC to 0% SOC and 100% SOC, respectively. Seller should also normalize reporting of energy stored such that the amount of energy stored at 0% SOC is 0 MWh and that the energy stored at 100% SOC is fully available for discharge. Seller will provide details on how the State of Charge is to be measured and physically indicated. For each characteristic, list the value that the facility will be designed to have at the start of the Delivery Term.]***

Dmax: MW (Design Dmax)

Dmin: MW

Discharge Duration: (hours) (Design Discharge Duration)

Dmax Duration: (hours) (Design Dmax Duration)

Storage Energy: MWh (Design Storage Energy)

Design Duration Energy: MWh ***[Equals the product of the Design Dmax and Design Dmax Duration]***

Cmax: MW (Design Cmax)

Cmin: MW

Charge Duration: (hours) (Design Charge Duration)

Cmax Duration: (hours) (Design Cmax Duration)

Charging Energy and, as applicable, Integral Station Use: MWh

[Provide a power profile of the Energy Storage Facility across a full duty cycle.]

**System Efficiency**

Full Duty Cycle Efficiency: xx% (Design Full Duty Cycle Efficiency)

***[Delivered Discharge Energy divided by Charging Energy and, as applicable, Integral Station Use, over a Full Duty Cycle Test. This discharge/charge ratio should be exclusive of Station Use, with the exception of Integral Station Use.]***

Standby Self Discharge: kW (per hour)

Standby Integral Station Use: kW

**Ramp Rates**

***[e.g. Describe ramp rates for the Energy Storage Facility . If Energy Storage Facility ramp rates vary based on Energy Storage Facility loading level, please provide a ramp rate for each segment within the operational range in which it differs. If Energy Storage Facility ramp rates vary based on the Product (e.g. Regulation), please provide separately.]***

Dmin to Dmax: MW / sec

Cmin to Cmax: MW/ sec

Dmax to Dmin: MW/ sec

Cmax to Cmin: MW/ sec

**System Response Time**

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

Idle to Dmax:

Idle to Cmax:

Dmax to Cmax:

Cmax to Dmax:

Dmin to Cmin:

Cmin to Dmin:

***[For the purpose of filling out this Exhibit, Discharge (Charge) Start-up Time is the amount of time needed to bring the Energy Storage Facility from non-operation to Dmin (Cmin). If applicable, provide start-up time for each Unit. Provide in seconds if appropriate.]***

Discharge Start-Up time (from notification to Dmin):

Charge Start-Up time (from notification to Cmin):

Discharge Start-up Fuel: \_\_\_ MMBtu

**Starts and other Run Time Limitations**

***[Describe start limitations for the Energy Storage Facility. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s). If possible, Seller shall provide a formula for annual dispatch purposes that provides Buyer more flexibility to operate the Energy Storage Facility.]***

Start limitations:

Run hour limitations:

***[Describe minimum times for the Energy Storage Facility.]***

The Minimum Run Time after a Discharge start is \_\_ minutes for the Energy Storage Facility

The Minimum Run Time after a Charge start is \_\_ minutes

The Minimum Down Time after a shutdown is \_\_ minutes for the Energy Storage Facility

Shutdown time is \_\_\_\_\_\_\_\_\_\_\_.

**Ancillary Services**

Other Capacity Attributes, at ISO conditions, normal efficiency mode:

Spinning Reserves: \_\_\_ MWs; Range: \_\_\_MW to \_\_ MW

Non-Spinning Reserves: \_\_\_ MWs; Range: \_\_\_MW to \_\_ MW

Regulation up: \_\_\_ MWs; Range: \_\_\_MW to \_\_ MW

Regulation down: \_\_\_ MWs; Range: \_\_\_MW to \_\_ MW

Black start capability (if applicable):

Other:

***[Seller must provide CAISO certification (if required) for all Capacity Attributes specified in this section prior to the start of the Delivery Term.]***

**Other Restrictions**:

***[Provide a description of any other operational limitations not covered above, including forbidden operating regions]***

**MWh Limitations**:

***[Insert applicable cumulative total limitations per Contract Year that are applicable to the Energy Storage Facility during the Delivery Term. Only Scheduled Operations pursuant to Buyer’s Discharge Schedule will apply to limitations.]***

1. Total annual discharge throughput may not exceed \_\_\_\_\_MWh per contract year.

**Degradation**:

Annual Dmax Degradation Rate: \_\_% per Contract Year

Annual Cmax Degradation Rate: \_\_% per Contract Year

Annual Storage Degradation Rate: \_\_% per Contract Year ***[Applies to Storage Energy.]***

Annual Duration Energy Degradation Rate: \_\_% per Contract Year ***[Applies to Degraded Duration Energy.]***

***[Seller can also specify percentage degradation tied to MWh delivered. If degradation is not a fixed percentage per year, Seller should include a table of degraded Dmax, Storage, and/or Degraded Duration Energy, and terms relating to degradation will have to be modified accordingly.]***

Note: Design Duration Energy will not degrade. System will exhibit degradation in both Full Duty Cycle Efficiency and Design Charge Duration, per the terms previously submitted to SVCE as follows:

**Efficiency Degradation Table**

|  |  |
| --- | --- |
| **Delivered Discharge Energy (MWh)1** | **Design Full Duty Cycle Efficiency (%)** |
| 0 – 9,000 | % |
| 9,001 – 18,000 | % |
| 18,001 – 27,000 | % |
| 27,001 – 36,000 | % |
| 36,001 – 45,000 | % |
| >45,000 | % |

1Delivered Discharge Energy is total discharge energy delivered by the Energy Storage Facility (including test energy) beginning at start of the Delivery Term.

**Design Charge Duration Degradation *[Applies to Design Charge Duration.]***

|  |  |
| --- | --- |
| **Delivered Discharge Energy (MWh)1** | **Design Charge Duration (Hours)** |
| 0 – 9,000 |  |
| 9,001 – 18,000 |  |
| 18,001 – 27,000 |  |
| 27,001 – 36,000 |  |
| 36,001 – 45,000 |  |
| >45,000 |  |

1Delivered Discharge Energy is total discharge energy delivered by the Energy Storage Facility (including test energy) beginning at start of the Delivery Term.

**Measurement of Operational Characteristics**:

***[Seller will provide details on how operational characteristics, including State of Charge, are to be measured. Further information on detailed methodology and measurements to be included in the development of the Performance Test Procedures in Exhibit E.]***

Multiple end devices will be used to gather subsystem data (e.g., CT’s, PT’s, temperature probes, etc.), which will then be processed and displayed through the system controller and associated user interface. System available energy and state of charge will be calculated after gathering module and string open-circuit voltages, adjusted for operating current and temperatures, and correlating with the known discharge curve (voltage vs. SOC) for the system.

See above Safety-Related Systems table for additional information.

EXHIBIT B-1

GENERATING FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Generating Facility**.
	1. Seller shall cause construction to begin on the Generating Facility by [***Date***], (as may be extended by the Development Cure Period (defined below), the “**Generating Facility** **Guaranteed Construction Start Date**”). The beginning of construction shall be the execution of Seller’s engineering, procurement and construction contract, Seller’s issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Generating Facility.
	2. If construction does not begin on the Generating Facility by the Generating Facility Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which construction has not begun by the Generating Facility Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller commences construction of the Generating Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B-1.
2. **Commercial Operation of the Generating Facility**. “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained and all conditions to operate the Generating Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) the Seller receives final permission to parallel from the PTO, (iii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer, (iv) Full Capacity Deliverability Status has been assigned by the CAISO, and (v) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement; and (vi) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Generating Facility Commercial Operation Date**” shall be the later of (x) [***Date***] or (y) the date on which Commercial Operation is achieved.
	1. Seller shall cause Commercial Operation for the Generating Facility to occur by [***Date***] (as may be extended by the Development Cure Period (defined below), the “**Generating Facility** **Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.
	2. If Seller achieves Commercial Operation by the Generating Facility Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
	3. If Seller does not achieve Commercial Operation by the Generating Facility Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day the Generating Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Generating Facility Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
3. **Termination for Failure to Achieve Commercial Operation**. If the Generating Facility has not achieved Commercial Operation withinsixty (60**)** days after the Generating Facility Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon written Notice to Seller. For the avoidance of doubt, Buyer may elect to terminate this Agreement, if either the Generating Facility and/or the Energy Storage Facility has not achieved Commercial Operation within sixty (60) days after their respective Guaranteed Commercial Operation Date(s).
4. **Extension of the Guaranteed Dates**. The Generating Facility Guaranteed Construction Start Date and the Generating Facility Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
	1. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Generating Facility and to permit the Seller and Generating Facility to make available and sell Product are not received by [***Date***];
	2. a Force Majeure Event occurs;
	3. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Generating Facility to connect and sell Energy at the Delivery Point by [***Date***]; or
	4. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Generating Facility Guaranteed Commercial Operations Date;

provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred twenty (120) days (“**Development Cure Period**”). For the avoidance of doubt, this Development Cure Period limit on extensions of one hundred twenty (120) days is applicable to both the Generating Facility and Energy Storage Facility.

1. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operations Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to One Hundred Thousand Dollars ($100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
2. **Buyer’s Right to Draw on Generating Facility Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay, Buyer may draw upon the Generating Facility Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT B-2

ENERGY STORAGE FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Energy Storage Facility**.
	1. Seller shall cause construction to begin on the Energy Storage Facility by [***Date***], (as may be extended by the Development Cure Period (defined below), the “**Energy Storage Facility Guaranteed Construction Start Date**”). The beginning of construction shall be the execution of Seller’s engineering, procurement and construction contract, Seller’s issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Energy Storage Facility.
	2. If construction does not begin on the Energy Storage Facility by the Energy Storage Facility Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which construction has not begun by the Energy Storage Facility Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller commences construction of the Energy Storage Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B-2.
2. **Commercial Operation of the Energy Storage Facility**. “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained and all conditions to operate the Energy Storage Facility have been satisfied and complied with in order to accept, sell and transmit Energy, (ii) the Seller receives final permission to parallel from the PTO, (iii) ninety percent (99%) of the Guaranteed Capability has been completed and is ready to deliver Energy to Buyer, (iv) Full Capacity Deliverability Status has been assigned by the CAISO, and (v) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement; and (vi) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Energy Storage Facility Commercial Operation Date**” shall be the later of (x) [*Date*] or (y) the date on which Commercial Operation is achieved.
	1. Seller shall cause Commercial Operation for the Energy Storage Facility to occur by [***Date***] (as may be extended by the Development Cure Period (defined below), the “**Energy Storage Facility** **Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.
	2. If Seller achieves Commercial Operation by the Energy Storage Facility Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
	3. If Seller does not achieve Commercial Operation by the Energy Storage Facility Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day the Energy Storage Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Energy Storage Facility Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
3. **Termination for Failure to Achieve Commercial Operation**. If the Energy Storage Facility has not achieved Commercial Operation withinsixty (60**)** days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon written Notice to Seller. For the avoidance of doubt, Buyer may elect to terminate this Agreement, if either the Generating Facility and/or the Energy Storage Facility has not achieved Commercial Operation within sixty (60) days after their respective Guaranteed Commercial Operation Date(s).
4. **Extension of the Guaranteed Dates**. The Energy Storage Facility Guaranteed Construction Start Date and the Energy Storage Facility Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
	1. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Energy Storage Facility and to permit the Seller and Energy Storage Facility to make available and sell Product are not received by [***Date***];
	2. a Force Majeure Event occurs;
	3. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Energy Storage Facility to connect and sell Energy at the Delivery Point by [***Date***]; or
	4. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Energy Storage Facility Guaranteed Commercial Operations Date;

provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred twenty (120) days (“**Development Cure Period**”). For the avoidance of doubt, this Development Cure Period limit on extensions of one hundred twenty (120) days is applicable to both the Generating Facility and Energy Storage Facility.

1. **Failure to Reach Guaranteed Capability**. If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capability has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operations Date to install additional capability and/or network upgrades such that the Installed Capability is equal to the Guaranteed Capability. In the event that Seller fails to construct the Guaranteed Capability by such date, Seller shall pay “**Capability Damages**” to Buyer, in an amount equal to One Hundred Thousand Dollars ($100,000) for each MW that the Guaranteed Capability exceeds the Installed Capability and the Guaranteed Capability and other applicable portions of the Agreement shall be adjusted accordingly.
2. **Buyer’s Right to Draw on Energy Storage Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay, Buyer may draw upon the Energy Storage Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

CONTRACT PRICE

The Generating Facility Contract Price of the Product shall be:

|  |  |
| --- | --- |
| **Contract Year** | **Contract Price** |
| 1 – [XX] | [$XX.00] |

The Energy Storage Facility Monthly Contract Capability (“**MCC**”), Capability Payment Price (“**CPP**”), and Variable O&M Price (“**VOMP**”) shall be:

| **Contract Year** | **MCC\*** **(Dmax MW)** | **CPP ($/kW-year of MCC)** | **VOMP ($/MWh)** |
| --- | --- | --- | --- |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  |  |  |
| 7 |  |  |  |
| 8 |  |  |  |
| 9 |  |  |  |
| 10 |  |  |  |
| 11 |  |  |  |
| 12 |  |  |  |
| 13 |  |  |  |
| 14 |  |  |  |
| 15 |  |  |  |
| 16 |  |  |  |
| 17 |  |  |  |
| 18 |  |  |  |
| 19 |  |  |  |
| 20 |  |  |  |

*\*MCC should reflect Annual Dmax degradation rates for Contract Years 2-20*

The Energy Storage Facility Monthly Allocation Factor (“**MAF**”) shall be:

|  |  |  |
| --- | --- | --- |
|  | **Month** | **MAF** |
|  | January | 8.34% |
|  | February | 8.34% |
|  | March | 8.33% |
|  | April | 8.33% |
|  | May | 8.33% |
|  | June | 8.33% |
|  | July | 8.33% |
|  | August | 8.33% |
|  | September | 8.33% |
|  | October | 8.33% |
|  | November | 8.34% |
|  | December | 8.34% |

Buyer may Notify Seller of modifications to the MAF above, but must do so at least ninety (90) days prior to start of any Contract Year. Buyer may NOT modify MAF values above such that (1) any individual month has a percentage allocation of less than four percent (4%) or greater than fifteen percent (15%) and (2) Seller would receive less than the full Capability Payment Price in any Contract Year due solely to the modification. The sum of the twelve (12) monthly allocation factors in any calendar year shall equal one hundred percent (100%).

**Energy Storage Facility Availability, Section 3.4(a)(i)**

(a) Availability Adjustment. The Availability Adjustment (“**AA**”) will be applied in calculating the Monthly Fixed Payment in accordance with Section 3.4. See below for formula to calculate Availability. For each month of the Delivery Term, the Availability Adjustment (“AA”) is:

For Summer Months:

If Availability is greater than or equal to 98%, then

AA=100%;

If Availability is less than 98%, but not less than 70%, then

AA = 100% - [(98% - Availability) × 2]; and

If Availability is less than 70% then AA=0

For Non-Summer Months:

If Availability is greater than or equal to 96%, then

AA=100%;

If Availability is less than 96%, but not less than 60%, then

AA = 100% - [(96% - Availability) × 2]; and

If Availability is less than 60%, then AA=0

(b) Calculation of Availability.

(i) Seller shall calculate the availability of the Energy Storage Facility in a given month using the formula set forth below (“**Availability**”):

Availability*m* = [MNTHHRS*m*-MAINTHRS*m*-UNAVAILHRS*m* -UNAVAILPRODHRS*m*]
[MNTHHRS*m*-MAINTHRS*m*]

where:

*m* = relevant month “m” in which Availability is calculated.

MNTHHRS*m* is the total number of hours for the month.

MAINTHRS*m* is the total number of hours that the Energy Storage Facility was unavailable to deliver Delivered Discharge Energy or unable to accept Charging Energy due to Excused Scheduled Maintenance Outages or Force Majeure declared by Seller during the month, provided that the number of MAINTHRS in a month due to Excused Scheduled Maintenance Outages may not exceed the maximum number of hours per year permitted for Excused Scheduled Maintenance Outages pursuant to Section 4.11(e)(ii) and the number of MAINTHRS in a month due to Force Majeure declared by Seller may not exceed the number of Excused Hours available to the Seller at the end of the applicable month. An Excused Scheduled Maintenance Outage or Force Majeure (declared by Seller) that results in partial Outage of the Energy Storage Facility or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the Seller Notifies Buyer of a change in the Energy Storage Facility’s Dmax that results in a reduction in Delivered Discharge Energy by ten percent (10%) for twenty (20) hours due to an Excused Scheduled Maintenance Outage, then the Energy Storage Facility would be deemed unavailable due to an Excused Scheduled Maintenance Outage for two (2) full hours.

UNAVAILHRS*m*, is the total number of hours in which the Energy Storage Facility was unavailable to deliver Delivered Discharge Energy or unable to accept Charging Energy during the month due to (A) a Forced Outage, unless caused by a Force Majeure Event (which Force Majeure Event shall be subject to subsection (C) of this paragraph); (B) an Unexcused Scheduled Maintenance Outage; (C) Force Majeure declared by Seller, but only to the extent the number of hours of Force Majeure exceed the cumulative number of Excused Hours available to the Seller as of the end of the applicable month; (D) an extension of an Excused Scheduled Maintenance Outage from its original Outage schedule that was not Notified to Buyer prior to the timelines specified in Section 4.11; (E) an Outage due to an Exigent Circumstance, unless during a Buyer Remediation Review Period; or ( F) Seller declaring the Energy Storage Facility unavailable, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward MAINTHRS*m*. To the extent the Energy Storage Facility was unavailable in certain hours of the month due to Instructed Operations, Excused Events, or Operational Limitations in Exhibit A-2, such hours will not be included in UNAVAILHRS*m* for such month. An event described in clauses (A) through (F) above that results in partial Outage of the Energy Storage Facility or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

UNAVAILPRODHRS*m* is the total number of hours in which the Energy Storage Facility was unable to provide Product other than Energy due to (A) an event that inhibits the Energy Storage Facility’s ability to provide such other Products but not its ability to deliver Energy; (B) inability of Seller to maintain certification of any such other Product; or (C) Seller declaring the Energy Storage Facility unable to provide such other Product, in whole or in part, for any hour or part of an hour, for any reason other than an event that counts toward MAINTHRS*m* , provided that twenty percent (20%) of the hours during which the Energy Storage Facility was unavailable to provide such other Product shall be counted as unavailable and provided further that an event described in clauses (A) through (C) above that results in partial Outage of the Energy Storage Facility or occurs for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Any hour or partial hour considered unavailable for the purposes of UNAVAILHRS*m* will not also be considered UNAVAILPRODHRS*m*.

(ii) If the Energy Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Energy Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Energy Storage Facility in the Day-Ahead Market, the Energy Storage Facility will be deemed to be available to the extent set forth in the revised Notice. If the Energy Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Energy Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Energy Storage Facility in the Real-Time Market, and the Energy Storage Facility is dispatched in the Real-Time Market, the Energy Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

(iii) The Availability calculation may be subject to audit by Buyer pursuant to the general audit rights.

**Energy Storage Facility Section 3.4(a)(iii) Other Payment Adjustments** .

(1) Forced Outage Compensation. On a monthly basis, Seller shall compensate Buyer for hours in which the Energy Storage Facility experiences a Forced Outage and has a market award or schedule in the Day-Ahead Market or Real-Time Market, as specified below (“**Forced Outage Compensation**”):

(1.1) If (A) the Energy Storage Facility is experiencing a Forced Outage in a given Settlement Interval, (B) there exists a Buyer’s Discharge Schedule in such Settlement Interval, and (C) Imbalance Energy is negative for that Settlement Interval, then:

FOC*i* = (RTP*i* – Awarded Price*i*) × Abs(IE*i*)

where:

FOC*i* is the Forced Outage Compensation in interval *i* within the Forced Outage Evaluation Period;

RTPi is the applicable Real-Time Price for Settlement Interval *i*;

Awarded Price*i* is the Day-Ahead Price or Real-Time Price for Settlement Interval *i* applicable to the market award or schedule,

IE*i* is the Imbalance Energy in Settlement Interval *i*.

(1.2) If (A) the Energy Storage Facility is experiencing a Forced Outage in a given Settlement Interval, (B) there exists a Buyer’s Charging Schedule in such Settlement Interval, and (C) Imbalance Energy is positive for that Settlement Interval, then:

FOC*i* = (Awarded Price*i* – RT Price*i*) × Abs(IE*i*)

where:

FOC*i* is the Forced Outage Compensation in interval *i* within the Forced Outage Evaluation Period;

RTP*i* is the applicable Real-Time Price for Settlement Interval *i*;

Awarded Price*i* is the Day-Ahead Price or applicable Real-Time Price for Settlement Interval *i* applicable to the market award or schedule,

IEi is the Imbalance Energy in Settlement Interval *i*.

(1.3) Seller will not pay Forced Outage Compensation in Settlement Intervals that are not part of a Forced Outage Evaluation Period. On a monthly basis, Buyer shall add the Forced Outage Compensation for all Settlement Intervals within any Forced Outage Evaluation Period in the month to determine the total Forced Outage Compensation due to Buyer from Seller for such month, if any. If the sum of the Forced Outage Compensation for all Settlement Intervals within Forced Outage Evaluation Periods is negative, the Forced Outage Compensation for that month will be zero. In no case will Buyer owe or pay Seller Forced Outage Compensation.

(2) Other Deviation Charges. During the Delivery Term, Seller shall be liable for any costs, charges, or penalties assessed by the CAISO to Buyer in its role as Scheduling Coordinator that are related to the Energy Storage Facility’s failure to provide or dispatch any scheduled or awarded Products other than Energy (“**Other Deviation Charges**”). Invoicing and payment for Other Deviation Charges shall be done pursuant to Article 8 on a monthly basis.

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

[Name], [Title]

[Buyer]

[Address]

[Address]

Fax No: [\_\_\_\_\_\_\_\_\_\_\_]

Phone No: [\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_]

SELLER:

[Name], [Title]

[Seller]

[Address]

[Address]

Fax No: [\_\_\_\_\_\_\_\_\_\_\_]

Phone No: [\_\_\_\_\_\_\_\_\_\_\_]

Email: [\_\_\_\_\_\_\_\_\_\_\_]

EXHIBIT E

Energy Storage Facility

Scheduling, Outage Reporting, Performance Testing Protocol

and

Operating Procedures

To be determined by Buyer and Seller

**EXHIBIT F**

**GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production for the Generating Facility, during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

(A – B) \* (C – D)

where:

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

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

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point,plus (b) $50/MWh

D = the Contract Price for the Performance Measurement Period, in $/MWh

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

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated by assuming that the Generating Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

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

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

**SCHEDULE F-1**

**GENERATING FACILITY EXPECTED ENERGY**

[Average Expected Energy, MWh Per Hour]

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

**EXHIBIT G**

**BUYOUT OPTION**

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term and (iii) the twentieth (20th) Contract Year of the Contract Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase each Facility. If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the Fair Market Value of each Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, the Parties shall mutually agree upon an independent appraiser on or before the date that is sixty (60) days prior to the last day of (i) the tenth (10th) Contract Year of the Contract Term, (ii) the fifteenth (15th) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if applicable. Such appraiser shall determine, at equally shared expense of Buyer and Seller, the fair market value of each Facility as of the date on which the Buyout Payment is to be paid, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of each Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single independent appraiser, each Party shall contract for an independent appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two independent appraisers.

(3) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute all documents necessary to cause title to each Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided*, *however*, that Seller shall remove any encumbrances held by Seller with respect to each Facility.

**EXHIBIT H**

**MILESTONE PROGRESS REPORTING FORM**

Seller shall prepare a written report (this “**Milestone Progress Reporting Form**”) at the end of each calendar quarter prior to start of construction, and at the end of each calendar month after start of construction, on its progress on the Milestones and the development construction, testing and start-up of the Generating Facility and Energy Storage Facility.

Within fifteen (15) days of the end of the applicable period (quarterly or monthly), Seller must (a) complete this Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone Progress Report must include the following items:

**[To be developed by Buyer, and provided to Seller]**

1. Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program. [↑](#footnote-ref-2)