



ENERGY STORAGE AGREEMENT

COVER SHEET

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller:

Description of Facility:

A. Transaction

Product: Storage Capacity, Capacity Attributes, Discharging Energy, Ancillary Services

Guaranteed Installed Capacity: __ MW at __ () hours of continuous discharge [degrading]
[nondegrading]

Contract Price: XX/kW-mo. (flat) with no escalation

Delivery Term:

Anticipated Flexible Capacity: Amount: _____ (MW) Category: _____

Guaranteed Storage Availability: 98%

Guaranteed Round Trip Efficiency Rate: As set forth in Exhibit M

Deliverability: Full Capacity Deliverability Status

RA Guarantee Date: Commercial Operation Date

Maximum Storage Facility Cycles Per Year: 365 + 90 carry forward/year

B. Milestones:

Site Control:

Permitting:

Phase I and II Interconnection study results:

Executed Interconnection Agreement:

Financial Close:

Construction Start:

Mechanical Completion:

Initial Synchronization:

Network Upgrades completed:

Commercial Operation Date:

C. Seller Collateral:

Development Assurance: \$90/kW multiplied by the Guaranteed Storage Capacity.

Performance Assurance: \$105/kW multiplied by the Guaranteed Storage Capacity.

D. Notices

<p>Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF</p>	<p>Seller:</p>
<p>All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Power Contract Administration Phone: Email:</p>	<p>All Notices: Attn: Phone: Email:</p>
<p>Federal Tax ID Number:</p>	<p>Federal Tax ID Number: DUNS Number:</p>
<p>Invoices: Attn: Phone: Email:</p>	<p>Invoices: Attn: Phone: Email:</p>
<p>Scheduling: Attn: Phone: Email:</p>	<p>Scheduling: Attn: Phone: Email:</p>
<p>Payments: Attn: Phone: Email:</p>	<p>Payments: Attn: Phone: Email:</p>
<p>Wire Transfer: BNK: ABA (ACH): ACCT:</p>	<p>Wire Transfer: BNK: ABA: ACCT:</p>
<p>Credit and Collections: Attn: Phone: Email:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Email:</p>	<p>Credit and Collections: Attn: Phone: Email:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Email:</p>

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EXHIBITS

The following Exhibits constitute a part of this Agreement and are incorporated into the Agreement by reference.

EXHIBIT A	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
EXHIBIT B	FACILITY DESCRIPTION AND SITE DRAWINGS
EXHIBIT C	GUARANTEED ANNUAL CAPACITY
EXHIBIT D	INSURANCE COVERAGES
EXHIBIT E	CONSTRUCTION START CERTIFICATION
EXHIBIT F	PROGRESS REPORT
EXHIBIT G-1	COMMERCIAL OPERATION CERTIFICATION
EXHIBIT G-2	INSTALLED CAPACITY CERTIFICATION
EXHIBIT H-1	FORM OF LETTER OF CREDIT
EXHIBIT H-2	FORM OF SIGHT DRAFT
EXHIBIT I	FORM OF REPLACEMENT RA NOTICE
EXHIBIT J	OPERATING PARAMETERS
EXHIBIT K	STORAGE CAPACITY TESTS
EXHIBIT L	AVAILABILITY GUARANTEE
EXHIBIT M	ROUND TRIP EFFICIENCY GUARANTEE

ENERGY STORAGE AGREEMENT

This Energy Storage (“Agreement”) is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) and _____, a _____ (“Seller”), as of _____ (the “Execution Date”). The Agreement shall include the exhibits, attachments, any written and fully executed supplements hereto, and any designated collateral, credit support, or similar arrangement between the Parties.

RECITALS

1. Seller intends to develop, finance, build, own, and operate a [technology type] storage facility, located in _____, California; and,
2. Buyer operates CleanPowerSF, a community choice aggregator that serves retail customers in the City and County of San Francisco; and,
3. Buyer is willing to purchase, and Seller is willing to sell, the Product of the Facility, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

AC: Alternating current.

Affiliate: With respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

Agreement: Has the meaning set forth in the preamble.

Ancillary Services: Means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Parameters, as each is defined in the CAISO Tariff.

Applicable Laws: Any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including the CAISO, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

Availability Adjustment: Has the meaning set forth in Exhibit L.

Availability Excused Event: Has the meaning set forth in Exhibit L.

Availability Notice: Has the meaning set forth in Section 5.8(b).

Availability Standards: Has the meaning set forth in the CAISO Tariff.

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

Bankrupt: With respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (b) has any such petition filed or commenced against it and such case filed against it is not dismissed within sixty (60) calendar 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.

Board of Supervisors: The Board of Supervisors for the City and County of San Francisco.

Business Day: Any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday, between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF.

Buyer Dispatched Test: Has the meaning set forth in Section 5.4(c).

Buyer Indemnified Party: Has the meaning set forth in Section 9.1.

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Certification: Means the certification and testing requirements for an energy storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

CAISO Charges Invoice: Has the meaning set forth in Section 5.6(c).

CAISO Dispatch: Any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through Automated Dispatch System, Automatic Generation Control (as those terms are defined in the CAISO Tariff) or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, Business Practice Manuals (BPMs), and Operating Procedures, as may be amended, supplemented or replaced (in whole or in part) from time to time.

Capacity Attributes: Any current or future defined characteristic (including the ability to store, charge, or discharge energy at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, locational, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to store, charge, or discharge energy, including Resource Adequacy Benefits, any accounting construct, or any other measure by the CPUC, the CAISO, the FERC, or any other Governmental Authority with jurisdiction, including Resource Adequacy Benefits.

Capacity Damages: Has the meaning set forth in Section 5.3(j).

Capacity Procurement Mechanism (CPM) Soft Offer Cap: Has the meaning set forth in the CAISO Tariff.

CEQA: The California Environmental Quality Act, California Public Resources Code Sections 21000, et. seq., as it may be amended from time to time.

Change in Law: Has the meaning set forth in Section 11.5(f).

Charging Energy: The Energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter, as adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Facility.

Charging Notice: The operating instruction and any subsequent updates given by Buyer, Buyer's SC, or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh.

City: The City and County of San Francisco.

CleanPowerSF: Buyer's community choice aggregation program.

Commercial Operation: The condition of the Facility existing when Seller has fulfilled all of the conditions set forth in Section 2.2(b)(ii) and Seller has provided notice to Buyer in the form of the Commercial Operation Certification set forth in Exhibit G-1.

Commercial Operation Certification: Seller's certification of Commercial Operation for the Facility in the form set forth as Exhibit G-1, executed by a Licensed Professional Engineer.

Commercial Operation Date or COD: The date upon which Commercial Operation is achieved as specified in the Commercial Operation Certification.

Commercial Operation Date or COD Delay Damages: An amount equal to the Development Assurance divided by sixty (60).

Compliance Cost Cap: Has the meaning set forth in Section 3.8.

Compliance Costs: Has the meaning set forth in Section 3.8(a).

Confidential Information: Has the meaning set forth in Section 11.2(b).

Construction Start: Has the meaning set forth in Section 5.3(a)(i).

Construction Start Date: Has the meaning set forth in Exhibit E.

Construction Start Delay Damages: An amount equal to the total amount of Development Assurance divided by one hundred twenty (120).

Contract Price: Has the meaning set forth in Section 3.2.

Contract Year: A period of twelve (12) consecutive months, commencing at 12:00 a.m. on the COD, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the COD.

Controller: The Controller for the City and County of San Francisco.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement, and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

Cover Sheet: The cover sheet to this Agreement.

CPUC: The California Public Utilities Commission or any successor entity.

CPUC System RA Penalty: The CPUC-adopted penalty imposed on load serving entities for system RA deficiencies as that penalty may be updated or revised from time to time.

Credit Rating: 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 unsecured senior long-term debt, then the rating assigned to such entity as an issuer rating by Standard & Poor's Financial Services and/or Moody's Investors Service. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

Curtailed Order: An order, direction, alert, or notice of the CAISO, the Transmission Provider (whether directly or through a Scheduling Coordinator or the Transmission Provider) to curtail deliveries of Discharging Energy, for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could

jeopardize the CAISO's or Transmission Provider's electric system integrity or the integrity of other systems to which the CAISO or the PTO is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider.

Damage Payment: The amount to be paid by the Defaulting Party to the Non-defaulting Party in the event of a termination of this Agreement prior to the COD and as calculated pursuant to Section 8.2(b).

Day-Ahead Market or DAM: Has the meaning set forth in the CAISO Tariff.

Defaulting Party: The Party that has caused an Event of Default.

Delivery Point: _____

Delivery Term: Has the meaning set forth in Section 2.2(b)(i).

Development Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a)(i) of this Agreement.

Discharging Energy: All Energy discharged from the Facility to the Delivery Point as measured by the Facility Meter, as adjusted by the CAISO for Electrical Losses and Station Uses.

Discharging Notice: An operating instruction, and any subsequent updates, given by Buyer, Buyer's SC, or the CAISO to the Facility, directing the Facility discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh.

Dispatch Notice: Any Charging Notice, Discharging Notice and any subsequent updates, given by the CAISO, Buyer, or Buyer's SC, to Seller directing the Facility to charge Charging Energy or to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level; provided, any such operating instruction or updates shall be in accordance with the Operating Parameters.

Dispatch Instruction: Has the meaning set forth in the CAISO Tariff.

Early Termination Date: Has the meaning set forth in Section 8.2(a)(i).

Economic Losses: 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 the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, and subject to Sections 8.2(c) and 8.3. Factors used in determining the loss of economic benefit may include reference to information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including Environmental Attributes and Capacity Attributes. The Non-Defaulting Party shall not be required to enter into replacement transactions to establish Economic Losses. Economic Losses shall exclude any (1) associated loss of investment tax credits and other lost tax benefits and (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations, and (3) consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

Effective Date: The date on which all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties.

Effective Flexible Capacity or EFC: The effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff.

Effective FCDS Date: The date identified in Seller's notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

Electric System Upgrades: Any Network Upgrades, distribution upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Transmission Provider, as applicable, to physically and electrically interconnect the Facility to the Transmission Provider's electric system for receipt of Energy at the Point of Interconnection.

Electrical Losses: All transmission or transformation losses between the Facility and the Delivery Point associated with delivery of Charging Energy and Discharging Energy.

Eligible LC Bank: A U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A3 with an outlook designation of "stable" from Moody's or A- with an outlook designation of "stable" from S&P.

Energy: Three-phase, 60 cycle alternating current electric energy measured in kilowatt hours or megawatt hours. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Term.

Environmental Attributes: Any and all credits, benefits, offsets, emissions reductions, certificates, allowances, or any other attribute applicable to the Facility and related to the generation of electricity that is created by a Governmental Authority with jurisdiction during the Term.

Environmental Costs: Means all costs, taxes, charges, and fees pertaining to, or incurred in connection with: acquiring and maintaining all environmental permits and licenses for the Facility and the Product; the Product's and Facility's compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility; all operating and maintenance costs for operation of pollution mitigation or control equipment; all costs of permit maintenance fees and emission fees as applicable; the costs of all emission reduction credits or marketable emission trading credits; any costs related to greenhouse gas emissions, required by any applicable environmental laws, rules, regulations, and Permits to operate; costs associated with the storage, use, disposal, transportation, and clean-up of Hazardous Substances introduced to the Site, and; the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of energy storage projects.

Event of Default: Has the meaning set forth in Section 8.1.

Excess Storage Capacity: Has the meaning set forth in Section 3.2(c).

Execution Date: Has the meaning set forth in the preamble.

Extended Delivery Term: Has the meaning set forth in Section 2.3.

Facility: The energy storage facility, interconnection facilities, and associated facilities and equipment for the storage and delivery of Energy, to be constructed, owned, and operated by Seller on the Site and as described in the Cover Sheet and Exhibit B.

Facility Meter: The CAISO-approved bi-directional revenue quality meter or meters dedicated solely to the Facility, along with a CAISO-approved compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility and the amount of Discharging Energy delivered to the Delivery Point. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

FERC: The Federal Energy Regulatory Commission and any successor organization.

Fifteen Minute Market or FMM: Has the meaning set forth in the CAISO Tariff.

Financial Close: Seller and/or one of its Affiliates has obtained debt and/or equity financial commitments from one or more Lenders or Seller's owners sufficient to construct the Facility.

Fiscal Year: The period commencing on July 1 and ending on June 30 in the following calendar year.

Flexible Capacity: Means, with respect to any particular Showing Month, the number of MWh of Product which are eligible to satisfy Flexible RAR.

Flexible RAR: Means the flexible capacity requirements for load-serving entities as set forth in the CAISO Tariff and the Resource Adequacy Rulings.

Force Majeure Event: An event or circumstance, including without limitation, a natural disaster, war, riot, act of terrorism, sabotage, destruction by a third party, or civil disturbance, which prevents one Party ("Claiming Party") from performing all or a portion of its material obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of (whether direct or indirect), or the result of the action or inaction of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Neither Party may raise a claim of Force Majeure based in whole or in part on;

- (a) failures or delays by the Transmission Provider and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, including a failure to complete, or a delay in completing, interconnection or Electric System Upgrades by the Commercial Operation Date except to the extent that such delay is solely caused by a Force Majeure Event;
- (b) a strike, work stoppage, or labor dispute;
- (c) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (d) Seller's inability to obtain Permits of any type, except where such failure is solely caused by a Force Majeure Event;
- (e) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event;
- (f) any equipment failure, except to the extent such failure is caused by a Force Majeure Event;
- (g) a Forced Outage except to the extent such Forced Outage is caused by a Force Majeure Event;
- (h) a Curtailment Order, except to the extent that such Curtailment Order is caused by a Force Majeure Event; or
- (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs), including Buyer's ability to buy Product at a lower price, or Seller's ability to sell Product at a higher price.

Forced Labor: Has the meaning set forth in Section 5.1(g).

Forced Outage: Any unplanned reduction or suspension of the operation of the Facility or unavailability of the Product in whole or in part in response to a mechanical, electrical, or equipment malfunction and any other unavailability of the Facility, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS Finding: A written or electronic confirmation from the CAISO that the Facility has received FCDS.

Full Cycle: The quantity of Discharging Energy equal to the then effective Storage Contract Capacity multiplied by XXX (X) hours and expressed in MWh.

Gains: 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 the Agreement for the remainder of the Term, determined in a commercially reasonable manner, and subject to Sections 8.2(c) and 8.3. Factors used in determining economic benefit may include information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the CAISO.

Guaranteed Annual Capacity: For each Contract Year of the Delivery Term, the capacity of the Facility as set forth in Exhibit C.

Guaranteed Commercial Operation Date: Has the meaning set forth on the Cover Sheet.

Guaranteed Construction Start Date: Has the meaning set forth on the Cover Sheet.

Guaranteed Installed Capacity: Has the meaning set forth in the Cover Sheet.

Guaranteed Round Trip Efficiency or GRTE Rate: Has the meaning set forth in Exhibit M.

Guaranteed Storage Availability: Has the meaning set forth in Section 3.6(a)(i).

Hazardous Substance: (a) any chemical, material or substance that is listed or regulated under Applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance for which exposure to or release of such substance is prohibited, limited, or regulated by Applicable Laws.

Indemnified Party: Has the meaning set forth in Section 9.2.

Indemnifying Party: Has the meaning set forth in Section 9.2.

Initial Synchronization: The initial delivery of Discharging Energy to the Delivery Point.

Installed Capacity: The maximum dependable operating capability to discharge Energy that can be sustained for XX (X) consecutive hours that achieves Commercial Operation as measured by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, as determined by a Storage Capacity Test and as set forth in the Installed Capacity Certificate substantially in the form set forth in Exhibit G-2.

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the Transmission Provider, and the CAISO governing the terms and conditions of the Facility’s interconnection with the CAISO grid, including any description of the plan for interconnection of the Facility to the Transmission Provider’s system.

Interconnection Facilities: The interconnection facilities, control and protective devices and metering facilities required to connect the Facility to the transmission system as set forth in the Interconnection Agreement.

Investment Grade: A Credit Rating of “Baa3” or better from Moody’s or “BBB-” or better from S&P.

ITC: The investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

kW: Kilowatt.

LAR Attributes: Means any and all resource adequacy attributes (or other location attributes related to system reliability) of the Facility, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward a load serving entity's LAR.

Late Payment Fee: Has the meaning set forth in Section 4.1(b).

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Facility, (b) the term or permanent financing of the Facility, or (c) working capital or other ordinary business requirements for the Facility. "Lender(s)" shall not include any trade creditor(s) of Seller.

Letter of Credit or LC: An irrevocable, non-transferable standby letter of credit issued by an Eligible LC Bank in a form that is substantially similar to the form contained in Exhibit J. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Licensed Professional Engineer: A third-party acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

Local Area Requirements or LAR: Means the local area reliability requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, by CAISO pursuant to the Tariff, or by other Governmental Authority having jurisdiction. LAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

Market Results Interface-Settlements: Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

Master File: Has the meaning set forth in the CAISO Tariff.

Mechanical Completion: The condition of the Facility existing when (i) all components and systems of the Facility have been properly constructed, installed and functionally tested according to Seller's EPC contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Applicable Laws; (ii) the Facility is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC contract.

Milestones: The key development activities required for the construction and operation of the Facility, as set forth more particularly in Section 5.2(a).

Monthly Payment: Has the meaning set forth in Section 4.1(a)(i).

Monthly Storage Availability: Has the meaning set forth in Exhibit L.

Monthly Forecast: Has the meaning set forth in Section 5.8(a).

Moody's: Moody's Investors Service, Inc.

MW: Megawatt.

MWh: Megawatt hour.

NERC: The North American Electric Reliability Corporation or a successor organization.

Net Qualifying Capacity or NQC: Has the meaning set forth in the CAISO Tariff.

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 8.2(a).

Non-Operating Periods: Has the meaning set forth in Exhibit J.

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Facility without any delay or waiting periods.

Operating Parameters: Means the criteria for operating the Storage Facility set forth in Exhibit J.

Outage Schedule: Has the meaning set forth in Section 5.9(a)(i).

Partial Cycle: Has the meaning set forth in Exhibit J.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(b) of this Agreement.

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility, including any such permits or approvals required under CEQA or the National Environmental Policy Act, 42 U.S.C. Sections 4321 et. seq.

Permitted Extensions: Has the meaning set forth in Section 5.3(c).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: The removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the production level of the Facility to be reduced by at least ten percent (10%) of the Storage Contract Capacity.

PMax: Means the applicable CAISO-certified maximum operating level of the Facility.

PMin: Means the applicable CAISO-certified minimum operating level of the Facility.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection or POI: The point on the electrical system where the Facility is physically interconnected with the Transmission Provider's system as further described in the Interconnection Agreement.

Product: Means Installed Capacity, Capacity Attributes, Ancillary Services, Discharging Energy, and any and all other reliability, power, environmental, or other products which may be produced by or are related to the Facility.

Progress Report: A report containing the information set forth in Exhibit F.

Prudent Operating Practice: Means (a) the applicable practices, methods and acts required by or consistent with Applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities and co-located storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather

to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities and co-located storage facilities in the Western United States. Prudent Operating Practice includes compliance with Applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

Public Records Laws: The California Public Records Act, California Government Code Sections 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, the Ralph M. Brown Act, California Government Code Sections 54950, et seq., and any other Applicable Law regarding public records as may be amended from time to time.

Qualifying Capacity: Has the meaning set forth in the CAISO Tariff.

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

RA Deficiency Amount: The liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(d)(i).

RA Guarantee Date: The date by which the Facility is expected to achieve Full Capacity Deliverability Status, which is the Commercial Operation Date.

RA Shortfall Month: Any month, commencing on the RA Guarantee Date, during which (a) the Facility has not achieved FCDS or IDS, or (b) the Net Qualifying Capacity of the Facility for such month was either (i) not published by the Notification Deadline, or (ii) was less than the Qualifying Capacity of the Facility for such month.

RA Shortfall: Has the meaning set forth in Section 3.3(d)(i).

Real-Time Market or RTM: Has the meaning set forth in the CAISO Tariff.

Reliability Coordinator: Has the meaning set forth in the CAISO Tariff.

Replacement RA: Resource Adequacy provided by Seller to Buyer from a facility other than the Facility pursuant to Section 3.3(d)(ii) which has the same flexible attributes and local, zonal, or other locational attributes associated with the Facility.

Resource Adequacy Benefits: The rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

Resource Adequacy Requirements or RAR: The resource adequacy capacity requirements for load serving entities, including LAR and Flexible RAR, established by the Resource Adequacy Rulings.

Resource Adequacy Rulings: The CPUC's existing or subsequent decisions, resolutions, or rulings addressing resource adequacy issues, or any other resource adequacy laws, rules, or regulations enacted, adopted or promulgated by any other Governmental Authority with jurisdiction, as those decisions, resolutions, rulings, laws, rules, or regulations may be amended or modified from time-to-time.

Round Trip Efficiency or RTE Rate: Means the ratio of the amount of Energy that is discharged from the Facility compared to the amount of Energy that is used to charge the Facility as calculated in accordance with Exhibit M.

Round Trip Efficiency or RTE Adjustment Factor: Has the meaning set forth in Exhibit M.

Schedule: Has the meaning set forth in the CAISO Tariff.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Self-Schedule: Has the meaning set forth in the CAISO Tariff.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Initiated Test: Has the meaning set forth in Section 5.4(c).

Settlement Interval: Has the meaning set forth in the CAISO Tariff.

SFPUC: The San Francisco Public Utilities Commission.

Showing Month: The calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff.

Site: The location of the Facility as described on Exhibit B.

Standard & Poor's or S&P: Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global, limited liability company).

State of Charge or SOC: The ratio of the (a) amount of Energy stored in the Facility and available for discharging relative to (b) the Storage Contract Capacity multiplied by [XX (X)] hours, expressed as a percentage.

Station Uses: The Energy used within the Facility to power the lights, motors, control systems, temperature control systems, and other electrical loads that are necessary for the operation of the Facility. Station Uses shall not be served from the Facility, Charging Energy, or Discharging Energy.

Storage Capacity Test or SCT: Any test or retest of the capacity of the Facility conducted in accordance with the testing procedures, requirements, and protocols set forth in Section 5.4 and Exhibit K.

Storage Contract Capacity: The maximum dependable operating capacity of the Facility as measured in MW at the Delivery Point, initially equal to the Guaranteed Installed Capacity, as adjusted from time to time pursuant to Section 5.4 and Exhibit K to reflect the results of the most recently performed Storage Capacity Test.

Stored Energy Level: The amount of Energy in the Facility that is available for discharge as Discharged Energy.

Supplementary Storage Test Protocol: Has the meaning set forth in Exhibit K.

System Emergency: Has the meaning set forth in the CAISO Tariff.

Tax Credit: Any state, local, and/or federal production tax credit, depreciation benefit, tax deduction, and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities.

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

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: With respect to the Non-Defaulting Party, the sum of (a) the Economic Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Sections 8.2(c) and 8.3, provided that if such amount is negative, then the amount determined pursuant to this clause (a) of the definition of Termination Payment will be deemed to be zero dollars (\$0), plus (b) the net of all amounts then owed to the Non-Defaulting Party by the Defaulting Party, or to the Defaulting Party by the Non-Defaulting Party, determined as of the Early Termination Date.

Transmission Provider: Any entity or entities that owns, operates and maintains transmission or distribution lines and associated facilities used for the purpose of transmitting Energy from the Facility to or from the Delivery Point.

WECC: The Western Electricity Coordinating Council or successor agency.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent to Term of Agreement

- (a) Conditions Precedent. The Term of this Agreement shall not commence until the occurrence of all of the following:
 - (i) Buyer receives from Seller the conditions precedent documentation listed in Part I of Exhibit A; and
 - (ii) Buyer receives from Seller the Development Assurance;
 - (iii) Buyer receives all necessary approvals from the SFPUC and/or Board of Supervisors; and
 - (iv) The Controller has certified in accordance with the City's Charter that sufficient unencumbered balances are available in the proper fund.
- (b) Effective Date. The Effective Date of this Agreement shall be the date that all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties. Buyer will notify Seller promptly in writing when the condition in Section 2.1(a)(i) has been met.
- (c) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Section 2.1(a) are not satisfied or waived in writing by both Parties within ninety (90) days of full execution of this Agreement, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, as a result of such termination and Buyer shall return all Development Assurance to Seller.

2.2 Term, Delivery Term, and Extension

- (a) Term. The term of this Agreement shall commence, and this Agreement shall be effective, upon the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall continue until the conclusion of the Delivery Term subject to Section 11.5(w). unless earlier terminated pursuant to an express provision of this Agreement ("Term").
- (b) Delivery Term.
 - (i) The delivery term shall commence on the Commercial Operation Date and continue for _____ years ("Delivery Term"), unless terminated as provided by the terms of this Agreement.
 - (ii) The Delivery Term shall not commence until Seller completed to Buyer's reasonable satisfaction each of the following conditions:
 - (A) Seller has delivered to Buyer the Commercial Operation Certification in substantially the form set forth at Exhibit G-1, the Installed Capacity Certification in substantially the form set forth in Exhibit G-2, and a SCT test report for the pre-COD Storage Capacity Test as specified in Exhibit K;

- (B) equipment for the Facility with a capacity of no less than ninety-five percent (95%) and no more than one hundred percent (100%) of the Guaranteed Installed Capacity has been installed;
 - (C) the Facility has successfully completed all testing required by Prudent Operating Practice and any applicable requirement to operate the Facility;
 - (D) Seller has secured and maintained in full force and effect all necessary approvals, authorizations, and permits from CAISO and any other Governmental Authority with jurisdiction to enable Seller to operate the Facility and deliver Product to Buyer and satisfied all conditions thereof that are capable of being satisfied on the COD;
 - (E) Seller has obtained CAISO Certification for the Facility;
 - (F) Seller has delivered to Buyer a fully executed Interconnection Agreement between Seller and the Transmission Provider for the Facility, which agreement shall be in full force and effect;
 - (G) Seller has delivered to Buyer a fully executed Participating Generator Agreement and Meter Services Agreement between Seller and the CAISO for the Facility, which agreements shall be in full force and effect;
 - (H) Seller has taken all actions and executed all documents required to authorize Buyer or its designee to act as Scheduling Coordinator for the Facility and Buyer or its designee is authorized to act as SC;
 - (I) Seller has demonstrated satisfaction of all requirements under this Agreement that commence prior to or as of the Delivery Term, including payment of all amounts owed to Buyer under this Agreement, if any; and
 - (J) Seller has delivered Performance Assurance to Buyer.
- (c) The Parties agree that, in order for Buyer to dispatch the Facility as of the Commercial Operation Date, the Parties must perform certain of their Delivery Term obligations in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility as of the Commercial Operation Date.

2.3 Extended Delivery Term and Purchase Option. At its sole discretion, Buyer may provide notice to Seller no later than twenty-four (24) months prior to the end of the Delivery Term of its intent to (i) extend the Delivery Term (“Extended Delivery Term”), or (ii) purchase the Facility. Buyer and Seller shall promptly enter into good faith negotiations on the price and other terms that will apply to any Extended Delivery Term or Facility purchase and sale. If the Parties have not reached agreement on such price and other terms within ninety (90) days after delivery of Buyer’s notice under this Section 2.3 in the case of an Extended Delivery Term, or one-hundred and twenty (120) days in the case of a purchase and sale of the Facility, then neither Party shall have any further obligation to negotiate for an Extended Delivery Term or purchase and sale. Upon termination of the negotiations under this Section 2.3, Seller may enter into negotiations and definitive agreements with one or more third parties for the sale of the Product, the Facility, or any component thereof with respect to the period occurring after the end of the Delivery Term.

ARTICLE 3: PURCHASE AND SALE OF PRODUCT

3.1 Purchase and Sale. During the Delivery Term, subject to the terms and conditions of this Agreement, Buyer will purchase all of the Product produced by or associated with the Facility and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility.

- (a) Exclusive Right. Buyer shall have the exclusive right to all Product associated with the Facility, except for Discharging Energy associated with a Seller Initiated Test. Buyer shall have the exclusive right to use, market, or resell the Product and the right to all revenues generated from the use, resale, or remarketing of the Product. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to facilitate a resale of Product by Buyer and to allow subsequent purchasers to use such resold Product. If Buyer incurs any liability to a subsequent purchaser due to the failure of Seller to comply with this Section 3.1, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.
- (b) No Substitution. Except as otherwise set forth in this Agreement, Seller shall not substitute or purchase any Product from any other resource, nor shall Seller sell, assign or otherwise transfer any Product to any third party.
- (c) Title to Product. Commencing on the Commercial Operation Date through the end of the Delivery Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of and title to the Product at the Delivery Point in accordance with the terms of this Agreement. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any other interest created by any Person other than Buyer. Subject to Section 5.6(b) Seller shall be responsible for paying or satisfying when due any costs, fees, Taxes, assessments, or charges imposed on or associated with the Product or the delivery of Discharging Energy to the Delivery Point and Buyer shall be responsible for all costs, fees, Taxes, assessments, or charges imposed on or associated with the purchase and delivery of Charging Energy, purchase of Product, and delivery of Discharging Energy at and after 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, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other Party for such Taxes.

3.2 Contract Price. Buyer shall pay Seller _____ per kw-month (\$---/kW-mo) multiplied by the Storage Contract Capacity, as adjusted pursuant to Sections 3.2 and 3.6, for the Product ("Contract Price"). The Contract Price shall be the total compensation owed by Buyer for the Product, adjusted as follows:

- (a) Storage ITC. If, prior to the commencement of Commercial Operation, federal investment tax credit legislation is enacted that either (i) applies the ITC in its current form to the Facility, or (ii) extends federal Tax Credits associated with capital investment in the construction of energy storage facilities or equipment used to store energy for which Seller, as the owner of the Facility, is eligible, Seller shall provide notice to Buyer of the effective date of such legislation and the Contract Price shall be reduced by a percentage reduction that is equal to or commensurate with the value of the Tax Credit that is applicable to the owner of the Facility.
- (b) Non-availability of Product. Notwithstanding any other provision of this Agreement, Buyer's obligation to make payment for Product shall be excused during the pendency of (i) a Force Majeure event, (ii) a Curtailment Period, or (iii) a period of Buyer suspension due to a Seller Default pursuant to Article 8. In addition, Buyer has no obligation to purchase from Seller any Product for which the associated Discharging Energy is not or cannot be delivered to the Delivery Point as a result of a total or partial outage of the Facility.
- (c) Excess Storage Capacity. **[FOR DEGRADING CAPACITY FACILITIES ONLY]** Buyer has the right, but not the obligation, to purchase Storage Contract Capacity in excess of one hundred ten percent (110%) of the Guaranteed Annual Capacity set forth in Exhibit C for the then-current Contract Year ("Excess Storage Capacity"). Buyer shall pay Seller

seventy-five percent (75%) of the Contract Price for Excess Storage Capacity. If an annual Storage Capacity Test demonstrates Excess Storage Capacity, Buyer shall notify Seller within thirty (30) days after the completion of the Storage Capacity Test of its intent to purchase or not to purchase the Excess Storage Capacity. Such Buyer election shall only apply in the then-current Contract Year.

3.3 Capacity Attributes and Resource Adequacy. Throughout the Delivery Term, Seller grants, pledges, assigns, and otherwise commits to Buyer all of the Installed Capacity, including the Capacity Attributes, from the Facility for any purpose, including to enable Buyer to meet its Resource Adequacy Requirements or successor program requirements as the CPUC, CAISO, and/or other Governmental Authority may prescribe.

- (a) Full Capacity Deliverability Status. Seller shall be solely responsible for and take all necessary actions to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date and to maintain FCDS throughout the Delivery Term.
- (b) Resource Adequacy. From the Execution Date and throughout the Delivery Term, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use or resell all of the Resource Adequacy Benefits committed to Buyer under this Agreement.
- (c) NQC. Seller shall take all commercially reasonable actions as necessary for Buyer to obtain and maintain an NQC value that is equal to the Qualifying Capacity for the Facility.
- (d) Resource Adequacy Guarantee. For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.
 - (i) For any RA Shortfall Month, Seller shall pay liquidated damages to Buyer in an amount equal to the product of (A) the Qualifying Capacity minus the NQC, as the NQC may be adjusted by the CAISO to reflect the CAISO's capacity evaluations of the Facility (including for Forced Outages), for the RA Shortfall Month ("RA Shortfall"), multiplied by (B) the sum of (1) the CPM Soft Offer Cap, or any successor value adopted or implemented by the CAISO for procurement of backstop capacity resources and (2) the applicable CPUC System RA Penalty, or any successor value adopted or implemented by the CPUC and imposed on load-serving entities for RA deficiencies ("RA Deficiency Amount"). If a RA Shortfall Month occurs during the period between the COD and the Effective FCDS Date, for the purpose of this Section 3.3(d)(i), the Qualifying Capacity shall be the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect, provided, the amount shall be deemed to be zero (0) if the NQC has not been published by the CAISO by the Notification Deadline for the RA Shortfall Month.
 - (ii) Seller may offer to provide Replacement RA to Buyer in the amount of the Qualifying Capacity of the Facility minus the Net Qualifying Capacity for the applicable RA Shortfall Month. Seller shall provide notice to Buyer of the offer of Replacement RA substantially in the form of Exhibit J at least ninety (90) days prior to the applicable Showing Month for the purpose of monthly RAR reporting. Buyer may elect to accept some or all of the Replacement RA by providing notice to Seller of its election within fifteen (15) days of Seller's offer. If Buyer does not elect to accept all or some of the Replacement RA, Seller shall pay the RA Deficiency Amount for the RA Shortfall minus the Replacement RA provided to Buyer, if any, for the RA Shortfall Month.

- (iii) If within ten (10) Business Days of the end of a RA Shortfall Month, Seller does not either provide an offer to Buyer to provide Replacement RA or deliver payment of the RA Deficiency Amount to Buyer, Buyer shall be entitled to collect the RA Deficiency Amount by electing, in its sole discretion, one or more of the following, (1) to draw upon the Performance Assurance; and/or (2) netting under Section 4.1(c).

3.4 Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services from, or associated with, the Facility.

3.5 Environmental Attributes. Buyer shall have the exclusive right to any Environmental Attributes associated with the Facility that may be created during the Term of this Agreement. At Buyer's request and subject to Section 3.8, Seller shall use commercially reasonable efforts to take necessary actions to enable Buyer to register for, claim, receive, use, or otherwise realize the benefits of Environmental Attributes.

3.6 Performance Guarantees.

(a) Guaranteed Storage Availability.

- (i) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability of no less than ninety-eight percent (98%) (the "Guaranteed Storage Availability"). The Monthly Storage Availability shall be calculated in accordance with Exhibit L.
- (ii) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, Buyer's payment for the Product shall be adjusted by the Availability Adjustment set forth in Exhibit L.
- (iii) Failure to maintain an average Monthly Storage Availability of at least seventy percent (70%) over a consecutive twenty-four (24) month period shall constitute a Seller Event of Default as set forth in Section 8.1(b).

(b) Round Trip Efficiency Guarantee.

- (i) During the Delivery Term, the Facility shall maintain a Round Trip Efficiency Rate of no less than the GRTE Rate set forth in Exhibit M.
- (ii) If the Round Trip Efficiency Rate during any month is less than the applicable GRTE Rate, Buyer's monthly payment for the Product shall be adjusted by the RTE Adjustment Factor set forth in Exhibit M.
- (iii) Failure to maintain an average RTE Rate of at least seventy percent (70%) over a consecutive twelve (12) month period shall constitute a Seller Event of Default as set forth in Section 8.1(b).

(c) Storage Capacity

- (i) During the Delivery Term, Seller shall maintain the Guaranteed Annual Capacity as set forth in Exhibit C. Seller's failure to maintain at least seventy-five percent (75%) of the Guaranteed Annual Capacity on a prorated basis over a consecutive twelve (12) month period shall constitute a Seller Event of Default pursuant to Section 8.1(b).
- (ii) Without limiting Seller's rights or obligations to maintain the Facility as set forth in this Agreement, if as a result of any Storage Capacity Test after the initial Storage Capacity Test, the Storage Contract Capacity is lower than the Guaranteed Annual Capacity for that Contract Year as set forth in Exhibit C, Seller may, at its sole discretion, add facilities and equipment to the Facility to increase the Storage Capacity up to, but not in excess of, the applicable level of the Guaranteed Annual Capacity. Seller shall conduct a subsequent Storage Capacity Test to determine the

Storage Contract Capacity. Seller shall provide Buyer with thirty (30) days advance written notice of Seller's intent to add facilities or equipment pursuant to this Section 3.6(c).

- 3.7 Surplus Cycles Carry-over.** If the Facility is dispatched for less than the equivalent of three hundred sixty-five (365) Full Cycles during any Contract Year, Buyer shall be entitled to carry forward up to the equivalent of ninety (90) Full Cycles to the following Contract Year at no additional cost.
- 3.8 Compliance Cost Cap.** If Seller establishes to Buyer's reasonable satisfaction that a change in Applicable Laws has occurred after the Effective Date that results in Compliance Costs as defined in Section 3.8(a), then Seller's Compliance Costs during the Delivery Term shall be capped at twenty-five thousand dollars (\$25,000.00) per MW of Installed Capacity ("Compliance Cost Cap").
- (a) Compliance Costs. This Section shall apply to Seller's additional, reasonable out-of-pocket costs paid to applicable Governmental Authorities for obtaining, maintaining, or conveying Capacity Attributes and Environmental Attributes for Buyer's use ("Compliance Costs"). Compliance Costs includes only those new costs actually incurred by Seller associated with the change in Applicable Laws after the Execution Date that are in excess of the reasonably anticipated compliance costs as of the Execution Date.
- (b) Reimbursement. In the event that the Compliance Costs exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing those obligations that cause the Compliance Costs to exceed the Compliance Cost Cap. If Buyer agrees to reimburse Seller, Seller shall perform the additional compliance actions and shall include the Compliance Costs in the monthly invoice.
- (c) Notice. Seller shall notify Buyer within sixty (60) calendar days after the change in Applicable Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide an estimate of the Compliance Costs. Buyer shall notify Seller within ninety (90) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waives Seller's performance of such obligations.

ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION

4.1 Billing and Payment.

- (a) Monthly Invoices. Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product for the prior month, and for other amounts due to or from Seller hereunder. Each invoice shall be in a format reasonably specified by Buyer shall include data as is reasonably necessary to verify each element of the calculation of the Monthly Payment and other charges or credits as set forth in this Agreement.
- (i) The "Monthly Payment" for each month will be an amount equal to the summation of the following:
- (A) the product of the Contract Price, multiplied by the Storage Contract Capacity for that month, multiplied by the Availability Adjustment, multiplied by the Round Trip Efficiency Factor; plus
- (B) credits for any amounts owed from Seller to Buyer under section 5.7; plus
- (C) any other amounts netted against the monthly invoice under Section 4.1(c).
- (ii) The Invoice shall include:

- (A) CAISO metering and transaction data sufficient to document and verify the amounts of Charging Energy and Discharging Energy as measured by the Facility Meter;
 - (B) the amount of Replacement RA delivered to Buyer (if any);
 - (C) any adjustments to the Monthly Payment as set forth in Sections 3.2 and 3.6; and
 - (D) the calculation of any other amounts due to or from Seller hereunder.
- (iii) Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.
- (b) Payment. Unless otherwise specified under this Agreement, all payments shall be due and payable on or before the thirtieth (30th) calendar day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Any amount not paid by when due shall be considered late and the Party owing the payment shall pay a Late Payment Fee equal to a daily rate of five dollars and fifty cents (\$5.50) per one hundred thousand dollars (\$100,000) on the unpaid balance for a maximum period of ninety (90) days after the due date of the payment (“Late Payment Fee”) shall be added to the outstanding amount.
- (c) Netting. Except as otherwise set forth in this Agreement, the Parties shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any damages set forth in this Agreement, CAISO Charges Invoices, Late Payment Fees, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- (d) City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Fee shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller’s failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City’s vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- (e) Disputes and Adjustments of Invoices. 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, metering, 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, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with the Late Payment Fee from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Buyer from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1(d) within twelve (12) months after the

invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which delivery of Product occurred, the right to payment for such delivery is waived.

- (f) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data or applicable market prices for a given time period, the Parties shall share information necessary to revise the monthly invoices pursuant to Section 4.1 and Seller agrees that it shall submit revised monthly invoices covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Seller receives such binding adjustment to the meter data.

4.2 Designated Fund/Limited Obligations.

- (a) Auto-Appropriating Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further Buyer action and which shall be used solely for CleanPowerSF costs and expenses, including the obligations under this Agreement. Buyer agrees to establish CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the SFPUC designated fund upon request during the Delivery Term.
- (b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of CleanPowerSF. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

4.3 Guaranteed Maximum Costs.

- (a) Controller Certification. The Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Agreement scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
- (b) Biennial Budget Process. For each City biennial budget cycle during the term of this Agreement, Buyer agrees to take all necessary action to include the Buyer's payment obligations under this Agreement in its budget submitted to the Board of Supervisors for that budget cycle.

ARTICLE 5:

FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE

- 5.1 General Obligations.** Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Records. Keep complete and accurate design, operating, and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority or Prudent Operating Practice;
- (b) Further Development Information. Provide to Buyer such other information regarding the permitting, engineering, testing, construction or operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to obtain such information upon agreeing to confidentiality or signing a confidentiality agreement with regard to such information;
- (c) Insurance. Obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D;
- (d) Vendor Certification. Obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement;
- (e) Construction. Design, develop, finance, and construct the Facility;
- (f) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the prevailing wage rate for the county in which the Facility will be located, as determined by the California Department of Industrial Relations. Seller shall require in any contract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed. Seller shall provide to Buyer upon request, certified payroll reports with respect to all persons performing labor in the construction of the Facility;
- (g) Forced Labor. Not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("Forced Labor"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.
- (h) Interconnection and Transmission. Take all necessary actions, including arranging and paying for any and all necessary Electric System Upgrades, obtaining all required regulatory approvals, and executing and maintaining in full force and effect all necessary agreements to allow Seller to interconnect the Facility to the CAISO grid, maintain interconnection capacity and FCDS for the Facility that is no less than the Storage Contract Capacity throughout the Delivery Term, and deliver the Product to the Delivery Point in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Prudent Operating Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer;
- (i) Environmental Costs. Be solely responsible for all Environmental Costs;
- (j) Compliance with Laws. Seek, obtain, maintain, and comply with all Applicable Laws, Permits, certificates, agreements, or other authorizations or approvals, which are required for the ownership, construction, operation, and maintenance of the Facility and the delivery and sale of the Product pursuant to this Agreement.

5.2 Facility Construction and Milestones.

- (a) Time is of the Essence. The Parties agree that time is of the essence in the performance of this Agreement. Seller shall diligently pursue to completion each of the following Milestones:
 - (i) Site control: [_____];

- (ii) Final and non-appealable discretionary authorizations, Permits, and approvals: [_____];
 - (iii) Phase I and II Interconnection study results: [_____];
 - (iv) Executed Interconnection Agreement: [_____];
 - (v) Financial Close: [_____];
 - (vi) Construction Start: [_____] (“Guaranteed Construction Start Date”);
 - (vii) Mechanical Completion: [];
 - (viii) Initial Synchronization: [_____];
 - (ix) Network Upgrades completed (evidenced by a permission to parallel letter from the Transmission Provider): [_____]; and,
 - (x) Commercial Operation: [_____] (“Guaranteed Commercial Operation Date”).
- (b) Progress Report. Seller shall provide to Buyer a Progress Report concerning the progress towards construction and completion of the each of the Milestones (including whether Seller has met or is on target to meet each of the Milestones), which shall be substantially similar in form and substance to that attached as Exhibit F, and include such additional information as reasonably required by Buyer. Commencing on the Effective Date, Seller shall provide Progress Reports every three (3) month prior to the Guaranteed Construction Start Date and monthly Progress Reports thereafter. Seller agrees to meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller’s construction progress, as Buyer may request from time to time.
- (c) Certification of Completion of Milestones. Within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller’s achievement or satisfaction of each such Milestone.
- (d) Notice of Failure to Achieve Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Milestone by the required date for any reason, Seller shall notify Buyer in writing as soon as is reasonably practical but no later than thirty (30) days prior to the Milestone date. If the delay is caused by a Force Majeure event and thirty (30) days’ notice is not feasible, Seller shall notify Buyer in writing as soon as reasonably practical. The notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and describe Seller’s plan for meeting the Milestone(s) in sufficient detail to enable Buyer to reasonably assess the sufficiency of the plan to remedy the delay and achieve the Milestone. Seller’s notice shall also explain any impact such delay may or shall have on any other Milestone, and measures to be taken to mitigate such impact. Subject to the provisions of Section 5.3, Seller shall not be considered in default of this Agreement for failure to meet a Milestone if Seller complies with its obligations under this Section 5.2(d).

5.3 **Guaranteed Construction Start Date and Guaranteed Commercial Operation Date.**

- (a) Construction Start.
- (i) “Construction Start” will occur when Seller has (i) obtained all necessary approvals, Permits, and authorizations for the construction of the Facility, (ii) executed an EPC contract and engaged all necessary contractors, (iii) ordered all essential equipment and supplies that are necessary to commence physical construction of the Facility and to proceed to completion without a foreseeable interruption of material duration, (iv) issued a final Notice to Proceed to the EPC Contractor, and (v) commenced mobilization at the Site by Seller or its agents,

including site preparation at a sufficient level to reasonably demonstrate that Seller has commenced preparations for construction of the Facility, and (vi) delivered to Buyer the Construction Start Certification substantially in the form set forth in Exhibit E. Seller shall cause the Construction Start to occur no later than the Guaranteed Construction Start Date.

- (ii) Seller may extend the Guaranteed Construction Start Date by paying Construction Start Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days. At least ten (10) Business Days prior to the Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Start Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Construction Delay Damages, but as may be extended pursuant to a Permitted Extension), Buyer shall refund to Seller all Construction Start Delay Damages.

(b) Commercial Operation.

- (i) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.
- (ii) Seller may extend the Guaranteed Commercial Operation Date by paying COD Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty (60) days. At least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the COD Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of for delays in the Guaranteed Commercial Operation Date, but as may be extended pursuant to a Permitted Extension), then Buyer shall refund to Seller all COD Delay Damages.

(c) Permitted Extensions. The following events constitute "Permitted Extensions":

- (i) A Force Majeure event occurs and Seller works diligently to resolve the effect of the Force Majeure event;
- (ii) Seller has used commercially reasonable efforts to obtain Facility interconnection but the Electric System Upgrades are not complete and ready for the Facility to connect and deliver and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date; or
- (iii) Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

(d) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, which notice shall clearly identify the grounds for the requested extensions and include information necessary for Buyer to verify the length of and grounds for the extension. If the delay is due to Force Majeure and sixty (60) days' notice is impracticable or impossible, Seller shall provide notice as soon as possible after the occurrence of the Force Majeure event.

(e) Maximum Delay.

- (i) The combined Permitted Extensions under this Section 5.3 (other than the extensions under Section 5.3(c)(iii)) for the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date combined shall not exceed one hundred twenty (120) days in the aggregate.
 - (ii) The cumulative extensions of the Guaranteed Construction Start Date for Permitted Extensions and by payment of Construction Start Delay Damages shall not exceed one hundred and eighty (180) days.
 - (iii) The cumulative extensions of the Guaranteed Commercial Operation Date for Permitted Extensions (other than the extensions under Section 5.3(c)(iii)) and by payment of COD Delay Damages shall not exceed one hundred and eighty (180) days.
- (f) No Limitation of Damages. The Parties agree that Buyer's receipt of the Construction Start Delay Damages or COD Delay Damages shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 8, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination right pursuant to Section 5.3(h) or Article 8.
- (g) Development Assurance. If Seller fails to timely pay any Construction Start Delay Damages or COD Delay Damages, Buyer may draw upon the Development Assurance to satisfy Seller's payment obligations under this Section 5.3.
- (h) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
- (i) Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date and the combined extensions to the Guaranteed Construction Start Date exceed the limits under Sections 5.3(a)(ii) and 5.3(e); or
 - (ii) Seller fails to achieve COD on or before the Guaranteed COD Date and the combined extensions to the Guaranteed COD Date exceed the limits under Sections 5.3(b)(ii) and 5.3(e); or
 - (iii) Seller fails to pay, or discontinues paying, any or all of the Construction Start Delay Damages or Commercial Operation Delay Damages when due and Buyer cannot obtain such amounts by drawing upon the Development Assurance and/or setting off against any amounts owed to Seller by Buyer under this Agreement.
- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date of up to ninety (90) days beyond the maximum extensions set forth in Section 5.3(e) with payment of Construction Start Delay Damages or COD Delay Damages, as applicable, by Seller. Buyer may not terminate this Agreement for failure to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date during the mutually agreed upon extension period so long as Seller continues to pay the Construction Start Delay Damages or COD Delay Damages.
- (j) Failure to Reach Guaranteed Installed Capacity. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Installed Capacity, within ninety (90) days after the Commercial Operation Date, Seller shall take all necessary actions to cause the Installed Capacity to equal to (but not exceed) the Guaranteed Installed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 specifying the Installed Capacity. If Seller fails to construct the Guaranteed Installed Capacity by such date, Seller shall pay damages to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Installed Capacity exceeds the Installed Capacity ("Capacity Damages"), and the Guaranteed Installed Capacity and other applicable portions of the Agreement shall be

adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Assurance, Performance Assurance, Construction Start Delay Damages, COD Delay Damages, or any other form of liquidated damages under this Agreement.

5.4 Storage Capacity Tests.

- (a) Frequency. Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date and shall perform annual Storage Capacity Tests in accordance with Exhibit K. Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit K and Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices.
- (b) Witnesses. Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test.
- (c) Buyer and Seller Tests. Any testing of the Facility requested by Buyer after the Commercial Operation Date and all required annual tests pursuant to Exhibit K shall be deemed Buyer-instructed dispatches of the Facility (“Buyer Dispatched Test”). Any test of the Facility that is not a Buyer Dispatched Test including pre-COD SCTs, SCTs required to obtain or maintain CAISO Certification, and re-tests pursuant to Exhibit K shall be deemed a “Seller Initiated Test”.
- (d) Notice. Except as otherwise set forth in Exhibit K, for any Seller Initiated Test Seller shall provide Buyer at least twenty-four (24) hours advance notice (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices). The timing and duration of any Seller Initial Test shall be subject to Buyer’s reasonable approval.
- (e) Dispatch Notices. No Dispatch Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test.
- (f) Testing Report. Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit K. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate shall become the new Storage Contract Capacity and/or Efficiency Rate at the beginning of the day following the completion of the Storage Capacity Test.
- (g) Testing Costs and Revenues.
 - (i) Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test.
 - (ii) Seller shall be responsible for the cost of all Charging Energy for, and shall be entitled to all CAISO revenues associated with, a Seller Initiated Test. In the month following Buyer’s receipt of such CAISO revenues, costs, and charges, Buyer shall credit or invoice Seller for all applicable CAISO revenues, costs, and charges received by Buyer and associated with the Seller Initiated Test in the CAISO Charges Invoice.
 - (iii) Except as set forth in Section 5.4(b), all other costs of any testing of the Facility shall be borne by Seller.

5.5 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in accordance with this Agreement, all Applicable Laws, the requirements of the CAISO, NERC and WECC, all applicable

contractual obligations and Permits, and in accordance with Prudent Operating Practice, and shall be solely responsible for all associated costs and expenses.

- (i) In the event Seller requires any data or information from Buyer in order to comply with any Applicable Law, including the requirements of CAISO, NERC and WECC, relating to the Facility, then Seller shall request in writing such data from Buyer no less than forty-five (45) days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.
 - (ii) Upon Buyer's request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide Ancillary Services that the Facility is, at the relevant time, capable of providing. At Buyer's request, the Parties shall cooperate in good faith to agree on necessary alterations to the Facility equipment or Facility operations in order to allow the Facility to provide additional Ancillary Services.
 - (iii) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, Station Use, availability, outages, changes in operating status, inspections, and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 5.5(a)(iii) shall be provided to Buyer within fifteen (15) days of Buyer's request.
 - (iv) Seller shall maintain accurate records of all Storage Capacity Tests.
 - (v) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practice.
- (b) Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility, including maintenance of a safety manual at the Facility addressing all hazard and safety requirements and operating procedures. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in the Cover Sheet notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Discharging Energy to the Delivery Point.
- (c) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures.
- (d) Metering.
- (i) All Charging and Discharging Energy must be delivered through the Facility Meter, which shall be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Uses. Each meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested,

adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable.

- (ii) The meter data will account for transformer losses and will be programmed to reflect Electrical Losses to the Delivery Point, consistent with CAISO requirements. Seller shall bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer (and Buyer's Scheduling Coordinator) read-only rights to retrieve all data, including the meter reads, via website and direct download and directly from the CAISO meter(s) at the Facility through both (A) physical access and (B) remote electronic read-only access. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports.
- (iii) If Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter at its sole cost and expense. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate, Seller shall promptly repair or replace the meter and submit corrected meter data in compliance with CAISO requirements. Seller shall be responsible for and shall reimburse Buyer for all CAISO costs, penalties, and charges related to the inaccuracy of the Facility Meter.
- (iv) Upon Buyer's request, Seller shall take all commercially reasonable actions to become, as specified by Buyer, either a CAISO Metered Entity or a Scheduling Coordinator Metered Entity (as those terms are defined in the CAISO Tariff).
- (e) Shared Facilities. The Parties acknowledged and agree that the Facility may share the Interconnection Facilities and other assets, including the Interconnection Agreement and transmission service agreements. Seller agrees that such joint ownership or arrangements shall permit Seller to perform or satisfy, and shall not limit, Seller's obligations under this Agreement, including Buyer's ability to discharge the Facility up to the interconnection capacity limit for the Facility and to charge the Facility up to the Storage Contract Capacity, and providing for separate metering of the Facility. At the request of Buyer, the Facility shall have an unique Scheduling Coordinator ID as that term is defined in the CAISO Tariff.
- (f) Refurbishment of the Facility. During the Term, Seller may not refurbish the Facility, alter components of the Facility, or replace major components of the Facility where such action results in a total increased capacity higher than the Guaranteed Annual Capacity, without the prior written consent of Buyer. Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment or alteration that may increase capacity of the Facility above the Guaranteed Annual Capacity. Nothing in this Section 5.5(f) is intended to limit Seller's ability to refurbish, repair, maintain, or replace any portion of the Facility where such actions will not increase the Facility's total capacity above the Guaranteed Annual Capacity.

5.6 Scheduling.

- (a) Scheduling Coordinator.
 - (i) Upon Initial Synchronization, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Charging Energy,

Discharging Energy, and the Product at the Delivery Point. At least thirty (30) days prior to Initial Synchronization, (A) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of Initial Synchronization, and (B) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization. On and after Initial Synchronization, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to or directed by Buyer. Buyer or Buyer's designee shall submit Schedules to the CAISO in accordance with this Agreement and the CAISO Tariff and protocols.

- (ii) At any time during the Term of this Agreement, Buyer may elect to require Seller or Seller's designee to become the Scheduling Coordinator for the Facility. Buyer shall provide one hundred twenty (120) days prior notice to Seller and the Parties shall promptly enter into good faith negotiations on necessary amendments to this Agreement to reflect the transfer of Scheduling Coordinator responsibilities to Seller. The negotiations shall be limited to necessary amendments that are solely related to the Scheduling Coordinator services for the Facility.
 - (iii) Buyer shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO both telephonically and by electronic mail to the personnel designated to receive such information.
 - (iv) At least thirty (30) days prior to the expiration of the Delivery Term or the date that Seller assumes SC services under Section 5.6(a)(ii), or as soon as reasonably practicable upon an early termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on the designated expiration, termination, or transfer date.
 - (v) Prior to the COD, the Parties shall cooperate to develop protocols as necessary to implement scheduling and settlements procedures consistent with this Agreement and the CAISO Tariff.
- (b) CAISO Costs and Revenues.
- (i) Except as otherwise set forth in this Section 5.6(b), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs and shall be entitled to all CAISO revenues or other credits related to the Product Scheduled or delivered from the Delivery Point.
 - (i) Seller shall be responsible for and reimburse Buyer for all CAISO costs, charges, and penalties which are related to (A) the unavailability of the Facility, (B) Seller's default, breach, or other failure to perform as required by this Agreement, (C) any failure by Seller to abide by the CAISO Tariff, any requirements imposed on it as Facility owner, or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform

its duties as Scheduling Coordinator for the Facility), (D) any failure by Seller to comply with a Curtailment Order, CAISO Dispatch, or Dispatch Instruction, (E) Facility Meter inaccuracies, (F) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment (as defined in the CAISO Tariff) awards due to conditions within Seller's control, and (G) costs associated with deviations from the amounts included in a Discharging Notice and the actual RTM Discharging Energy. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

- (ii) Seller shall be entitled to any Availability Incentive Payments (as defined in the CAISO Tariff) and shall be responsible for any Non-Availability Charges (as defined in the CAISO Tariff).
 - (iii) Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
- (c) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- (d) CAISO Charges Disputes. Seller may require Buyer (as the Facility's SC) to dispute CAISO settlements related to any costs or revenues for which Seller is responsible under this Agreement. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with CAISO charges that Seller has directed Buyer to dispute.
- (e) Master File. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (f) Seller Equipment for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC.

5.7 Energy Management.

- (a) Charging Generally. Upon receipt of a Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Storage Product in accordance with the terms of this Agreement. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.
- (b) Charging and Discharging Notices. Buyer shall have the right to charge and discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by issuing Charging and Discharging Notices to Seller, subject to the requirements and limitations set forth in this Agreement, including the Operating Parameters. Each Charging or Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or CAISO modifies such Charging or Discharging Notice by providing Seller with an updated Charging or Discharging Notice, as the case may be.
- (c) No Unauthorized Charging. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice. Notwithstanding the foregoing, Seller may adjust a Charging Notice to the extent necessary to comply with the Operating Parameters, in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or any other applicable Governmental Authority. Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 5.7(c), then (i) Seller shall be responsible for all Energy costs associated with such charging of the Facility, (ii) Buyer shall not be required to pay for such Energy, and (iii) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Product) associated with such discharge.
- (d) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice. Notwithstanding the foregoing, Seller may adjust a Discharging Notice to the extent necessary to comply with the Operating Parameters, in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or any other Governmental Authority.
- (e) Unauthorized Charges and Discharges. Any charges, discharges or use of the Facility that is not in accordance with this Agreement shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated with, and shall be responsible to Buyer for any damages arising from, such unauthorized use. If Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 8.
- (f) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer or Buyer's SC, and Seller shall comply with any CAISO Dispatch. If the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 5.7(c)).
- (g) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, Buyer shall have no right to charge or discharge the Facility and Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility.
- (h) Curtailments. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, Transmission Provider, or any successor thereto pursuant to a Curtailment Order. Notwithstanding anything in this Agreement to the contrary, during

any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall not be in violation of this Section 5.7 or any Dispatch Notice if and to the extent the deviation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the Operating Parameters.

5.8 Capacity Availability Notice.

- (a) Monthly Forecast. 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 SC a non-binding forecast of the hourly expected Available Capacity, for each day of the following month ("Monthly Forecast").
- (b) Availability Notice. During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and Buyer's SC an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of the day ("Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) in a form as reasonably requested by Buyer, by electronic mail to Buyer and Buyer's SC.
- (c) Updates. Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.
- (d) Daily Operation. Upon Buyer's request, Seller shall, on each day immediately after each operating day, provide Buyer an operating report for the Facility with the actual available capacity for each hour of the operating day.

5.9 Outages.

- (a) Planned Outages.
 - (i) No later than January 15, April 15, July 15, and October 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer the schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12) month period in a form reasonably specified by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give notice to Seller of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than five (5) days after receiving Buyer's comments.
 - (ii) Seller shall not schedule Planned Outages during the period of reliability accounting, initially the period between June 1st and October 31 of each year; however, such period shall be subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
 - (iii) If replacement capacity is required by the CAISO for the period of any Planned Outage, Seller shall provide the required replacement capacity in the amount and for the duration specified by the CAISO pursuant to the CAISO Tariff.

- (iv) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than sixty (60) days advance notice to Buyer, to propose changes to the Outage Schedule. Buyer may provide comments no later than ten (10) days after receiving Seller's notice of proposed changes to the Outage Schedule and Buyer shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs and charges associated with such changes.
- (b) Forced Outages. Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator as soon as reasonably possible but no later than ten (10) minutes following the occurrence of a Forced Outage, or if Seller has knowledge that a Forced Outage will occur, within twenty (20) minutes of determining that such Forced Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Forced Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical. Seller shall promptly prepare and provide to Buyer, all reports of Forced Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws. Seller shall also report all Forced Outages or Planned Outages in the report specified in Section 5.8(d).

ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE

6.1 Grant of Security Interests/Remedies.

- (a) First Priority Security Interest. To secure its obligations under this Agreement hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance and Performance Assurance posted with Buyer in the form of cash collateral or cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) calendar days of the delivery of the Development Assurance or Performance Assurance, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively.
- (b) Rights and Remedies. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date or the occurrence of any event under this Agreement where Buyer is entitled to draw upon the Development Assurance or Performance Assurance, Buyer may do any one or more of the following:
 - (i) exercise any of the rights and remedies of a secured party with respect to all Development Assurance or Performance Assurance, as applicable, including any such rights and remedies under Applicable Law;
 - (ii) draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Assurance or Performance Assurance; and
 - (iii) liquidate all Development Assurance or Performance Assurance, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
- (c) Application of Proceeds. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to

the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

6.2 Development Assurance and Performance Assurance.

(a) Development Assurance.

- (i) Seller shall post Development Assurance the amount of ninety dollars per kilowatt (\$90/kW) multiplied by the Guaranteed Installed Capacity in the form of cash or a Letter of Credit within ten (10) calendar days following the Execution Date and maintain the Development Assurance in full force and effect until such time as Seller posts the Performance Assurance pursuant to Section 6.2(b)(i) below with Buyer. Seller shall replenish the Development Assurance within five (5) Business Days of any draw down of any portion of the Development Assurance for any reason permitted under this Agreement other than to satisfy a Damage Payment.
- (ii) Buyer shall be entitled to draw upon the Development Assurance posted by Seller for any reason permitted under this Agreement. Buyer shall also be entitled to draw upon the Development Assurance for any Damage Payment arising upon Buyer's declaration of an Early Termination Date prior to the Commercial Operation Date.
- (iii) Buyer shall return the Development Assurance to Seller less any amounts drawn in accordance with this Agreement: (A) within thirty (30) days after Seller posts Performance Assurance with Buyer, or (B) within sixty (60) days after the following have occurred: (1) early termination of the Agreement; and (2) all payment obligations of Seller due and payable under this Agreement are paid in full, including compensation for the Damage Payment, indemnification payments, or other damages (whether directly or indirectly such as through set-off or netting). With Buyer's consent, Seller may elect to apply the Development Assurance (or a portion thereof) toward the Performance Assurance.

(b) Performance Assurance.

- (i) Seller shall post Performance Assurance in an amount equal to the product of one hundred five dollars per kilowatt (\$105/kW) multiplied by the Guaranteed Installed Capacity in the form of cash or a Letter of Credit before the COD. The amount of the Performance Assurance shall be adjusted on the first day of each Contract Year to reflect the Guaranteed Storage Capacity for that Contract Year. Seller shall replenish the Performance Assurance within five (5) Business Days of any draw down of any portion of the Performance Assurance for any reason permitted under this Agreement other than to satisfy a Termination Payment.
- (ii) Buyer shall be entitled to draw upon the Performance Assurance posted by Seller for any reason permitted under this Agreement, including Buyer's declaration of an Early Termination Date after the Commercial Operation Date.
- (iii) Seller shall maintain Performance Assurance from the Commercial Operation Date until the following have occurred: (a) the Delivery Term has expired or terminated early, and; (b) all payment obligations of Seller due and payable under this Agreement are paid in full, including compensation for the Termination Payment, indemnification payments, or other damages (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.

(c) No Limitation of Damages. The amount of Development Assurance and Performance Assurance required under this Agreement shall not be deemed a limitation of damages.

- 6.3 Letter of Credit.** Development Assurance or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit I-1, or another form reasonably acceptable to Buyer, subject to the following provisions:
- (a) Renewal of Letter of Credit. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 6, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis.
 - (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (i) or (ii) below is considered the "Cure"):
 - (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of Buyer's notice to Seller in this Section 6.3(b); or
 - (ii) posting cash.
 - (c) Failure to Cure. If Seller fails to cure, or if such Letter of Credit expires or terminates without a full draw thereon by Buyer or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall be deemed to have failed to meet the collateral requirements of Section 6.2 and Buyer may declare an Event of Default as set forth in Article 8.
 - (d) Letter of Credit Costs. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE 7: FORCE MAJEURE

- 7.1 Remedial Action.** Subject to the limitation on extensions of Milestones set forth in Sections 5.3(e), a Claiming Party shall not be liable to the other Party if the Claiming Party is delayed or prevented from performing its obligations hereunder due to a Force Majeure Event. The Claiming Party shall take all action necessary to remove such inability with all due speed and diligence. The Claiming Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting the Claiming Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.
- 7.2 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Claiming Party shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance. The Claiming Party's failure to give timely notice shall not affect the Claiming Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving notice materially prejudices the other Party.
- 7.3 Termination Due to Force Majeure Event.** Subject to the provisions of Section 5.3(e) on extensions of Milestones, if the Claiming Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, either Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior

written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall promptly return to Seller all Development Assurance or Performance Assurance, as applicable, less any damages due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 7.3. This Section 7.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 8: DEFAULT, REMEDIES, AND TERMINATION

8.1 Events of Default.

- (a) Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party:
- (i) the breach of any material obligation or covenant of this Agreement and such Party fails to cure such breach within sixty (60) days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the breach cannot reasonably be cured within sixty (60) days, provided that the extended cure period will only continue for so long as the Party in breach is pursuing a cure with reasonable diligence;
 - (ii) subject to Sections 4.1(d) and 4.1(e), failure to make any payment when due under this Agreement within fifteen (15) Business Days after written notice that such payment is due;
 - (iii) 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 neither such circumstance nor the adverse effects of such circumstance are cured or remedied within thirty (30) days after written notice;
 - (iv) such Party becomes Bankrupt;
 - (v) subject to Section 11.1(d), such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) Seller Events of Default. The following shall constitute additional Events of Default by Seller:
- (i) The occurrence of any of the events set forth in Section 5.3(h);
 - (ii) Seller fails to satisfy any of the credit requirements of Article 6;
 - (iii) Seller delivers or attempts to deliver Energy to the Delivery Point that was not discharged by the Facility under this Agreement;
 - (iv) Seller fails to meet at least seventy-five percent (75%) of the applicable Guaranteed Annual Capacity set forth in Exhibit C on a prorated basis over a consecutive twelve (12) month period;
 - (v) Seller fails to maintain an average RTE Rate of at least seventy percent (70%) over a consecutive twelve (12) month period; or
 - (vi) Seller fails to maintain an average Monthly Storage Availability of at least seventy percent (70%) over a consecutive twenty-four (24) month period.

8.2 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default has occurred, is continuing and has not been cured, the non-defaulting Party (the “Non-Defaulting Party”) shall have the right to:
- (i) send notice, designating a day, no earlier than ten (10) calendar days and no later than sixty (60) days after the day such notice is deemed to be received, as the date on which this Agreement will terminate (the “Early Termination Date”);
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) collect as of the Early Termination Date, (A) the Damage Payment in the case of an Event of Default arising at any time prior to the Commercial Operation Date, including an Event of Default pursuant to Section 8.1, or (B) the Termination Payment in the case of an Event of Default arising after the Commercial Operation Date;
 - (iv) withhold any payments due to the Defaulting Party under this Agreement;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 6 of this Agreement to draw upon and retain Development Assurance or Performance Assurance, as applicable; and
 - (vii) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Damage Payment. If the Early Termination Date occurs prior to the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 8.2(b).
- (i) If Seller is the Defaulting Party, the Damage Payment owed to Buyer shall equal the entire Development Assurance amount and any accrued interest. Buyer shall be entitled to retain for its own benefit those funds held as Development Assurance and any accrued interest, and any amount of Development Assurance that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine with certainty and that the damages set forth in this Section 8.2(b)(i) are a reasonable approximation of Buyer’s harm or loss.
 - (ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of all actual, documented, and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer.
- (c) Calculation of Termination Payment. If the Early Termination Date occurs on or after to the Commercial Operation Date, the Termination Payment shall be calculated by the Non-Defaulting Party as follows:
- (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date.

- (ii) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Economic Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be limited to the amounts set forth in clause (b) of the definition of Termination Payment.
- (iii) The Non-Defaulting Party is not required to enter into replacement transactions to establish a Termination Payment.
- (iv) The Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
- (d) Notice of Damage Payment or Termination Payment. As soon as practicable after declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Damage Payment or Termination Payment due to or from the Defaulting Party to the Non-Defaulting Party, as applicable. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.
- (e) Disputes Regarding Damage Payment or Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Damage Payment or Termination Payment shall be resolved in accordance with Section 11.3.
- (f) Rights and Remedies are Cumulative. Except where this Agreement explicitly states that liquidated damages or another remedy is the exclusive remedy, the rights and remedies in this Agreement, including this Article 8, are cumulative.
- (g) Mitigation. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Costs, Economic Losses, and damages resulting from any Event of Default.

8.3 Limitation of Liability/Liquidated Damages.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS 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, UNLESS THE PROVISION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY**

SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, OR COST OF CAPITAL, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE; PROVIDED HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO EXPRESS REMEDIES OR MEASURE OF DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT TO THE EXTENT THAT ANY DAMAGES SET FORTH IN THIS AGREEMENT ARE LIQUIDATED, INCLUDING PAYMENTS SET FORTH IN SECTIONS 3.3, 3.6, 5.3, 5.6, and 8.2, SUCH DAMAGES ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE HARM OR LOSS THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES FOR THE CIRCUMSTANCES SET FORTH ABOVE WOULD BE IMPOSSIBLE OR DIFFICULT TO MEASURE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671 AND THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

- (c) **BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLE 3 AND SECTIONS 5.6 AND 8.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 9 SHALL BE CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.**

ARTICLE 9: INDEMNIFICATION

- 9.1 Seller Indemnification Prior to Commercial Operation Date.** Up to and including the Commercial Operation Date, Seller shall indemnify, defend, and hold harmless Buyer, and its officials, directors, agents and employees ("Buyer Indemnified Party"), from and against all third party claims, liabilities, losses, penalties, arising out of, or in connection with, the negligence, willful misconduct or violation of Applicable Laws by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the active negligence, willful misconduct or violation of Applicable Laws by a Buyer Indemnified Party.
- 9.2 Seller and Buyer Indemnification after Commercial Operation Date.** After the Commercial Operation Date, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Laws by the Indemnifying Party.

9.3 Environmental Indemnity. Seller shall indemnify, defend, and hold harmless the Buyer Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.

9.4 Notice. If an Indemnified Party or Buyer Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

10.1 Seller's Representations and Warranties. In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a [_____] under the laws of the State of [_____] and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing, against Seller or any of its affiliates, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement; and
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt.
- (g) As of the Effective Date, Seller represents and warrants to Buyer that it has not received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

10.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened, in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

10.3 Covenants. In addition to other covenants contained in this Agreement, each Party covenants that throughout the Term:

- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 11: MISCELLANEOUS

11.1 Assignment.

- (a) General Assignment. Except as provided in Sections 11.1(b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.
- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 11.1, Buyer hereby consents to assignment of this Agreement by Seller as collateral

for any financing or refinancing of the Facility to a Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, physical and electronic addresses, and telephone and facsimile numbers of any Lender to which the Seller's interest under this Agreement has been assigned. The notice shall include the names of the Lender's primary contact(s) to whom all communications may be addressed. Seller shall promptly notify Buyer of any changes to the information contained in the notice. As a condition to Buyer's consent to assignment, the following provisions shall apply to any assignment under this Section 11.1(b):

- (i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by the Seller and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.
 - (ii) Buyer shall cooperate with Seller or a Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments, and other documents reasonably requested by Seller or Lender in order to complete any financing or refinancing and shall enter into reasonable agreements as necessary to provide for recognition by Buyer of the Lender's security interest in this Agreement and such other provisions as may be reasonably requested by Seller or any Lender, so long as the terms and conditions of such agreements are consistent with this Agreement and such amendments or agreements are reasonably acceptable to both Parties. All costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with an assignment of this Agreement to a Lender shall be borne by Seller.
 - (iii) In the event of a Default under this Agreement, Buyer shall provide a copy of the notice of Default to the Lender pursuant to Section 8.2(a) at the same time as the notice is provided to Seller. Buyer shall accept a cure performed by a Lender and shall negotiate in good faith with the Lender as to the cure period(s) allowed for the Lender to cure any Event of Default. Buyer shall accept a cure by Lender so long as the cure is accomplished within the applicable cure period. Notwithstanding any Lender cure, Seller shall not be released and discharged from, and shall remain liable for, any and all obligations to the Buyer arising or accruing hereunder.
 - (iv) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must (i) assume all of Seller's obligations arising under this Agreement, and (ii) shall cure all defaults under this Agreement existing as of the date of change of title or control as required under this Agreement.
 - (v) If Lender elects to sell or transfer the Facility after taking possession of, or title to the Facility, or a sale occurs through the actions of Lender, Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such transferee or buyer must be made to an entity that: (A) has a tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) has at least two (2) years of experience in the ownership and operation of energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 11.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall not require the prior written consent of Buyer.

Seller shall promptly notify Buyer of any direct or indirect change in control and shall provide any information reasonably requested by Buyer regarding the change in control, provided that this obligation does not apply to any direct or indirect owners of Seller's Parent. Seller acknowledges that its obligations under this Agreement remain in full force and effect notwithstanding such change in control and that Seller is solely responsible for ensuring that all required changes to its vendor certifications are promptly implemented.

- (d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 11.1 is void.

11.2 Proprietary or Confidential Information.

- (a) Confidential Information. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, the other Party may have access to private or confidential information and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns or controls the Confidential Information. Each Party agrees that all private and confidential information disclosed by one Party to the other Party shall be held in confidence and used only in performance of the Agreement; however, a Party may disclose the Confidential Information of the other Party to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement and as necessary to comply with any applicable requirements or orders of a Governmental Authority. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.
- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller's proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY", and identify the specific lines containing such information (the "Confidential Information"). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Laws).
- (c) Disclosure of Confidential Information by Buyer. In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer's deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 11.2 nothing shall restrict any Party from using or disclosing information related to this Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action

as determined by such Party's attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is furnished to the non-disclosing Party's Affiliates, or to the auditors, attorneys, advisors, or actual or potential lenders or investors of the non-disclosing Party and/or its Affiliates which are required to keep the information that is disclosed in confidence.

- (e) Nondisclosure of Private Information. If this Agreement requires Buyer to disclose "Private Information" to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

11.3 Dispute Resolution; Choice of Law.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of this Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Agreement in accordance with and subject to the terms of this Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) Governing Law; Venue. 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. Venue shall be in the County of San Francisco, California.

11.4 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

11.5 General.

- (a) Entire Agreement. This Agreement, the exhibits, attachments, and any written and fully executed supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. 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.
- (c) Amendments. Except to the extent set forth in this Agreement, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. If any provision of this Agreement is rendered unlawful by action by any Governmental Authority, or any change in Applicable Law, including the CAISO Tariff (a "Change in Law") occurring after the Execution Date, the remaining lawful obligations

that arise under this Agreement shall not be affected. If the Change in Law results in material changes to the Parties' obligations with regard to any Product sold hereunder so that the performance of this Agreement becomes impossible or impracticable, the Parties shall work in good faith to revise this Agreement so that the Parties may perform their obligations in a manner that maintains to the greatest extent practicable the original intent of the Parties and the benefits, burdens, and obligations under this Agreement. A change in cost shall not in and of itself be deemed to render this Agreement or any provision of this Agreement impossible or impracticable.

- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Agreement shall be binding on each Party's successors and assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility.
- (k) Limitations on Contributions. By executing this Agreement, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.
- (l) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer

may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.

(m) Nondiscrimination Requirements.

(i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(n) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. Seller is subject to the enforcement and penalty provisions in Chapter 12K.

(o) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(p) Submitting False Claims. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to Buyer for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to Buyer if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of Buyer a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Buyer; (c) conspires to defraud Buyer by getting a false claim allowed or paid by Buyer; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Buyer within a reasonable time after discovery of the false claim.

- (q) Use of City Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the Buyer.
- (r) Business License Taxes. Seller agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the Term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Seller further acknowledges and agrees that City may withhold any payments due to Seller under this Agreement if Seller is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this Section 11.5(r) shall be made to Seller, without interest, upon full payment of all taxes owed by Seller and reinstatement of Seller's vendor certification.
- (s) Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Seller shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off.
- (t) Health Care Accountability. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- (u) Conflict of Interest. Through its execution of this Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify Buyer if it becomes aware of any such fact during the term of this Agreement.
- (v) City Requirements. Seller shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of the Agreement, and must at all times materially comply with such local codes, ordinances, and regulations as they may be amended from time to time. Buyer shall use best efforts to provide notice to Seller of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware; however, Seller's obligations under this Section shall not be contingent on notice from Buyer.
- (w) Severability. Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. 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.
- (x) Survival. All rights pursuant to: Section 4.1(e) (Disputes and Adjustment of Invoices); Section 5.6(c) (CAISO Charges Invoices); Article 8 (Default; Remedies; and Termination), Article 9 (Indemnification), Section 11.2 (Proprietary or Confidential Information); Section 11.3 (Dispute Resolution; Choice of Law), Section 11.4 (Audit); Section 11.5(l) (Prohibition on Political Activity with City Funds); and Section 11.5(q) (City Opinion) shall also survive termination of this Agreement.

11.6 Mobile Sierra. Absent the prior written agreement of all Parties, the standard of review for changes to any rate, charge, term, or condition of service of this Agreement, whether proposed by a Party, a non-party or 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).

- 11.7 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code and Buyer and Seller are “forward merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.
- 11.8 Notices.** Unless otherwise stated in this Agreement, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand or electronic mail, or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.
- 11.9 Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

[Signature page follows on next page.]

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

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller

By: _____
General Manager
San Francisco Public Utilities Commission

By: _____
Name: _____
Title: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

SELLER DOCUMENTATION OF CONDITIONS PRECEDENT

Part I:

Seller shall provide to Buyer all of the following documentation at least five (5) Business Days prior to the Execution Date:

1. A copy of each of (a) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (b) the by-laws or other similar document of Seller as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
3. Evidence of Site control (e.g. lease with redacted price terms).
4. Evidence of CEC Certification or pre-certification received, as applicable.
5. A copy of the Interconnection Agreement, if any.
6. Insurance documentation as required in Exhibit D.
7. A copy of the most recent financial statements (which may be unaudited) from Seller's Parent.

Part II:

Seller shall provide to Buyer all of the following documentation in a timely manner following the Execution Date:

1. Evidence of all Permits received, as applicable, including but not limited to, any copies of all final environmental review documents.
2. A copy of the Project Labor Agreement, if any, for the Facility.
3. A copy of the load flow analysis and any deliverability assessment performed by the PTO or CAISO to show power flow capacity and/or deliverability at the point of interconnection.
4. A copy of all CAISO certification and testing performed for the Facility resource characteristics identified in Exhibit [B], including all Ancillary Services, storage Pmax and Pmin, Qualifying Capacity and Net Qualifying Capacity.

EXHIBIT B

FACILITY DESCRIPTION AND SITE DRAWINGS

I. Facility Description

Facility name:

Facility physical address:

Facility Coordinates:

Technology type (including any applicable model):

Interconnection Point of Facility:

Interconnection Agreement Name/Number:

Assessor's Parcel Nos:

II. Operational Characteristics

PMax of the Facility:

PMin of the Facility:

Minimum storage capacity (MWh):

Maximum storage capacity (MWh):

Ramp Rate Up (MW/minute):

Ramp Rate Down (MW/Minute):

Rest time required after reaching Minimum storage capacity (MWh):

Rest time required after reaching Maximum storage capacity (MWh):

III. Site Drawings

A. Site Map

B. Single Line Diagram.

EXHIBIT C

[FOR DEGRADING PROJECTS]

GUARANTEED ANNUAL CAPACITY

The Guaranteed Annual Capacity for each Contract Year is as follows:

Contract Year	Guaranteed Annual Capacity (MW)
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	

EXHIBIT D

INSURANCE COVERAGES

1. **Liability Coverages.** Without in any way limiting Seller's liability pursuant to the "Indemnification" section of this Agreement, Seller must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance:
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and include a blanket waiver of subrogation; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - (d) 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.
 - (e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
2. **Additional Coverages**
 - (a) Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full replacement value of the Site and Facility or 125% of the Loss Limit of the 1/500 year earthquake/flood event as established by a Maximum Foreseeable Loss earthquake and flood study prepared by the applicable insurer in accordance with current industry standard. Such insurance shall, include Business Interruption coverage in an amount equal to twelve months of revenue from this Agreement.
 - (b) Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of two million dollars (\$2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.
3. **Endorsements.**
 - (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide include blanket endorsements:
 - (i) Name as Additional Insured, the City and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) The certificate of insurance shall state that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(b) All policies shall provide thirty (30) days' advance written notice of cancellation for any reason, intended non-renewal, or reduction in coverages, except ten (10) days' notice for non-payment of premiums.

4. **Length of Coverage.** Should any of the required insurance be provided under a claims-made form, Seller shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5. **Maintenance of Coverage.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Buyer receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Buyer may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

Certificates. Prior to commencement of the Term, Seller shall furnish to Buyer certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A- , VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Approval of the insurance by Buyer shall not relieve or decrease Seller's liability hereunder.

EXHIBIT E

**CONSTRUCTION START
CERTIFICATION**

_____(Date)_____

This certification (“Certification”) of the Construction Start Date is delivered by _____ (“Seller”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer that Construction Start has occurred and :

- a) The Construction Start Date occurred on _____. (“Construction Start Date”);in
- b) the Notice to Proceed was issued by Seller to the EPC contractor, [EPS Contractor name]on _____ (attached), and;
- c) mobilization at the Facility Site commenced on _____.

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

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT F

PROGRESS REPORTING FORM

Each Progress Report shall include the following items:

1. Executive Summary.
2. Gantt chart schedule showing progress on achieving each of the Milestones.
3. Description of any material planned changes to the Facility or the Facility Site.
4. Financing activities. Provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.
5. Major equipment procurement activities. For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item to be procured or delivered in each Calendar Quarter.
6. Construction Activities. Include information on the status of any construction-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other Interconnection Facilities that are the direct responsibility of the Facility.
7. Interconnection Activities. Include information on interconnection-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Facility construction information), Network Upgrades, and grid outage and/or interconnection schedules.
8. Startup. Include information on the status of activities related to preparation for Commercial Operation, including progress towards the items set forth in Exhibit H-2, the requirements and notifications of the grid operator and Transmission Provider, and any other activities that must be conducted before the Facility may deliver Energy to the grid and/or declare Commercial Operation.

For items 4 through 8, include the progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements, and major equipment purchase orders showing the start dates, completion dates, and completion percentages. 8. Forecast of activities scheduled for the current calendar quarter.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
11. CPUC General Order 156 supplier diversity reporting. Format to be provided by Buyer.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION CERTIFICATION

This certification (“Certification”) of Commercial Operation is delivered by [LICENSED PROFESSIONAL ENGINEER] (“Engineer”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined in this Exhibit G-1 shall have the meanings assigned to these terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational and reliable.
2. The Facility is interconnected, fully integrated, and synchronized with the Transmission System.
3. The Facility’s Installed Capacity is no less than ninety-five percent (95%) and no more than one hundred percent (100%) of the Guaranteed Installed Capacity and the Facility is capable of charging, storing, and discharging Energy, subject to the applicable Operating Parameters.
4. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority up to the Guaranteed Installed Capacity.
5. The commissioning of all equipment for the Facility has been completed in accordance with the manufacturers’ specifications.
6. Authorization to parallel the Facility was obtained by the Transmission Provider on ____ [DATE] ____.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider] on ____ [DATE] ____.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on ____ [DATE] ____.

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

Licensed Professional Engineer:

Signature: _____

Name: _____

Title: _____

EXHIBIT G-2
FORM OF INSTALLED CAPACITY CERTIFICATION

This certification of the Installed Capacity is delivered by [licensed professional engineer] to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, in accordance with the terms of the Energy Storage Agreement dated _____, (“Agreement”) by and between Buyer and Seller. All capitalized terms used in this certification but not otherwise defined herein shall have the meanings set forth in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for [] consecutive hours to discharge electric energy of [] MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 5.4 and Exhibit K prior to the Commercial Operation Date (“Installed Capacity”).

EXECUTED BY [LICENSED PROFESSIONAL ENGINEER]

This _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____

Name: _____

EXHIBIT H-1
LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: **[Insert issue date]**

Beneficiary: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF
525 Golden Gate Avenue
San Francisco, CA 94102
Attn:

Applicant: **[Insert name and address of Applicant]**

Letter of Credit Amount: **[insert Amount]**

Expiry Date: **[insert expiry date]**

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it shall expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit J-2 hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. **Pursuant to the terms of that certain [insert name of the agreement] (the “Agreement”), dated [insert date of the Agreement], between Beneficiary and [insert name of Seller under the Agreement], Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by [insert name of Seller under the Agreement] under the Agreement; or**
 - B. **“Letter of Credit No. [insert number] shall expire in thirty (30) days or less and [insert name of Seller under the Agreement] has not provided replacement security acceptable to Beneficiary.**

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;

2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit shall be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we shall honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly. The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

EXHIBIT H-2
SIGHT DRAFT

TO: [INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$

DATE:

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF _____ THE AMOUNT
OF U.S.\$ _____ U.S. DOLLARS) DRAWN
UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

By: _____
Name and Title

EXHIBIT I

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice is delivered by [SELLER ENTITY] (“Seller”) to the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF in accordance with the terms of the Energy Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms not otherwise defined in this RA Notice shall have the meaning set forth in the Agreement.

UNIT SPECIFIC INFORMATION	
Resource Name	
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month	
Unit EFC by month	
Resource Type	
Minimum Qualified Flexible Capacity Category	
TAC Area	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Local Capacity Area	
Resource Category as defined by the CPUC	

Showing Month and Year	Quantity (MW)
[MM] [YY]	

EXHIBIT J
STORAGE OPERATING PARAMETERS

No later than one hundred eighty (180) days prior to the Commercial Operation Date, Buyer and Seller shall finalize the Operating Parameters, provided that, the Operating Parameters shall not be materially more restrictive of the operation of the Facility than set forth below, unless agreed to by Buyer in writing. The Operating Parameters may be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Parameters.

OPERATING PARAMETERS	VALUES
Instantaneous Maximum Charging Capacity [MW]	
Maximum Full Cycles/Year	365 plus the Surplus Cycles available for that Contract Year, subject to the Maximum Daily Discharge limit. Any cycle that is not a Full Cycle is a "Partial Cycle". Buyer may perform any number of Partial Cycles as long as, in the aggregate across all Partial Cycles, the Maximum Daily Discharge and Maximum Annual Discharge limits in this Operating Parameters table are not violated.
Maximum Annual Discharge	
Maximum Monthly Discharge	
Maximum Daily Discharge	
Maximum SOC during Charging	
Maximum SOC during Discharging	
Maximum Charging Capacity	
Maximum Discharging Capacity	
Maximum Storage Level	
Minimum Storage Level	

EXHIBIT K
STORAGE CAPACITY TESTS

I. Storage Capacity Test Frequency.

1. Commercial Operation Date Storage Capacity Tests. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. The initial SCT shall be performed in accordance with this Exhibit N and shall establish the Installed Capacity and Round Trip Efficiency Rate hereunder based on the actual capacity of the Facility determined by the SCT.
2. Subsequent Storage Capacity Tests. Commencing in the second Contract Year and in each subsequent Contract Year, within the first quarter of each calendar year of the Delivery Term and upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. Buyer shall have the right to require a retest once per Contract Year upon no less than five (5) Business Days prior written notice to Seller, or any shorter period reasonable acceptable to Seller consistent with Prudent Operating Practice. Seller shall have the right to require a retest once per Contract Year of the Storage Delivery Term upon no less than five (5) Business Days prior written notice to Buyer, or any shorter period reasonable acceptable to Buyer consistent with Prudent Operating Practice.
3. Test Results and Re-Setting of Storage Contract Capacity. No later than five (5) days following any SCT, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 5.4(f) of the Agreement and Part III below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Contract Capacity shall become the new Storage Contract Capacity at the beginning of the day following the completion of the Storage Capacity Test for all purposes under this Agreement.

II. Storage Capacity Test Procedures.

1. General. Each SCT (including the initial SCT) shall be conducted in accordance with Prudent Operating Practice, CAISO's testing procedures for energy storage facilities, and the provisions of this Exhibit K. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
2. Conditions Prior to Testing.
 - A. Energy Management System (EMS) Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
 - B. Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA System data.
 - C. Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

3. Requirements Applicable to all Storage Capacity Tests.

A. Purpose of Test. Each SCT shall:

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

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

- (1) Time (minutes);
- (2) Charging Energy (MWh);
- (3) Discharging Energy (MWh);
- (4) Stored Energy Level (MWh);
- (5) Station Uses (MWh).

C. Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility;
- (3) Ambient air temperature (°F).

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

- (1) That the SCT successfully started;
- (2) The maximum sustained discharging level for XXX (X) consecutive hours pursuant to A(1) above;
- (3) The maximum sustained charging level for XXX (X) consecutive hours pursuant to A(2) above;
- (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
- (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
- (6) Amount of Charging Energy and Energy In, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
- (7) Amount of Facility Energy and Energy Out, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practice and all operating protocols recommended, required or established by the manufacturer for operation.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.2.F below.

- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. Incomplete Test. If any SCT is not completed in accordance with this Exhibit N, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped without any modification to the Storage Contract Capacity pursuant to Section III, below; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer, the CAISO, or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within five (5) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.2.A through C, including copies of the raw data taken during the test;
 - (3) the level of Storage Contract Capacity, Charging Capacity, Discharging Capacity and Stored Energy Level determined by the SCT, including supporting calculations;
 - (4) the Round Trip Efficiency; and
 - (5) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor. If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.2.F.

3. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit N with additional and supplementary details, procedures and requirements applicable to SCTs based on the then current design of the Facility ("Supplementary Storage Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Test Protocol. The initial Supplementary Storage Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit N.

III. Storage Capacity Test Results and Re-Setting of Storage Contract Capacity.

The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first ___ hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Annual Capacity multiplied by (ii) ___ hours) shall be divided by ___ hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity commencing at the beginning of the day following the completion of the test for calculating the Contract Price and for all other purposes under this Agreement.

EXHIBIT L
STORAGE AVAILABILITY CALCULATION

Calculation of Monthly Storage Availability. Seller shall calculate the “Monthly Storage Availability” for each month of the Delivery Term using the formula set forth below:

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

where:

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

MONHRS_m is the total number of hours for the applicable month;

UNAVAILHRS_m , is the total number of hours, or partial hours, in the month during which the Facility was unavailable to deliver Product for any reason other than the occurrence of any of the following (each, an “Availability Excused Event”): a Force Majeure Event, Buyer Default, System Emergencies, up to one hundred twenty (120) hours of scheduled maintenance (including Planned Outages), or violation of the Operating Parameters.

- Guaranteed Capacity Deficit: During hours in which Storage Contract Capacity is less than the Guaranteed Annual Capacity (“Capacity Deficit Period”), the difference in capacity (“Capacity Deficit”) will be counted as an equivalent amount of UNAVAILHRS_m .
- Partial Hours and Partial Availability: If, for any reason other than an Availability Excused Event, the Facility is unavailable for less than a full hour or if a portion of the Facility is unavailable during any hour, the hours in which the Facility is partially available will be adjusted by an equivalent percentage to reflect the reduction in availability and will be included in this calculation of UNAVAILHRS_m . Any Availability Excused Event that results in unavailability of the Facility for less than a full hour or unavailability of a portion of the Facility during any hour, the hours in which the Facility is partially available will be adjusted by an equivalent percentage to reflect the reduction in availability for this calculation.
- If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.
- If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable “Availability Adjustment” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to 98%, then:

$$AA = 100\%$$

- (ii) If the Monthly Storage Availability is less than 98%, but greater than or equal to 70%, then:

$$AA = 100\% - [(98\% - \text{Monthly Storage Availability}) \times 2]$$

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

$$AA = 0$$

EXHIBIT M

ROUND TRIP EFFICIENCY ADJUSTMENT FACTOR

Seller shall calculate the “Round Trip Efficiency (or RTE) Adjustment Factor” for each month of the Delivery Term using the following calculation:

- (i) If the RTE Rate is greater than or equal to the GRTE Rate, then:
RTE Adjustment Factor = 100%
- (ii) If the RTE Rate is less than the GRTE Rate, then:
RTE Adjustment Factor = [100% - [(GRTE Rate –RTE Rate)]]

Where:

- “GRTE Rate” = The applicable Guaranteed Round Trip Efficiency Rate
- “RTE Rate” = Round Trip Efficiency Rate shall be the actual measured round trip efficiency of the Facility based on the total amount of Discharging Energy divided by the total amount of Charging Energy during each month of the Delivery Term (in %)

GUARANTEED ROUND TRIP EFFICIENCY

Contract Year	Guaranteed Round Trip Efficiency Rate %
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	