



Board of Directors Meeting

Wednesday, July 19, 2019

6:00 pm

City of Hayward
Council Chambers
777 B Street,
Hayward, CA 94544

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Board, please hand it to the clerk who will distribute the information to the Board members and other staff. Please bring at least 25 copies.

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Closed Session

- A. CONFERENCE WITH LEGAL COUNSEL - Anticipated Litigation: Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956:9: one case.
- B. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (under Paragraph (1) of subdivision (d) of Section 54956.9) In Re PG&E corporation and Pacific Gas and Electric Company, Debtors, Bankruptcy Case No. 19-30088(DM), United States Bankruptcy Court, Northern District of California.

4. General Counsel Report out of Closed Session

5. Public Comment

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

CONSENT AGENDA

6. Approval of Minutes:

- June 5, 2019
- June 19, 2019

7. Contracts entered into (Informational Item)

8. Consulting Services Agreement for Graphic and Web Design Services with Celery Design Collaborative

Adopt a resolution authorizing the Chief Executive Officer to sign an agreement for graphic and web design services with Celery Design Collaborative for the purpose of providing graphic and web design services to EBCE for the contract period of 7/17/19 to 7/31/20, in the amount of \$100,000.

9. PG&E Time-Of-Use Rate Transition

Receive report on planned PG&E Time-of-Use (TOU) rate transition, and adopt a resolution for EBCE participation in a transition of residential and non-residential customers to a default TOU rate in concert with the efforts of PG&E.

10. Legal Services Approval

Adopt a resolution authorizing the Chief Executive Officer, or a designee to negotiate and execute contracts with select legal firms in accordance with the board approved legal budget, totaling \$1,076,000 for fiscal year 2019-2020.

Selected law firms include:

- Richards Watson & Gershon -General Counsel Services
- Davis Wright Tremaine - Policy
- Keyes & Fox - Policy/Compliance/Power procurement
- Hall Energy Law - Power Procurement
- Wilson Sonsini Goodrich & Rosati - Power Procurement
- Liebert Cassidy & Whitmore - Employment/HR
- Nixon Peabody - Finance

REGULAR AGENDA

11. CEO REPORT

- A. Executive Committee Meeting;
- B. Marketing and Outreach update; and
- C. Regulatory and Legislative update.

12. Community Advisory Committee Report

13. Sacramento Municipal Utility District (SMUD) Presentation (Informational Item)

Receive a presentation from Director of Community Energy Services at SMUD regarding their services to EBCE

14. Treasurer's Report (Informational Item)

Receive quarterly report on EBCE Cash position.

15. Amended and Restated Barclays Revolving Credit Agreement (Action Item)

Adopt a Resolution approving an amended and restated revolving credit agreement with Barclays Bank PLC and authorizing the Chief Executive Officer to execute the same, to allow for issuance of Letters of Credit as well as reduce the interest cost of the facility.

16. EBCE Rate Modifications (Informational Item)

Receive an update from staff regarding EBCE rate modifications.

17. Clearway, esVolta, and SunRun Contract Approvals (Action Item)

Adopt three resolutions authorizing the CEO to:

- A. Execute a 13-year 7MW/28MWh Local Greater Bay Area Resource Adequacy contract (“esVolta contract”) with esVolta/Tierra Robles Energy Storage, LLC;
- B. Complete negotiations and execute a 10-year 0.5MW Local Greater Bay Area Resource Adequacy contract (“SunRun contract”) associated with behind the meter low income multi-family housing with SunRun; and
- C. Execute a 15-year 112MWac Solar PV Power Purchase Agreement (“Clearway PPA”) with Clearway Energy Group/Golden Fields Solar III, LLC.

18. Board Member and Staff Announcements including requests to place items on future Board Agendas

19. Adjournment - to Date: Wednesday September 18, 2019

Location: City of Hayward
Council Chambers
777 B Street
Hayward CA 94544



Consent Item 7

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: Contracts Entered into
DATE: July 9, 2019

RECOMMENDATION

Accept the CEO's report on contracts entered into between June 13, 2019 and July 9, 2019;

1. C-2019-46, M. Cubed (Oakland), First Amendment to Consulting Service Agreement, adds \$3,000 to the NTE through 6/30/19 for services related to ERRA Forecasting and Compliance.
2. C-2019-47, M. Cubed (Oakland), new Consulting Services Agreement for FY 19-20, for 2020 ERRA Forecast for A.19-06-001 Proceeding and related Advice Letters and 2018 ERRA Compliance, NTE \$14,000.
3. C-2019-50, Nixon Peabody (San Francisco), Consulting Services Agreement for FY 19-20, for Credit facility review services, NTE \$15,000.
4. C-2019-51, Pimenti & Brinker (Santa Rosa), Consulting Services Agreement from 7/1/19 through 12/31/2021 for three years of financial auditor services, NTE \$79,500.
5. C-2019-52, Maher Accountancy (San Rafael), Consulting Services Agreement from 7/1/19 to 12/31/19 for accounting services, NTE \$99,000.



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: Consulting Services Agreement for Graphic and Web Design Services with Celery Design Collaborative

DATE: July 17, 2019

Recommendation

Adopt a resolution authorizing the CEO to sign an agreement for graphic and web design services with Celery Design Collaborative for the purpose of providing graphic and web design services to EBCE for the contract period of 7/17/19 to 7/31/20, in the amount of \$100,000.

Background and Discussion

Alameda County issued a request for proposals in December 2016 for Community Outreach, Marketing and Customer Notification services. Four proposals were received by the Community Development Agency's (CDA) Planning Department and were reviewed pursuant to the County's procurement process. On January 13, 2017, a County Selection Committee (CSC) panel of two Community Choice Aggregation (CCA) Steering Committee members convened to interview, score, and rank the proposals.

Circlepoint, a certified Small, Local, Emerging Business (SLEB), was the top scoring proposal and recommended to the board, resulting in Procurement Contract No. 14862 that went into effect on April 11, 2017 and ends on April 11, 2018.

On April 12, 2018, EBCE entered into a Professional Services Agreement with Circlepoint to cover the remaining budget originally allocated to this agreement based on the approval of the Board at the April 11, 2018 public meeting. The agreement amount was \$295,000 with a term through June 30, 2019 and a scope to support the launch of Phase 1 and begin planning for Phase 2.

On July 18, 2018, EBCE amended the agreement to add budget in order for Circlepoint to continue to support community outreach, marketing, and customer notification for the Phase 2 launch to residential customers. The amended agreement was not to exceed \$828,510. On April 17, 2019, the Board approved an extension to the Circlepoint agreement through August 31, 2019 in order to allow time for a competitive solicitation of services from similar firms to address EBCE's on-going needs.

At this point, EBCE is executing many aspects of the agreement through in-house staff but continues to need support for graphic and web design. EBCE staff issued a competitive solicitation for an independent graphic and web design consultant on April 25, 2019. Ten proposals were submitted by the deadline of May 17. A small committee of three staff members scored the proposals independently and interviewed the top four contenders. Based on the interviews and references, staff selected Celery Design Collaborative, a small firm located in Berkeley and registered as a Small, Local, and Emerging Business (SLEB) with the County of Alameda. More information on Celery Design Collaborative is available at <http://www.celerydesign.com/>.

Fiscal Impact

The contract is budgeted at \$100,000 and will be billed based on time and materials. Hourly rates are included in the contract.

Attachment

- A. Resolution Authorizing the CEO to execute an agreement for graphic design services; and
- B. Consulting Services Agreement for Graphic and Web Design Services By And Between East Bay Community Energy Authority and Celery Design Collaborative

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
EAST BAY COMMUNITY ENERGY AUTHORITY TO AUTHORIZE THE CEO TO EXECUTE
AN AGREEMENT FOR GRAPHIC AND WEB DESIGN SERVICES

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

Section 1. The East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. EBCE issued a Request for Proposals for graphic and web design services to support the on-going needs of marketing and outreach and received ten qualified responses.

Section 3. EBCE selected Celery Design Collaborative as the successful bidder subject to entering into a mutually acceptable Consulting Services Agreement.

Section 4. The Chief Executive Officer is hereby authorized to execute an agreement with Celery Design Collaborative in a form substantially similar to the attached Consulting Services Agreement in an amount not to exceed \$100,000 for a one-year term.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**Consulting Services Agreement for
Graphic and Web Design Services
By and Between East Bay Community Energy Authority and
Celery Design Collaborative**

This Consulting Services Agreement (“Agreement”) is made this 17th day of July, 2019, (“Effective Date”) by and between East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”) and Celery Design Collaborative, a California Limited Liability Corporation (“Consultant”) for the purpose of providing graphic and web design services to EBCE.

Section 1. Recitals

1.1 The Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

1.2 Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties to this Agreement, agree as follows:

Section 2. Term

The term of this Agreement is from the Effective Date of this Agreement through July 31, 2020 unless terminated earlier pursuant to Section 8.

Section 3. Scope of Work/Compliance with Laws and Regulations

3.1 Consultant agrees to perform the scope of work in Exhibit A, which will be divided into several task orders (collectively the “Work”) in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work.

3.3 Consultant and its Subconsultants must comply with all federal, state and local laws and regulations in performing the Work under this Agreement.

Section 4. Consultant Staffing

Exhibit C contains a list of Consultant's project manager and all team members. Consultant will not change or substitute the project manager or any team members or add additional team members without EBCE's advanced consent.

Section 5. Subconsultants

5.1 Consultant agrees to use only those Subconsultants listed on Exhibit D. Any changes to Exhibit D to add or remove a Subconsultant must be approved by EBCE in advance, in its sole and absolute discretion.

5.2 Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, maintaining insurance in compliance with the insurance obligations under Section 9, the Confidentiality requirements under Section 11 and indemnifying EBCE under Section 12.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is \$100,000.

6.2 If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to EBCE on a monthly basis complete with the name of the individual that conducted the Work, the time spent and a brief description of the tasks performed during that time. On all invoices, Consultant must include the total compensation left on the Agreement after deducting the amount of the invoice and must submit invoices to EBCE by the 20th of the month following the month in which Consultant performed the Work.

6.3 If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the task or project to the satisfaction of EBCE for full payment, unless other arrangements have been made.

6.4 EBCE will not agree to pay any markups on Subconsultant Services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

6.5 The following are conditions on EBCE's obligation to process any payments under this Agreement:

6.5.1 If the Consultant is a U.S. based person or entity, the Consultant must provide to EBCE a properly completed Internal Revenue Service Form W-9 before EBCE will process payment. If the Consultant is a U.S based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must

provide EBCE with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before EBCE will process payment.

6.5.2 If the Consultant is not a U.S. based person or entity, the Consultant must provide EBCE with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before EBCE will process payment.

6.6 EBCE agrees to pay invoices within forty-five (45) days of receipt. Invoices may be sent to EBCE by U.S. mail or electronic mail to AP@EBCE.org and cc ahenderson@EBCE.org. Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

6.7 EBCE, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of EBCE's constituent members in connection with this Agreement.

Section 7. Records Retention and Ownership of Work Product

7.1 The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three years following termination of this Agreement.

7.2 EBCE owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. Work Product(s) includes, but is not limited to, all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, documents or other materials developed or discovered under this Agreement. All Work Product(s) will be considered "works made for hire." And all Work Product(s) and any and all intellectual property rights arising from their creation will be and remain the property of EBCE without restriction or limitation upon their use, duplication or dissemination by EBCE. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

Section 8. Termination

8.1 EBCE may terminate this Agreement for any reason by giving Consultant written notice. The termination notice may set the date of termination, but if no such date is given, termination is effective seven (7) days following the date of the written notice.

8.2 EBCE may terminate this Agreement immediately upon written notice for any material breach of this Agreement by Consultant or any of its Subconsultants. If EBCE terminates this Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess costs in addition to any other remedies available to EBCE.

8.3 Upon termination for any reason, EBCE has the option of requiring the Consultant to complete work up to the date of termination or to cease work immediately. EBCE has the further option to require Consultant to provide EBCE any finished or unfinished Work or Work Product prepared by the Consultant up to the date of termination.

8.4 EBCE will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to EBCE up to the date of written Notice of Termination. If EBCE authorizes Consultant to continue performing the Work through the date of termination, EBCE will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.

8.5 Upon termination of this Agreement, and at no cost to EBCE, Consultant, its Subconsultants and anyone working for EBCE under control of Consultant must return all Work Product to EBCE. Consultant may only retain copies of the Work Product by express written permission of EBCE.

Section 9. Insurance

9.1 Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full Term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by EBCE, a copy of the insurance policy, prior to performing any work under this Agreement.

9.2 Consultant agrees not to terminate any of the required insurance coverage during the term of this Agreement. Consultant must give EBCE ten (10) days written notice and obtain EBCE's written approval prior to making any modifications in the insurance coverage.

9.3 Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

Section 10. No Discrimination or Conflict of Interest

10.1 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

10.2 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not

violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify EBCE immediately if it identifies any conflicts of interest. Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

10.3 In accordance with the California Political Reform Act (Cal. Gov't Code section 81000 *et seq.*), Consultant will cause each of the following people performing services under this Agreement to file a Form 700 within 30 days after the person begins performing services under this Agreement and subsequently in conformance with the requirements of the Political Reform Act by filing the original with the EBCE Clerk to the Board of Directors. Each of the identified positions must disclose interests in accordance with the EBCE Resolution-2018-7, Conflict of Interest Code as may be amended from time to time.

Name	Position or Assignment
N/A	

Section 11. Confidentiality

11.1 Except as authorized by EBCE or as otherwise required by law, Consultant shall not disclose to any third party(ies) any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and EBCE staff. In the event Consultant receives a request from any third-party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify EBCE and wait for direction from EBCE before disclosing the information.

11.2 For the purposes of this Section 11, "third parties" refers to any person or group other than EBCE staff and Board members. For example, "third parties" include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.

11.3 This Section 11 will survive the expiration or termination of this Agreement.

Section 12. Indemnity

12.1 Consultant agrees, at its sole cost and expense, to indemnify, defend, with counsel reasonably approved by EBCE, protect and hold harmless EBCE, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those EBCE agents serving as independent contractors in the role of EBCE staff (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant's or Subconsultant's performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act

intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by EBCE's use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.

12.2 Consultant's obligations in Subsection 11.1 do not apply to the extent any claim, loss, damage, injury, expense or liability that results from the sole negligence or willful misconduct of Indemnitees.

12.3 Consultant's obligation to defend EBCE applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.

12.4 The Consultant's obligations under Section 12 applies regardless of the existence or amount of insurance the Consultant carries or has made available to EBCE.

12.5 The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

Section 13. Consultant is an Independent Contractor

13.1 Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is not an agent or employee of the EBCE and must not represent or act as the EBCE's agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to EBCE employees, and expressly waives any claim it may have to any such rights.

13.2 As an independent contractor, Consultant has complete control over its Subconsultants, Subsuppliers, affiliates agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subconsultants"). Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

Section 14. Miscellaneous Terms and Conditions

14.1 EBCE Authority.

The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer's signing authority, termination or modification of terms.

14.2 Waiver.

Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In no event will payment by EBCE to Consultant constitute or be construed as a waiver by EBCE of any breach or default of this Agreement, nor will such payment prejudice any of EBCE's other rights or remedies.

14.3 Governing Law.

Consultant and EBCE agree that this Agreement will be interpreted under the laws of the State of California.

14.4 Venue.

Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

14.5 Audit Rights.

All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to EBCE, at any time during regular business hours, upon written request by EBCE. Copies of such records or documents shall be provided to EBCE at EBCE's offices unless an alternative location is mutually agreed upon.

14.6 Recitals and Exhibits.

The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

14.7 Notices.

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

EBCE Attn: Annie Henderson
 C/o WeWork
 1111 Broadway, 3rd Floor
 Oakland, CA 94607
 Email: ahenderson@ebce.org
 Phone: 510-640-9681

Consultant Attn: Brian Dougherty
 1718 San Pablo Avenue
 Berkeley, CA 94702
 Email: brian@celerydesign.com
 Phone: 510-649-7155

14.8 Assignment.

Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without the EBCE's prior written consent. EBCE, at its sole discretion, may void this Agreement if a violation of this provision occurs.

14.9 Integrated Agreement.

The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between EBCE and Consultant and supersedes any prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral respecting the Work up through the Effective Date of this Agreement.

14.10 Amendments.

Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.

14.11 Government Claims Act.

Nothing in this Agreement waives the requirements to comply with the Governmental Claims Act, where applicable.

14.12 Severability.

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

14.13 Counterparts.

This Agreement may be entered into by counterparts, each of which shall be considered an original against the party that signed it.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement on the dates below to be effective upon the Effective Date.

EBCE, a California Joint Powers Authority

Celery Design Collaborative, a California LLC

Nick Chaset, CEO
Date:

Brian Dougherty, Founder and Creative Director
Date:

Approved as to form:

General Counsel

LIST OF EXHIBITS

- EXHIBIT A: SCOPE OF WORK
- EXHIBIT B: SCHEDULE
- EXHIBIT C: CONSULTANT STAFFING
- EXHIBIT D: SUBCONSULTANTS
- EXHIBIT E: COMPENSATION/BUDGET
- EXHIBIT F: INSURANCE REQUIREMENTS

EXHIBIT A
SCOPE OF WORK

Task 1.0 **Graphic Design Services**

1. Develop exceptionally professional, clean, and compelling layout and final artwork for print and digital collateral, including but not limited to displays, flyers, brochures, presentations, reports, social media, e-newsletters, mailers, ads, banners, infographics, templates, icons, and other visual formats
2. Provide flexible capacity to complete multiple design projects simultaneously during busy periods, and ability to rapidly ramp up or down the capacity dedicated to this contract to meet fluctuating client needs. Volume of work may fluctuate between 10 to 40 or more hours per week, with an average around 20 hours per week.
3. Develop ideas for communicating complex concepts through clean, professional, and compelling visual design
4. Understand the EBCE brand and articulate the brand message through appropriate design solutions
5. Maintain and update brand guideline documents
6. Create artistic and creative illustrations for marketing materials to support EBCE programs and services as needed
7. Contribute to the planning of specific advertising and communications campaigns as needed
8. Maintain consistently excellent standards of quality and attention to detail in all drafts and final products
9. Ability to work at a highly professional level in Adobe Creative Suite
10. Attend and direct EBCE photo shoots as needed

Task 2.0 **Web Design, Hosting, and Maintenance Services**

1. Coordinate with external design consultant to successfully transfer EBCE.org website to EBCE management.
2. Host and maintain existing EBCE.org website and apply appropriate updates as necessary.
3. Develop exceptionally professional, clean, and compelling new pages for EBCE.org that stay within brand guidelines and incorporate best practices in user interface, user experience, and Americans with Disabilities (ADA) compliance.
4. Demonstrate superior skills in developing functionality within WordPress to support the needs of the programs and general services of EBCE, such as but not limited to pop-up windows, embedded forms, and dynamic layouts.
5. Provide and follow a clearly defined process for creation and execution of new web content and features that includes wireframes, mock-ups, user-acceptance testing, final review by client in a pre-production environment, and notification of client directly after code release.
6. Analyze website analytics and recommend ways to improve metrics.
7. Provide direction and/or instruction to EBCE staff on basic WordPress features in order for staff to self-serve for simple needs.

8. Provide flexible capacity to complete multiple design projects simultaneously during busy periods, and ability to rapidly ramp up or down the capacity dedicated to this contract to meet fluctuating client needs.

Task 3.0

Client Communication

1. Assign a lead designer as point person for this account with availability to meet in-person on site at EBCE office on a regular basis (weekly if needed) to make on-the-spot design revisions as well as explore visual design concepts collaboratively with EBCE staff
2. Communicate effectively in writing and in verbal conversation, establishing and maintaining effective working relationships with all persons encountered during the performance of duties
3. Track client direction and feedback with utmost attention to detail in order to deliver promptly and accurately upon all requests
4. Deliver products by deadlines as directed by client
5. Maintain system of saving and tracking design files on client's online cloud storage system with high attention to detail in tracking draft versions
6. Utilize project management software that provides visibility of project progress and status to client
7. Track hours effectively and bill client accurately
8. Respond to client communications within 1 business day

**EXHIBIT B
SCHEDULE**

Task 1 Graphic Design Services	On-going
<i>Power Content Label</i>	<i>Begin 7/17/19 complete by 8/15/19</i>
<i>Other items</i>	<i>TBD</i>
Task 2 Web Design, Hosting, and Maintenance Services	On-going
<i>Website Transfer</i>	<i>Begin 7/17/19 complete by 8/31/19</i>
<i>Other items</i>	<i>TBD</i>
Task 3 Client Communication	On-going
<i>General Kick-off Meeting</i>	<i>ASAP</i>
<i>Web Transfer Kick-off Meeting</i>	<i>ASAP</i>
<i>PCL Kick-off Meeting</i>	<i>ASAP</i>
<i>Other items</i>	<i>TBD</i>

EXHIBIT C
CONSULTANT STAFFING

Consultant project team will consist of the following Key Personnel, as applicable during the contract term:

Name	Title
Brian Dougherty	Creative Director
Stephanie Welter-Krause	Art Director and Design Lead
Amy Glaiberman	Art Director and Design Lead
Christopher Paguio	Senior Designer
Shannon McGill	Senior Designer
William Lark	Senior Creative Technologist
Jennifer Jackson	Copywriter

Consultant agrees that it shall not transfer or reassign the individuals identified above as Key Personnel without the express written agreement of EBCE, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Consultant no longer be employed by Consultant during the term of this Agreement, Consultant shall make a good faith effort to present to EBCE an individual with greater or equal qualifications as a replacement subject to EBCE's approval, which approval shall not be unreasonably withheld.

**EXHIBIT D
SUBCONSULTANTS**

EXHIBIT E
COMPENSATION/BUDGET

This agreement is billed on a time and material basis, per the rates indicated below. Total invoices during the term of this agreement shall not exceed \$100,000. Any direct costs, such as web hosting, will be billed at the amount charged to the Consultant with no additional mark-up on price.

Name	Title	Hourly Rate
Brian Dougherty	Creative Director	\$150
Stephanie Welter-Krause	Art Director and Design Lead	\$150
Amy Glaiberman	Art Director and Design Lead	\$150
Christopher Paguio	Senior Designer	\$125
Shannon McGill	Senior Designer	\$125
William Lark	Senior Creative Technologist	\$175
Jennifer Jackson	Copywriter	\$175

Exhibit F

INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Consultant must procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant must obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Exhibit F.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Exhibit F must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to EBCE. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against EBCE.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by EBCE. At EBCE's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to EBCE, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the Term. Consultant further agrees not to, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of EBCE. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to EBCE. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two business days of notice from the insurer, phone and notify EBCE via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. EBCE Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, EBCE may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, EBCE may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse EBCE for any premium paid by EBCE or EBCE, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant must furnish EBCE with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to EBCE's approval. EBCE may request, and Consultant must provide complete, certified copies of all required insurance policies to EBCE. Consultant must maintain current endorsements on file with EBCE. Consultant must provide proof to EBCE that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify EBCE under Section 12 of this Agreement.

K. Subconsultant Insurance Requirements. Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all of the requirements of this Exhibit F.



Consent Item 9

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: PG&E Time-Of-Use Rate Transition (Action Item)

DATE: June 19, 2019

Recommendation

Receive report on planned PG&E Time-of-Use (TOU) rate transition, and adopt a resolution for EBCE participation in a transition of residential and non-residential customers to a default TOU rate in concert with the efforts of PG&E.

Background and Discussion

Regulatory Background

In July 2015, California Public Utilities Commission (CPUC) decision ([D.15.07-001](#)) provided direction to the investor-owned utilities (IOUs) regarding specific steps that must be taken to reform the residential rate structure resulting in default time-of-use (TOU) rate for residential customers. A primary driver for the transition to a TOU rate is to maximize use of power when renewable energy generation is high and minimize use of power when the grid relies on fossil-fuel generation. PG&E estimates a savings of up to 10,000 tons of CO₂ per year across PG&E territory due to load shifting associated with the new TOU rate.

Specific requirements of the decision include:

- Transition to TOU is optional (customer can decline default rate)
- There is to be a “mild differential” between on-peak and off-peak rates
- IOUs must offer one year of bill protection¹
- There must be education and outreach to customers
- Certain customer groups will be excluded from the default transition, including but not limited to:

¹ The decision describes Bill Protection as “If, at the end of the year, a customer would have been better off on the previous rate plan, the customer will be credited the difference on their bill.”

- Customers on the medical baseline allowance program
- Customers requiring third party notification and/or in-person visit prior to disconnection
- Customers that do not have a Smart Meter or interval meter, or less than 12 months of interval data
- Customers enrolled in or eligible for CARE/FERA discount programs and located within hot climate zones (<100 customers in Alameda County)
- Customers already on an optional TOU rate (NEM2.0, E6, EVA/B not eligible)

Community choice energy programs, such as East Bay Community Energy (EBCE), are not required to default customers onto a TOU rate. However, all IOUs, including Pacific Gas & Electric (PG&E), are required to transition customers to a TOU rate. TOU transition applies to both residential and non-residential customers. Non-residential (commercial and industrial) customers are scheduled for rate transition in November 2020 and are not offered bill protection. Residential customers are proposed to transition to TOU rates in May 2021 in Alameda County. PG&E will offer bill protection for its bundled residential customers.

The information provided in this report focuses on the residential rate transition. However, the resolution requests approval for both residential and non-residential participation in the TOU transition.

The current proposed structure of the residential TOU rate is for peak hours (highest cost) between 4 PM and 9 PM every day, including weekends. The [PG&E rate](#) is currently called “Time-of-Use (Peak Pricing 4-9 P.M. Everyday)”. As of early June, there are approximately 2,000 residential customers that voluntarily switched to this TOU rate and are served by EBCE.

Initial Pilots and Default Roll-Out

PG&E conducted pilots in the last few years:

- Phase 1 - Voluntary Opt-In Pilot (2016/2017)
- Phase 2 - Default Pilot (began April 2018)
- Phase 3 - Default Roll-Out (begins October 2020)

Phase 2 wrapped up in April 2019 and analysis of the impacts show an average 4.2% reduction in load per hour per customer with some load shifting but overall load conservation. Phase 2 included customers from three Community Choice Aggregators (CCA): MCE Clean Energy, Sonoma Clean Power (SCP), and Silicon Valley Clean Energy (SVCE). Below are the participation results of the Phase 2 default pilot enrollment.

	PG&E + CCAs		MCE		SCP		SVCE	
Initial Population	160,525	100%	9,921	100%	8,158	100%	8,509	100%

Ineligible	7,540	4.70%	460	4.6%	408	5.0%	366	4.3%
Declined	38,996	24.29%	1,913	19.3%	1,574	19.3%	1,702	20.0%
Transitioned	113,991	71.01%	7,548	76.1%	6,176	75.7%	6,441	75.7%

The goals of the Phase 2 pilot were to test customer messaging, customer notification timing and process, customer enrollment, impacts of bill protection, and overall impact on electricity load.

Marketing, Education, and Outreach

The CPUC has aggregated funds from IOU customers to support an \$8.5M statewide marketing, education, and outreach campaign. The statewide campaign includes two chapters. The first chapter is referred to as the “vision” campaign and provides the context for why a customer should care about when they use electricity. The second chapter is a call to action that includes ideas and tips on how to shift energy usage. The statewide campaign includes multiple channels of paid advertising, public relations and outreach, and engagement with Community Based Organizations (CBOs).

Both the vision and call to action chapters of the campaign are underway now in San Diego Gas & Electric (SDG&E) territory. The vision chapter of the campaign began in March 2019 in PG&E territory. The vision campaign slogan is “[Keep It Golden](#)”. Though the vision chapter does not have a strong call to action, it does direct viewers to the Energy Upgrade California website. There is a [section](#) of the website dedicated to educating customers on when there is the greatest demand for power versus when there is the greatest output from renewable energy resources. The site identifies the period of 4 PM to 9 PM as peak usage hours with the lowest amount of renewable energy available, which is in alignment with the IOUs’ TOU rate structure with peak hours from 4 PM to 9 PM every day.

EBCE customers are already being exposed to the statewide vision campaign.

In addition to the statewide campaign, each IOU will have a marketing campaign in its territory. Customer communications will provide personalized bill impact information to all default eligible customers, rate choices, bill impact information, and tips and tools on ways to save. Customers will receive notifications 90, 60, and 30 days prior to transition, and a welcome packet following transition to the new TOU rate. PG&E’s campaign will begin in October 2020 and run through June 2021.

Fiscal Impact

A default transition of residential customers onto a TOU rate structure has a fiscal impact on EBCE in two ways: 1) cost of bill protection, and 2) reduced revenue.

Customers that receive the bill protection benefit are those that received higher bills on the new TOU rate compared to the previous flat, E1 rate. Some of these customers, the “rate losers,” will select to return to the E1 rate after 12 months on the TOU rate, while others may shift the time of day that they use electricity. Those that do not need bill protection are paying the same, or less, on TOU than they were on the E1 rate. These customers are “rate benefiteres;” they do not need to make any changes to their usage patterns to benefit from the TOU rate. We assume the majority of these customers will remain with TOU and continue to, effectively, pay less for the same amount of electricity over 12 months.

Both PG&E and EBCE have analyzed the potential financial impact and came to very similar conclusions. Below are the assumptions and results:

Assumptions

- ~355,000 eligible EBCE residential customers (as of February 2019)
- All eligible customers participate in transition
- Certain customers are excluded including medical baseline, customers without interval data, and customers already on a TOU rate
- PG&E and EBCE rates as of 1/1/19
- 2018 usage
- Full 12 months of bill protection for each customer
- Customers do not take any action to shift their energy use to other time periods

Results

- Total generation revenue from customers on TOU 4-9 PM Everyday - \$107M
- Cost of Bill Protection - \$300,000
 - Number of customers that pay more on TOU (“rate losers”) - 25,000
- Reduction in Revenue - \$4.8M (4.3% reduction from tiered rate revenue)
 - Number of customers that pay less on TOU (“rate benefiteres”) - 330,000

Additional Considerations

Backend Support

EBCE’s backend system already supports this rate structure. However, the system will need to be updated to switch several hundred thousand customers to a new rate in a single month, implement updates when customers decline the new TOU rate, track the duration of bill protection per customer, and calculate and report the amount of bill protection per customer. Additionally, our call center representatives will need to be trained on this transition and we should anticipate that call volume and duration will increase.

Constraints

PG&E developed an online bill protection calculator and a rate comparison tool to inform customers about the potential financial impact of this rate transition. These tools are presented with the PG&E generation rate as a proxy for EBCE (and other CCA) rates. Due to our current modest discount, this is not a substantial constraint; however, it could further

increase customer confusion. Additionally, EBCE will continue to rely on PG&E for rate information about each customer. This means that a customer must call PG&E to decline the rate transition, and PG&E must pass this information along to EBCE for the correct rate to be applied to the customer’s bill.

Outreach

EBCE’s initial analysis assumes about 25,000 residential customers could pay more on a TOU rate structure assuming no changes in behavior. Targeted marketing and outreach campaigns to this identified population could help to inform and influence behavior to reduce usage and therefore avoid increases to the customer’s bill.

Comparison of Potential Options

		1	2	3	4
		TOU 4-9 + Bill Protection	TOU 4-9, No Bill Protection	Different TOU structure + Bill Protection	No TOU Default
Cost	Avoid pay-out of estimated \$300,000	X	✓	X	✓
	Customers save money by reducing during peak hours	✓	✓	✓	X
Environment	Incentives customers to shift use to when more renewable energy is in power mix	✓	✓	✓	X
Marketing	Consistent message, leverages statewide and PG&E campaigns	✓	X	X	X
Customer Experience	No advantage to switch to PG&E	✓	X	✓	X
	Clear message about when to shift use	✓	✓	X	X
Load	Hours match Alameda County peak	X	X	✓	X
Operations	Systems can currently support	✓ *	✓	X	✓

**Current system will need to be updated to support current aspects of bill protection*

Timeline

Date	Event
January 2019	CPUC hearings
March-April 2019	Briefings filed in CPUC proceedings
March 2019	Default transition begins in SDG&E territory
March 2019	Statewide “vision” marketing campaign begins in PG&E territory

June 2019	CPUC proposed decision
July 2019	CPUC final decision
August 2019	EBCE must approve versions of customer notification
October 2019	PG&E requests EBCE final decision
April 2020	PG&E sets TOU as default rate for new residential customers
October 2020	PG&E call to action marketing campaign begins
November 2020	TOU rate transition for non-residential customers
May 2021	Proposed EBCE TOU rate transition for residential customers
October 2021	Last new residential customer eligible for bill protection
October 2022	Last payout of bill protection

Staff Recommendation

EBCE staff recommends that the EBCE board approves the attached resolution to participate in the transition of EBCE residential customers to the new TOU rate in May 2021 and the transition of EBCE non-residential customers in November 2020, in concert with the PG&E transition. This recommendation is based on agreement with the need to shift usage to times when more renewable energy is available, and the potential for significant customer confusion if EBCE rates do not align with the structure promoted by the statewide and local IOU marketing campaigns.

This item is coming to the board at this time in order to support early alignment with the statewide marketing campaign, better coordination and collaboration with PG&E in drafting joint notifications, and sufficient time to develop EBCE supporting assets such as web pages, collateral, targeted outreach, and call center support.

Attachment:

- A. Resolution Approving participation in the Default time-of-use Transition

RESOLUTION NO. _____
A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE EAST BAY COMMUNITY ENERGY AUTHORITY TO
APPROVE PARTICIPATION IN THE DEFAULT TIME-OF-USE RATE TRANSITION

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

Section 1. The East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. Pacific Gas & Electric (PG&E) is required by the California Public Utilities Commission (CPUC) to transition residential and non-residential customers onto a time-of-use rate. The CPUC mandates PG&E to offer bill protection for one year to residential customers.

Section 3. As part of the mandated transition there will be robust statewide and local marketing, outreach, and education campaigns to encourage customers to reduce their use of electricity between the hours of 4 PM and 9 PM.

Section 4. EBCE supports the use of energy during times when renewable energy assets are generating electricity and encourages the reduction of use at times when there are more greenhouse gas emissions associated with the power on the grid. EBCE wishes to reduce customer confusion and supports a financially neutral transition to the new time-of-use rate.

Section 5. Based on the foregoing, the Board hereby approves the participation of non-residential and residential EBCE customers in a transition to a default time-of-use rate in concert with the efforts of PG&E, including mirroring the peak hours of 4 PM to 9 PM every day of the week and offering bill protection to residential customers for one year.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Time-of-Use Rate Transition

PRESENTED BY: ANNIE HENDERSON

DATE: JUNE 19, 2019



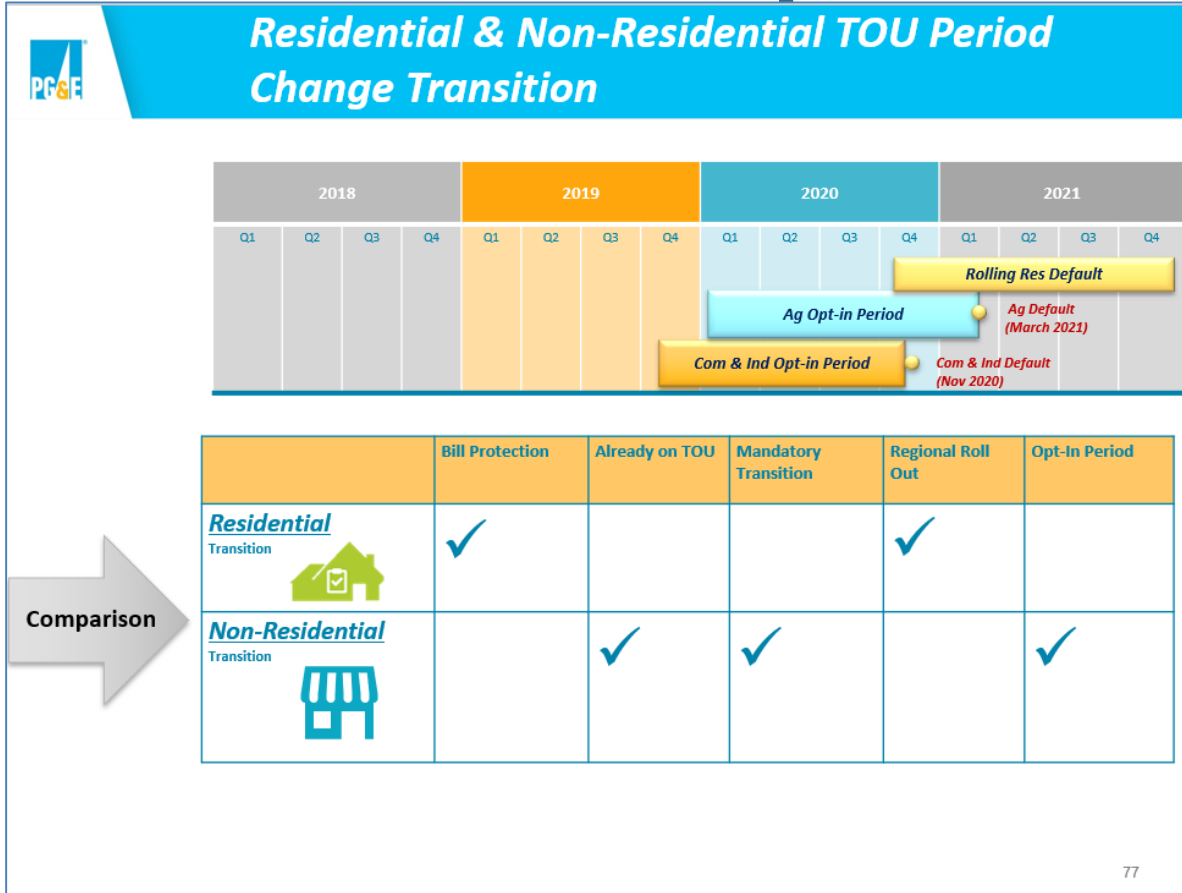
Comparison of Potential Options

		1	2	3	4
		TOU 4-9 + Bill Protection	TOU 4-9, No Bill Protection	Different TOU structure + Bill Protection	No TOU Default
Cost	Avoid pay-out of estimated \$300,000	X	✓	X	✓
	Customers save money by reducing during peak hours	✓	✓	✓	X
Environment	Incentives customers to shift use to when more renewable energy is in power mix	✓	✓	✓	X
Marketing	Consistent message, leverages statewide and PG&E campaigns	✓	X	X	X
Customer Experience	No advantage to switch to PG&E	✓	X	✓	X
	Clear message about when to shift use	✓	✓	X	X
Load	Hours match Alameda County peak	X	X	✓	X
Operations	Systems can currently support	✓ *	✓	X	✓

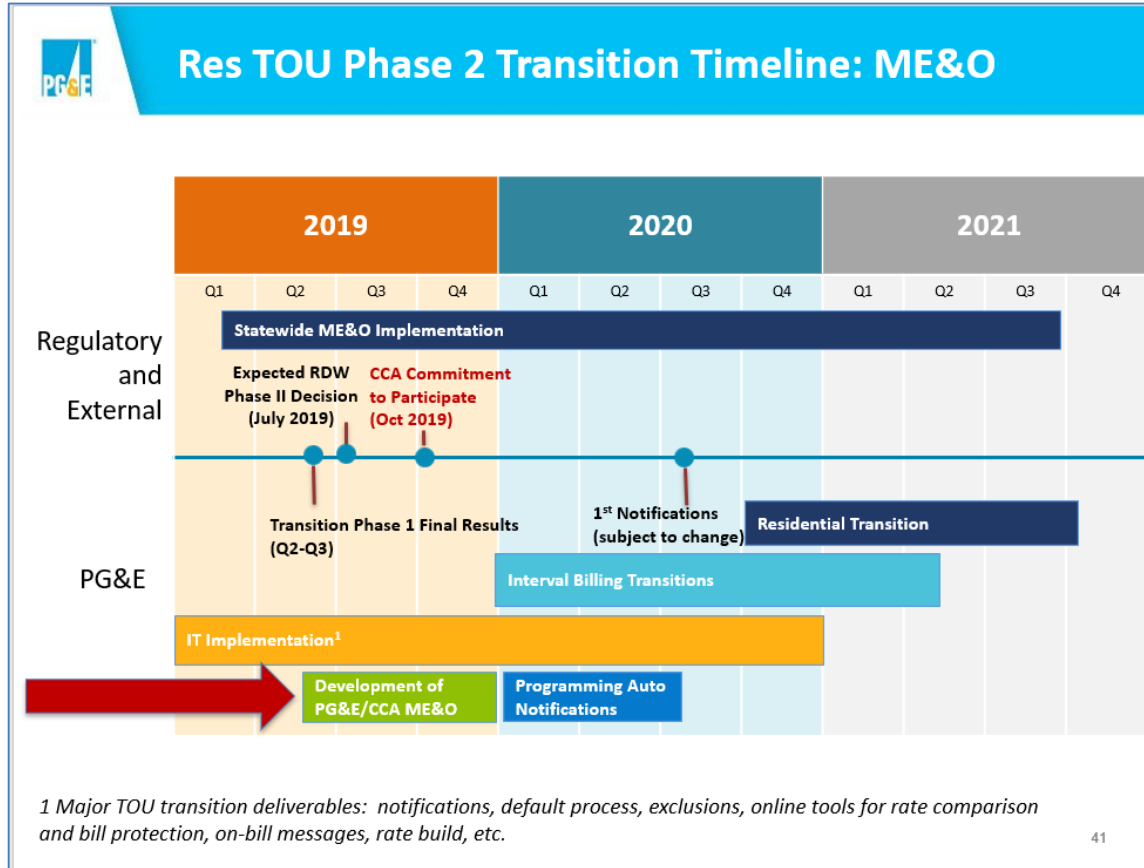
BACKGROUND



PG&E Timeline and Components



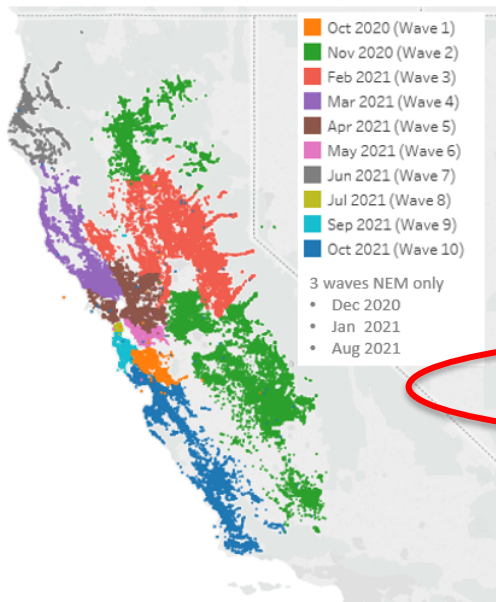
PG&E Timeline



Residential Transition



Residential TOU Full Rollout Plan (13 month rollout)



Counties	Service Provider Territory Included	Totals
Oct 2020 (Wave 1)		
		394,836
Santa Clara	San Jose Clean Energy (SJCE)	227,998
	Silicon Valley Clean Energy (SVCE)	166,838
Nov 2020 (Wave 2)		
Fresno, San Joaquin, Kern, Tuolumne, Shasta, Madera, Merced, Tehama, Plumas, Stanislaus, Mariposa, Kings, Tulare, Lassen		200,876
PG&E Bundled		200,876
Feb 2021 (Wave 3)		
		181,459
Placer, El Dorado, Yolo, Butte, Nevada, Calaveras, Lake, Amador, Sutter, Yuba, Glenn, Colusa, Sacramento, Sierra, Alpine	PG&E Bundled	118,183
	Pioneer Community Energy (PIO)	43,125
	Valley Clean Energy (VCE)	20,151
Mar 2021 (Wave 4)		
Sonoma, Mendocino		136,031
Sonoma Clean Power		136,031
Apr 2021 (Wave 5)		
		409,382
Contra Costa, Solano, Marin, Napa	MCE	307,341
	PG&E Bundled	102,041
May 2021 (Wave 6)		
		398,624
Alameda	East Bay Community Energy (EBCE)	369,913
	PG&E Bundled	28,711
Jun 2021 (Wave 7)		
		38,695
Humboldt, Trinity, Siskiyou	Redwood Coast Energy Authority (RCEA)	37,842
	PG&E Bundled	853
Jul 2021 (Wave 8)		
		261,529
San Francisco	CleanPowerSF (CPSF)	261,529
Sep 2021 (Wave 9)		
		200,182
San Mateo	Peninsula Clean Energy (PCE)	200,182
Oct 2021 (Wave 10)		
		262,936
Monterey, Santa Cruz, San Luis Obispo, Santa Barbara, San Benito	Monterey Bay Community Power (MBCP)	169,088
	PG&E Bundled	91,578
	King City Community Power	2,270

Note: Customer counts are approximate and reflect PG&E's proposed exclusion criteria. Also, assuming NEM customers transition on their true-up date, each wave would have an additional ~10K NEM customers. This table assumes all customers within each CCA territory are enrolled with the CCA service provider.

Pilot Results



Summary

- Statistically and materially significant load reductions seen across all segments during Peak Hours 4-9 PM. Average load reduction is 4.2%/hr/cust
 - Eight segments analyzed (5 PG&E, 2 CCA, 1 NEM)
 - Load Impacts assessed for the first Summer on new rate (Jun through Sep)
 - Peak Load Impacts assessed using standard Demand Response protocol models
- Load Conservation behavior among most segments.
 - Although there is load shifting behavior seen in off-peak hours, story in almost all segments is load conservation (any off-peak hour load shift/increase is offset by peak period reduction gains)
 - For some segments, off-peak usage increase is limited to few hours, while in other cases it is across all off-peak hours
- Impacts smaller than the Opt-In pilot for most segments (and lower than self-enrollments to TOU rates)
- Across all segments
 - Hotter climate regions are associated with higher load impacts
 - Within a climate, CARE customers have lower impacts than non-CARE customers
- The two participating CCA's (+90% moderate) showed reductions similar to PG&E moderate zones

Examples of Statewide Marketing

DDB

TOU STRATEGIC APPROACH

Give Californians context and a reason to care about TOU in order to move them from apathy to meaningful, long-term action.

- Evoke personal connection to the future of CA
- Ensure that everyone understands they need to change behavior to protect CA
- Illuminate that the time you use matters and raise awareness of 4-9PM* peak time

Chapter 1: The Launch Idea Statewide Energy Vision | “The Why”



Chapter 1 “The Why”

Provide the context and inspire customers about “why” the change is needed. A Statewide vision will prime consumer for the TOU conversation by introducing a new understanding of “using energy better.” Ideally, 12 months prior to the transition.

Opportunity – 12 month prior to transition

- Build a strong sense of pride and responsibility to use energy wisely
- Deliver a positive message about protecting our state
- Recognize our individual and social responsibility

Complete

Chapter 2: Behavior Change Idea In Development Peak Shifting | “The How”



Chapter 2 “The How”

Encourage customers to rally and take action. Peak shifting will reinforce the need to use energy differently. Behavioral elements will demonstrate how to “use energy better.” Strategically timed in alignment with when customers are likely to notice an impact in their bill and are most likely to make behavior changes.

Opportunity – 5 months timed around when customers will mostly make changes

- Demonstrate when and how Californians can shift their energy use in a crystal clear way
- Telegraph our message in a memorable way that drives an intent to act

Energy Upgrade California

TOU ME&O Overview

* San Diego Market Only. Other territories are exploring various time frames (4-8, 5-8, etc)

Image from EnergyUpgradeCA.org

When To Use Energy

By making a few small changes to your routine you can help create a big change for California. It's as simple as shifting when you use energy.

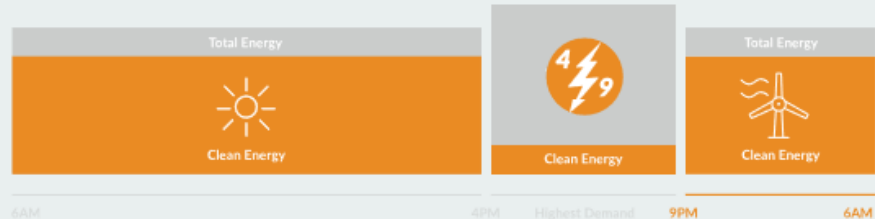
6AM – 4PM

4PM – 9PM

9PM – 6AM

Total Energy Usage and Availability of Clean Energy







At night as we go to bed, our energy use decreases, just as California's clean energy produced from wind farms become available.









Outreach Metrics for PG&E

EUC TOU COMMUNITY OUTREACH METRICS – BY TERRITORY









-  17 events
-  640 doors knocked
-  4,080 texts
-  13,649 phone calls
-  24,789 emails
-  5,000 pieces of collateral distributed



-  147 events
-  152 doors knocked
-  13 texts
-  140 phone calls
-  9,548 emails
-  25,000 pieces of collateral distributed



-  188 events
-  3,228 doors knocked
-  50 texts
-  225 phone calls
-  348,403 emails
-  32,000 pieces of collateral distributed

EUC Program Update

CBO Partners for PG&E

PG&E Territory – UPCOMING EUC TOU COMMUNITY OUTREACH



ASE will be reaching out to school districts in Northern California in preparation for launching the TOU program in the Fall 2019 semester.



The CCB's Annual Conference and Convention is set to take place from June 4-9, 2019 in Fresno, CA.

CCB plans to hold a TOU panel on Friday June 7th, and is coordinating with PG&E to feature an IOU representative.



The American GI Forum is slated to conduct a veteran-specific outreach campaign around the 4th of July.



Consent Item 10

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer
SUBJECT: Legal Services Approval
DATE: July 17, 2019

Recommendation

Adopt a resolution authorizing the Chief Executive Officer, or a designee to negotiate and execute contracts with select legal firms in accordance with the board approved legal budget, totaling \$1,076,000 for fiscal year 2019-2020.

Selected law firms include:

- Richards Watson & Gershon -General Counsel Services
- Davis Wright Tremaine - Policy
- Keyes & Fox - Policy/Compliance/Power procurement
- Hall Energy Law - Power Procurement
- Wilson Sonsini Goodrich & Rosati - Power Procurement
- Liebert Cassidy & Whitmore - Employment/HR
- Nixon Peabody - Finance

Background

On June 19, 2019, EBCE Board approved the 2019-2020 fiscal year budget. The budget includes a total legal budget of \$1,076,000 across legislative and regulatory policy, power procurement, general counsel services, finance, and other areas. In June 2018 EBCE launched a broad legal services RFP to select legal expertise across various staff functions. Staff is seeking approval to get enabled with the following selected law firms. All firms were previously utilized in Fiscal year 2018-2019. Staff is pleased with the prior services and interested in maintaining strong working relationships as it seeks new enabling agreements.

- Richards Watson & Gershon -General Counsel Services
- Davis Wright Tremaine - Policy
- Keyes & Fox - Policy/Compliance/Power procurement
- Hall Energy Law - Power Procurement
- Wilson Sonsini Goodrich & Rosati - Power Procurement
- Liebert Cassidy & Whitmore - Employment/HR
- Nixon Peabody - Finance

The anticipated budget breakdown across these functions is:

1. Outside General Counsel: \$250,000-350,000
2. Policy: \$200,000-300,000
3. Power Procurement: \$350,000-450,000
4. Other: \$100,000-200,000

Conclusion

Staff anticipates contract amounts with the selected law firms in varying amounts that may exceed \$100,000. Staff is seeking approval of a resolution that would approve the CEO or a designee to negotiate and execute contracts with the identified legal firms consistent with the total legal budget of \$1,076,000 as approved by the board on June 19, 2019

Attachments:

- A. Resolution Authorizing Chief Executive Officer to Negotiate and Execute Legal Service Agreements with selected law firms.

RESOLUTION EBCE R-2019-

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE
AND EXECUTE LEGAL SERVICE AGREEMENTS WITH SELECTED
LAW FIRMS**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, in June 2018 the EBCE issued a broad legal services RFP to select law firms to provide legal expertise across various staff functions, including legislative and regulatory policy, power procurement, general counsel services, finance, and other areas; and

WHEREAS, EBCE has previously utilized the following law firms to secure such legal expertise: Richards Watson & Gershon, Davis Wright Tremaine, Keyes & Fox, Hall Energy Law, Wilson Sonsini Goodrich & Rosati, Liebert Cassidy & Whitmore, and Nixon Peabody; and

WHEREAS, on June 19, 2019, the EBCE Board approved the 2019-2020 fiscal year budget, including a total legal budget of \$1,076,000 across legislative and regulatory policy, power procurement, general counsel services, finance, and other areas; and

WHEREAS, EBCE is pleased with the prior services provided by these law firms; and

WHEREAS, EBCE intends to enter into enabling agreements with the aforementioned law firms and seeks to direct and authorize the CEO to negotiate and execute such agreements in varying amounts that may exceed \$100,000.

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

SECTION 1. The CEO is hereby authorized to negotiate and execute Legal Service Agreements for one-year terms with the law firms of Richards Watson & Gershon, Davis Wright Tremaine, Keyes & Fox, Hall Energy Law, Wilson Sonsini Goodrich & Rosati, Liebert Cassidy & Whitmore, and Nixon Peabody. The Legal Services Agreements may be for varying amounts that exceed \$100,000, but the total compensation under the Agreements shall be consistent with the legal budget of \$1,076,000 for the 2019-2020 Fiscal Year as approved by the Board on June 19, 2019.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Staff Report Item 11

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: July 17, 2019

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

No executive committee meeting was held in June.

Marketing and Outreach Update

Presentation attached

Regulatory and Legislative Update

Presentation attached

Attachments:

- A. Marketing and Outreach update slides;
- B. Regulatory and Legislative update slides (available 7/15/19)



Account Services and Marketing Update

PRESENTED BY: ANNIE HENDERSON

DATE: July 17, 2019



Enrollment

Enrollment Stats as of July 2, 2019

Accounts Enrolled	~544,000
Actual Total Cost Savings to Date	\$6.2M
Actual Cost Savings 2019 to Date	\$3.5M
Estimated Cost Savings for 2019	\$7.980M

No substantive changes in opt out or product enrollment statistics by jurisdiction.

	<i>By Sector Count</i>	<i>By Overall Count</i>	<i>By Sector Load</i>	<i>By Overall Load</i>
Overall Opt Out Rate		3.70%	-	3.75%
Residential Opt Out Rate	3.84%	3.46%	4.40%	1.66%
Commercial Opt Out Rate	2.44%	0.24%	3.75%	2.09%

Account Services

- NEM Customers
 - Enrolled second group of NEM customers in June, next enrollment will be in August
 - NEM overall opt out at 3.4% and enrollment eligible opt out at 4.8%
- PG&E updated their rates on July 1. EBCE has modified our rates to account for changes to PG&E generation rate and changes to the Power Charge Indifference Adjustment (PCIA) to maintain the value proposition of each product.

Contracts Signing Press Highlights

[Agency's effort to retire Oakland power plant moves forward](#)

By J.D. Morris, SF Chronicle, 6/5/19

[More Wind & Solar Electricity Coming to East Bay Power Customers](#)

By Matt Bigler, KCBS Radio, 6/24/19

[Oakland to Swap Jet Fuel-Burning Peaker Plant for Urban Battery](#)

By Julian Spector, Green Tech Media, 6/26/19





Staff Report Item 13

TO: East Bay Community Energy Board of Directors
FROM: Annie Henderson, VP Marketing and Account Services
SUBJECT: SMUD Presentation (Informational Item)
DATE: July 17, 2019

Recommendation

Receive a presentation from Director of Community Energy Services at SMUD regarding their services to EBCE

Background

SMUD was selected by the EBCE board in November 2017 to be the Data Management, Billing and Call Center Services vendor. SMUD has been providing these services throughout the original enrollment of municipal and commercial customers in June 2018 and residential customer enrollment in November 2018. Their contract ends in November 2020.

SMUD will provide an overview of their services and an update on lessons learned to date.

Attachment

- A. SMUD Presentation

SMUD Community Energy Services

EBCE Operations Overview

Tracy Carlson

July 17, 2019



SMUD

Who We Are

70+
Years
Est. 1946


Providing Reliable,
Affordable Electricity
Sacramento and Placer County

6th Largest



Publicly Owned,
Not-for-profit
Electric Utility in the Nation



7 member
Elected Board of Directors



10,233 GWh
2018 Load



2,278
Employees

Mission

- Local Control
- Renewable Energy
- Greenhouse Gas Reduction
- Customer Choice
- Price Stability

SMUD

Community and Customer Commitment



Brand Trust &
Customer
Engagement

Western US
Electric Utilities



Business
Customer
Satisfaction

J.D. Power

1st
Large
California Utility



Time-of-Day
Standard for Residential Customers

American Public Power Association

2019
Community Service Award

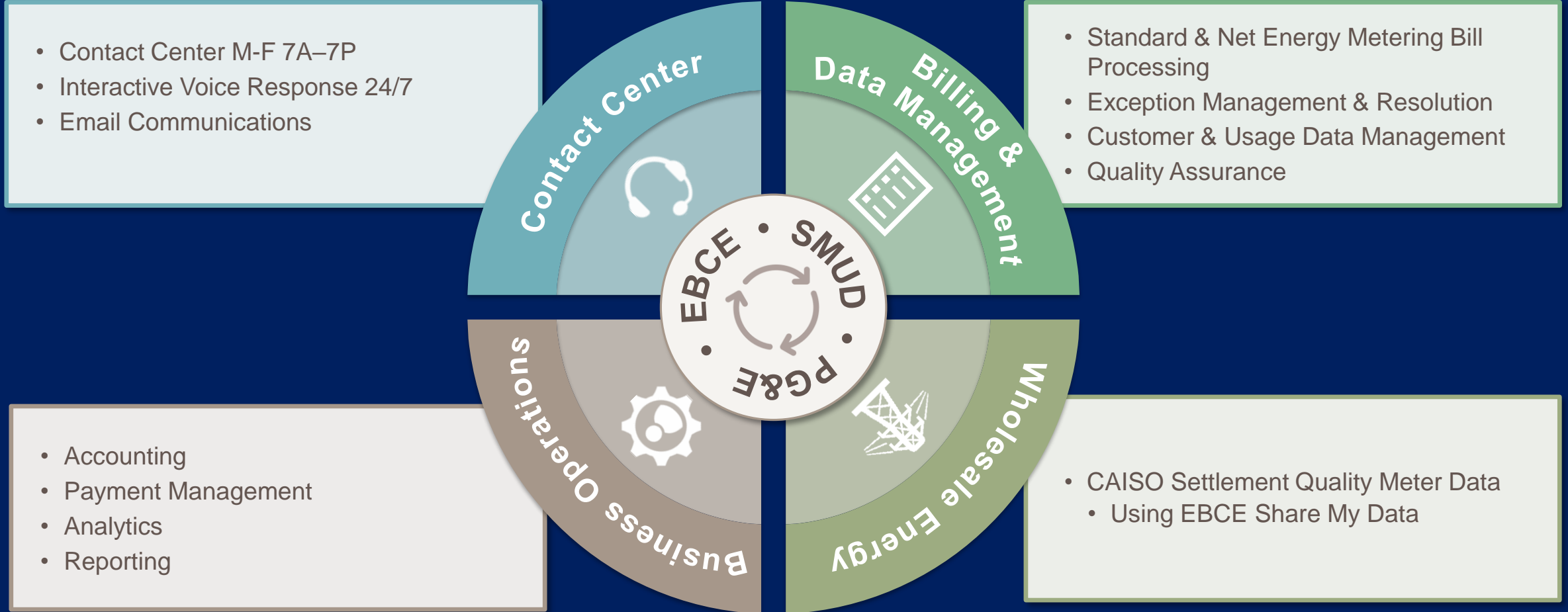


Recognized Nationally and Internationally

Innovative Energy Efficiency Programs & Renewable Power Technologies

Community Energy Services

Core Services

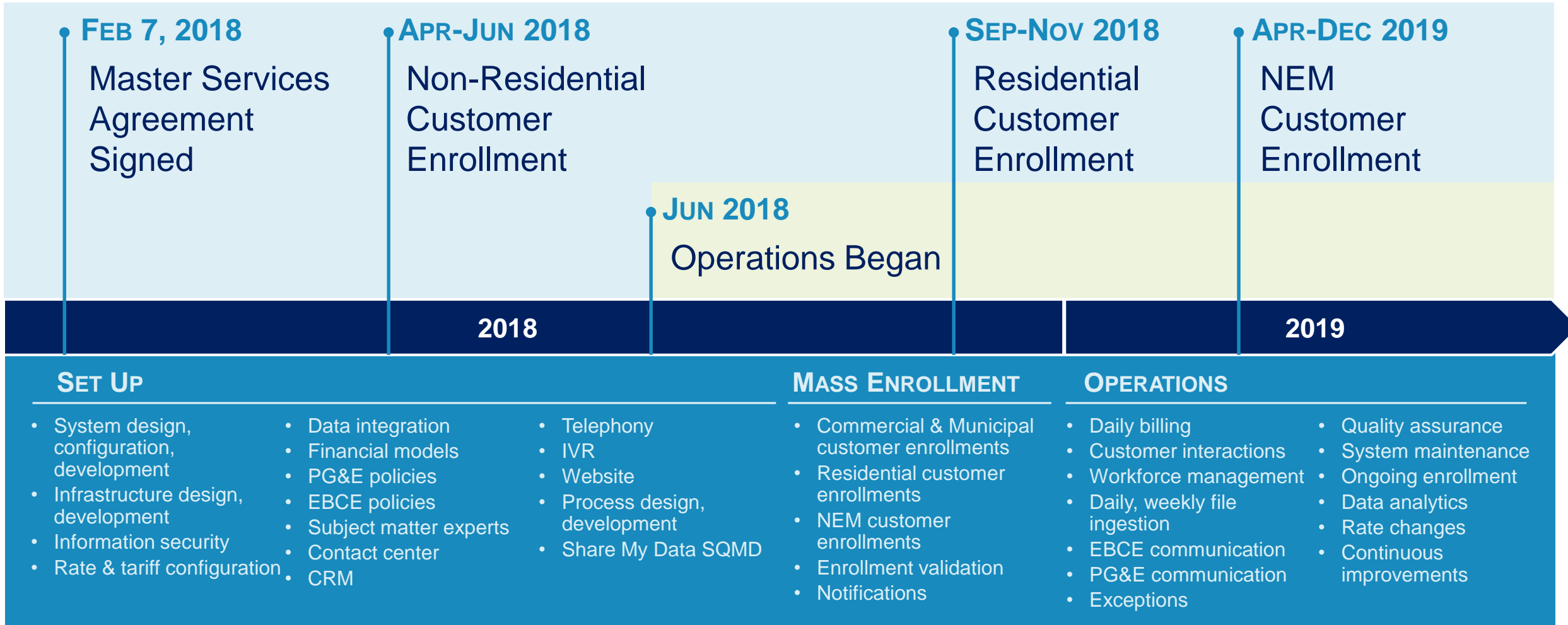


Community Energy Services
also provides service to



Community Energy Services

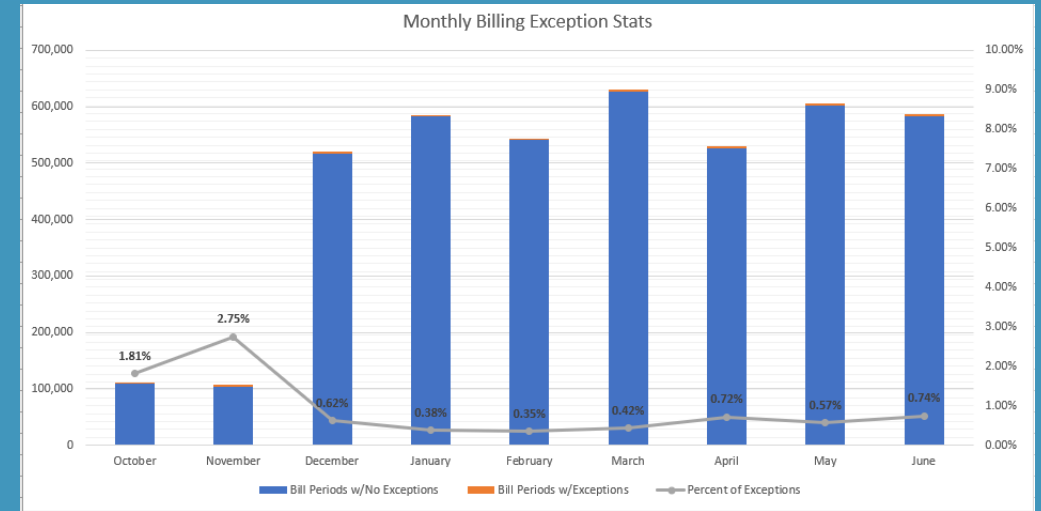
Billing, Data Management, & Contact Center Services



Billing & Data Management

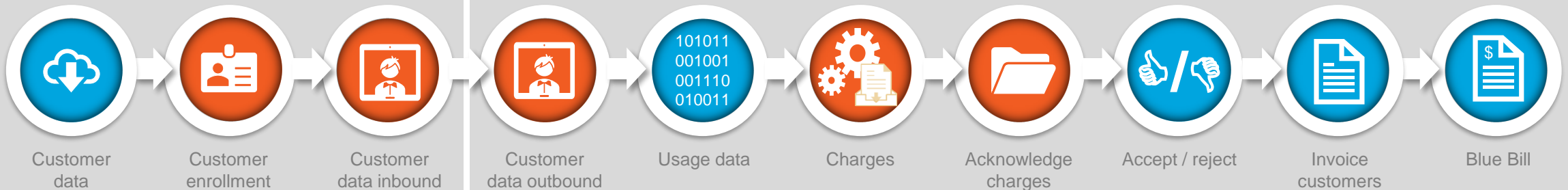
Getting It Right

- *As many as 32,321 bills daily*
- *0.63% required manual processing*
- *Collaboration & analysis*



Customer Enrollment

Usage & Billing (10 day window)

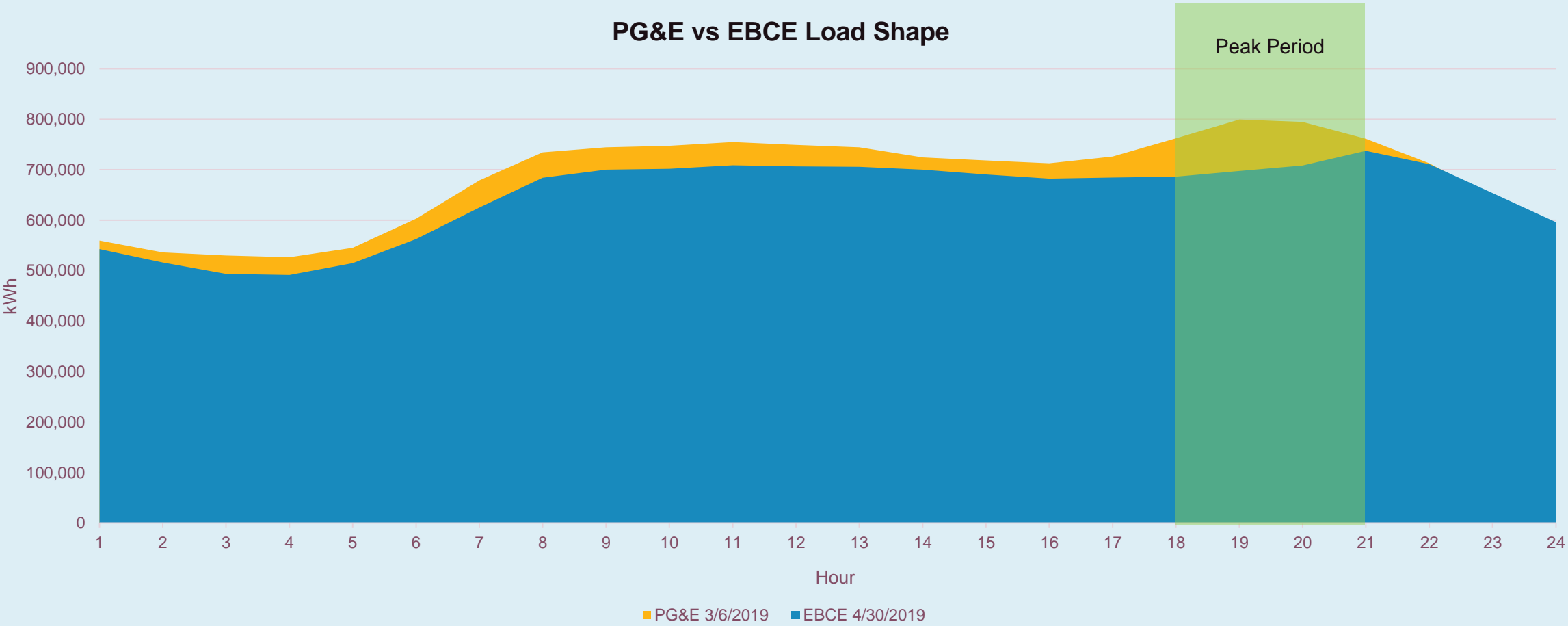


Robust Quality Assurance

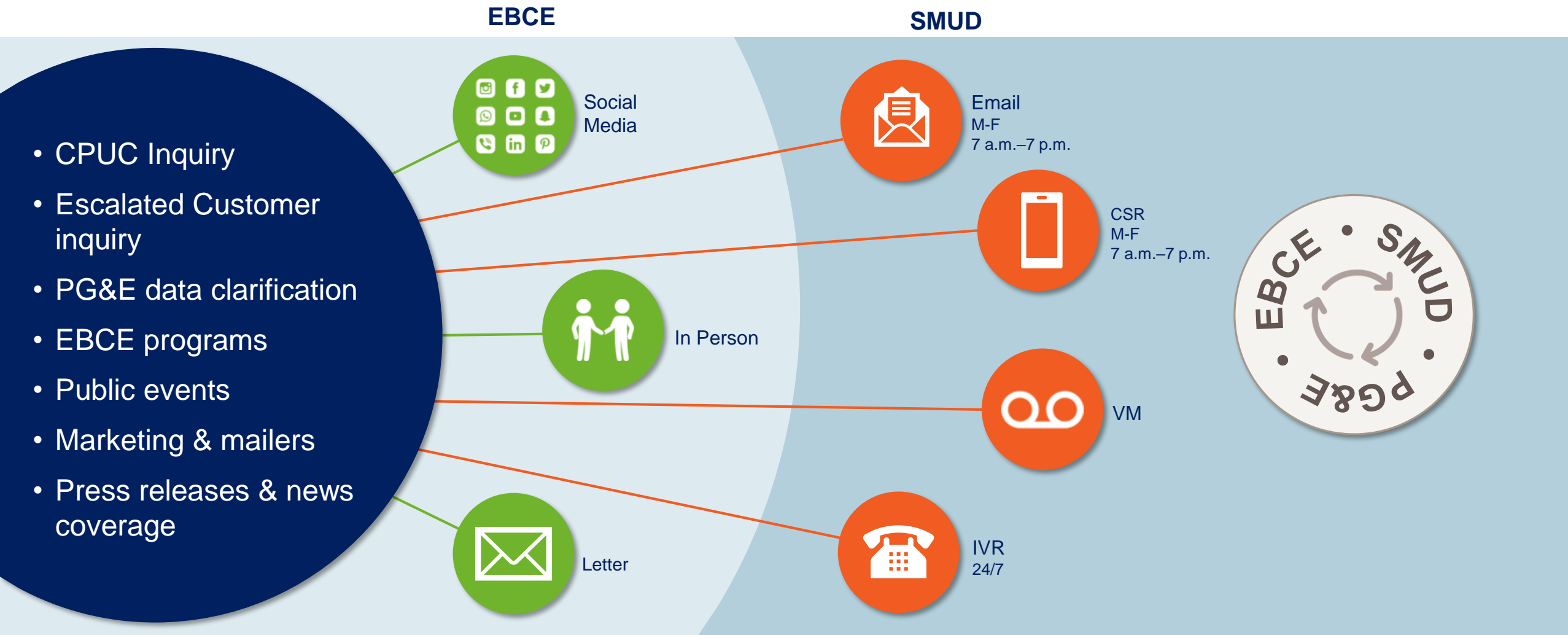


Daily Load Profile

Share My Data



Customer Communication Channels



Operations by the Numbers

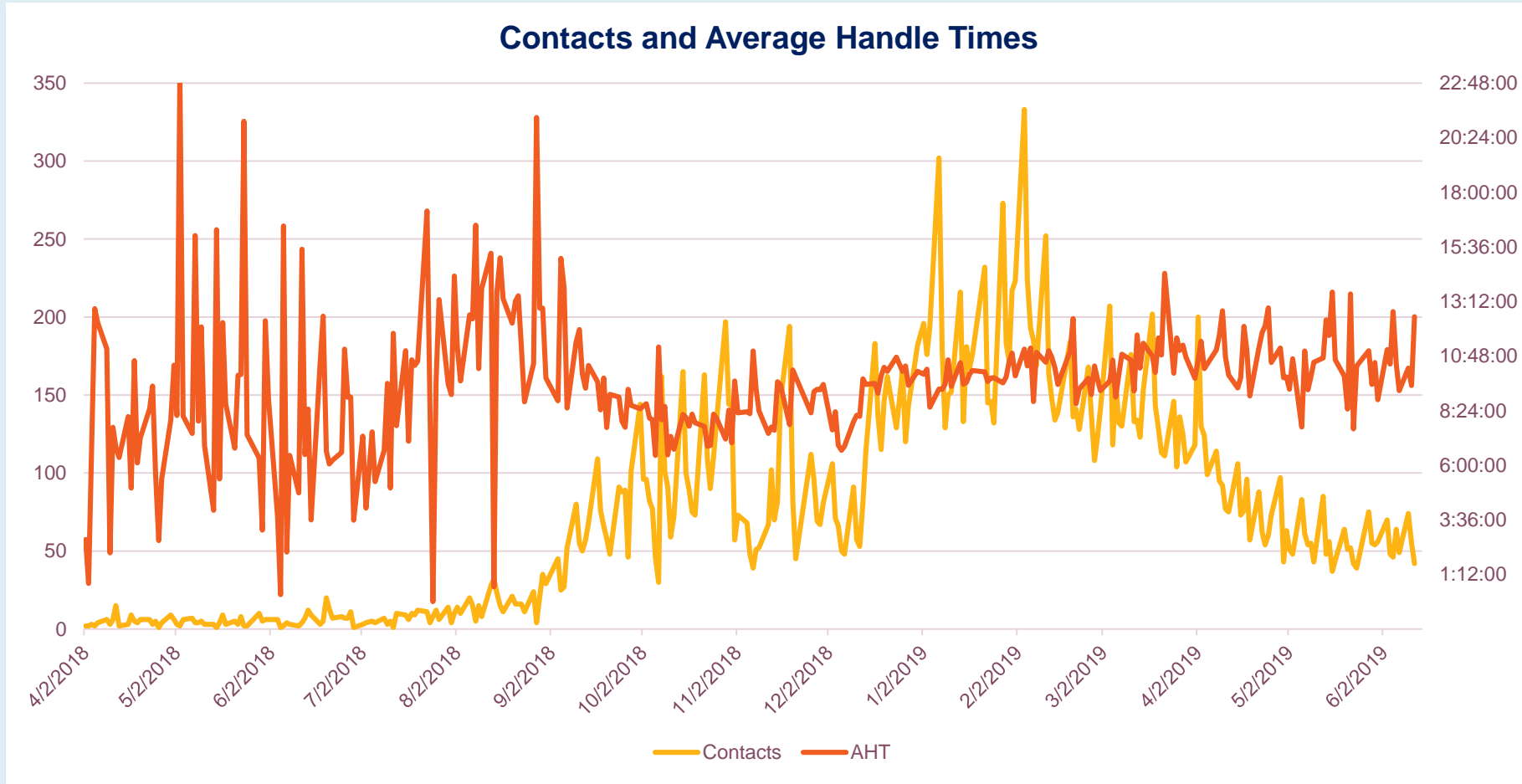


- ✓ **Successful mass enrollment for the largest CCA in California (2018)**
- ✓ **547,179 Customers-to-date**
- ✓ **Processed over 4,200,000 bills**
...totaling more than **\$405,000,000**
- ✓ **21,364 calls and counting**
- ✓ **1,500 emails**
- ✓ **500 customer call-backs**
- ✓ **Over 1,000 customer saves!**

Customer Contacts

Expect the Unexpected

Daily
Contacts
Range
From
40–300+



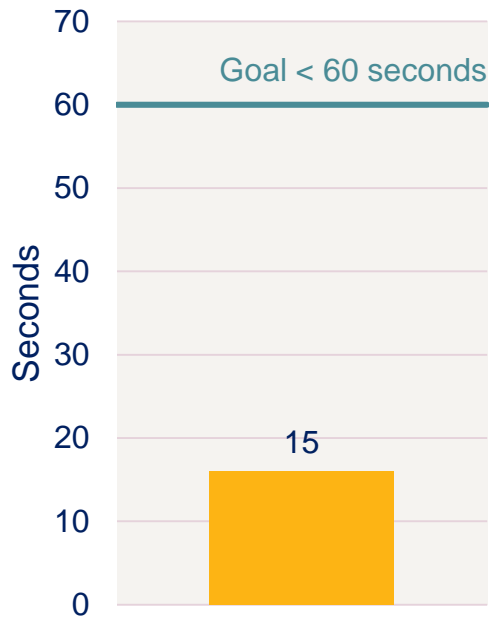
Handle
Time:
2 Mins –
>1 Hour

April 2018 - Present

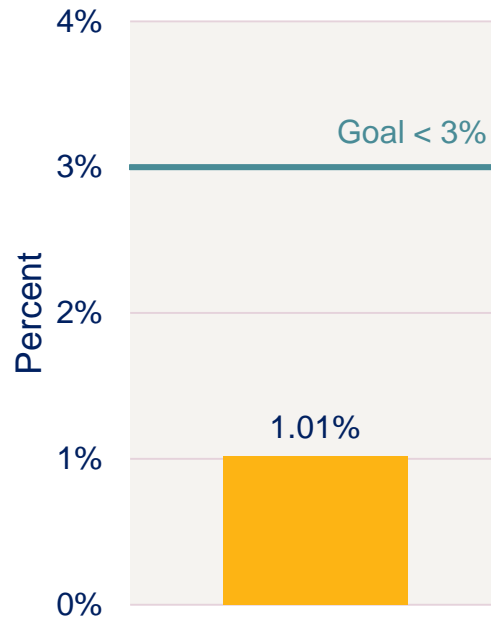


Contact Center Tracking Performance

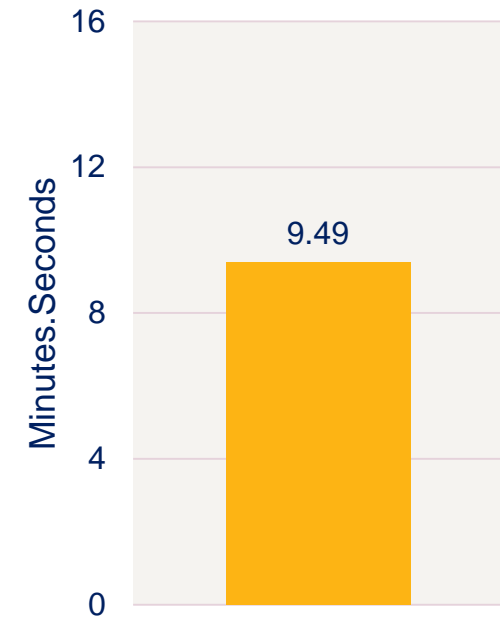
Average Speed of Answer (ASA)



Abandon Rate Percent

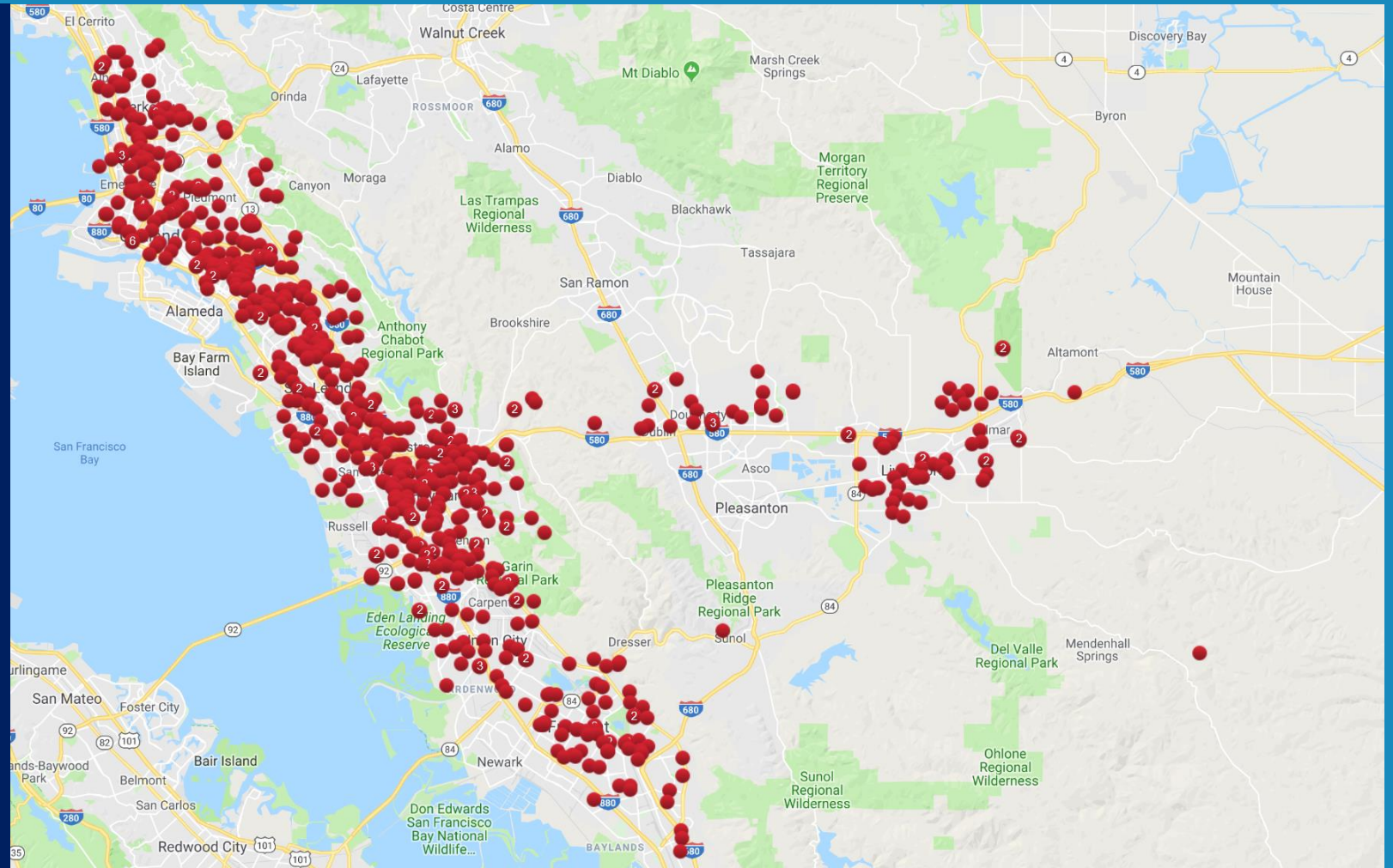
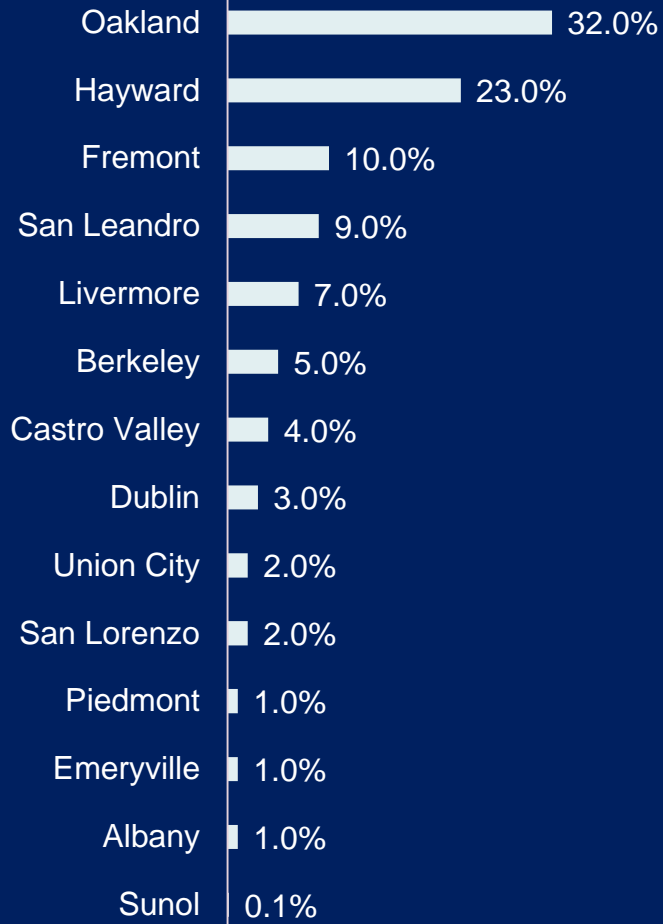


Average Handle Time (AHT)



April 2018 - Present

Customer Opt Out Saves (1000+ Saves)



What **EBCE** customers say about us...



Thank you for the explanation to help me understand my bill! – Elliot

I hope EBCE will be successful! – John

*I am grateful to you for **providing energy efficiency tips and how to manage my heating.** – Angie*

*Thank you for taking the time to **explain my charges in detail** to help me understand. – Jill*

*Thank you for **your patience and professionalism.** – Roberto*

*You did a **great job explaining EBCE charges.** – Andrew*

*I am so grateful for you **taking the time to explain the charges to me.***

***I appreciate your patience and expertise.** – Bonnie*

***Thank you for explaining the bill so thoroughly.** – Pamela*

Contact Center

Ongoing Expertise



- Wildfire Safety & Impacts
- Public Safety Power Shut-Off



- Complex Calls:
 - NEM, AB 117
- Programs & EBCE Customer Relationship Options



- Time-of-Use
- Educating on Load Shift, Load Shed, Energy Efficiency
- Load Impacting Activities



- Rate Changes

SMUD Community Energy Services



Thank you!





Staff Report Item 14

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Treasurer's Report (Informational Item)
DATE: July 17, 2019

Recommendation:

Receive quarterly report on EBCE Cash position.

Treasurer's Report

For quarter end June 30, 2019, EBCE has maintained a positive cash balance on all EBCE bank accounts. Below is a summary of Account balances, cash received, and outstanding loan balances as of 6/30/19.

Account Balances as of 6/30/19

Ending In	Account	Amount
*0045	Internal Operating	\$ 85,913
*2886	Operating Fund	\$ 26,730,701
*3199	Lockbox (Includes \$5,000,000 reserve)	\$ 10,929,728
*6189	Operating Reserve Fund	\$ 17,237,906
*6705	Barclays Collateral	\$ 2,007,478
*8900	Money Market	\$ 26,948
*9364	Insured Cash Sweep	\$ 640,545
	Total	\$ 57,659,219

Cash Received by month into Lockbox Account

April 2019	\$ 31,813,179
May 2019	\$ 33,554,692
June 2019	\$ 35,713,404
<hr/>	
Total	\$101,081,275

Outstanding Loan Balances:

Barclays Credit Facility: \$12,512,500

Collateral/Customer Pre-payments:

\$600,000 currently held

Customer Delinquency:

As of May 31, 2019

30 - 60 Days: \$1,983,653
60 - 90 Days: \$1,191,120
90+ Days: \$1,724,099

*Data reflects the latest information available on the date this report was generated

Other Highlights

- Barclays credit facility is being amended to reduce the interest rate and allow for issuance of letters of credit.
 - EBCE has begun repaying outstanding principal on the Barclays Facility at \$595,833 per month. This assumes repayment in full by March 15, 2021. EBCE anticipates accelerating this debt repayment schedule to repay in full in 2019.
 - Barclays Collateral Account is partially funded with \$2.0 million. This reduces interest payments on outstanding principal.
- Annual audit of fiscal year 2018-2019 currently underway.



Staff Report Item 15

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer & Treasurer

SUBJECT: Amended and Restated Barclays Revolving Credit Agreement (Action Item)

DATE: July 17, 2019

Recommendation

Adopt a Resolution approving an amended and restated revolving credit agreement with Barclays Bank PLC and authorizing the Chief Executive Officer to execute the same, to allow for issuance of Letters of Credit as well as reduce the interest cost of the facility.

Background and Discussion

Currently, EBCE has a \$50,000,000 all cash credit facility with Barclays, effective through March 15, 2021. The Revolving Credit Agreement (the “Original Agreement”) governing the existing Barclays credit facility was approved by the board in February 2018.

After a successful launch of services and repaying all outstanding debt and interest with the County, Barclays has agreed to incorporate amendments to the credit facility through a proposed Amended and Restated Revolving Credit Agreement (the “Amended Agreement”) to allocate a portion of the facility to be usable as a letter of credit (LC) and reduce EBCE’s borrowing rate thereunder.

Under the terms of the Amended Agreement, the following changes are proposed:

- The borrowing rate drops from 1-month LIBOR plus 5.25% to 1-month LIBOR plus 2.50%
- The undrawn fee drops from 1.00% to 0.95%
- Total credit facility remains at \$50,000,000. \$30,000,000 sublimit of the facility can be used for letters of credit, \$25,000,000 sublimit can be used for cash borrowing.

- The LC cost is at a rate of 1.75%. If EBCE does not reimburse Barclays for principal of any draws made by the LC holder on the same date of such draw, interest on the amount of the unreimbursed draw converts to 1-month LIBOR plus 2.50% (i.e., the same as the proposed amended/reduced borrowing rate for cash borrowing).
- The required Operating Reserve Fund Requirement is reduced from \$17,100,000 to \$7,000,000.
- The option to collateralize against borrowings, contained in the Original Agreement, is removed in the Amended Agreement.
- The loan facility remains in effect through March 15, 2021, and the Letter of Credit Facility would be effective through July, 2024 as it is customary to have a longer LC term

Fiscal Impact

Based on the reduction in interest for uncollateralized loans from L+5.25% to L+2.5%, for every \$1,000,000 borrowed in cash against the facility, EBCE will save \$27,500 per year in interest and commitment costs.

For every \$1.0 million issued as a LC on the facility, EBCE will incur a cost of \$17,500 per year in interest.

Full terms & conditions are provided in the attached Amended Agreement, and details regarding interest rates, fees, and proceeds are summarized herein to comply with California Government Code Section 5852.1, requiring such presentation to the board.

- A. Interest Costs per annum:
 - a. 1.75% for issued Letters of Credit (without draws made by the LC holder)
 - b. LIBOR + 2.50% for cash loans and LC draws not reimbursed on the same day
 - c. 0.95% commitment fee for undrawn amounts of the facility
- B. Finance charges to third parties: Estimated to total up to \$100,000 to cover costs such as counsel, recording, and LC issuance fees
- C. Proceeds: Maximum gross proceeds is \$50,000,000 for a fully utilized facility. Because this is a revolving credit facility this amount may be lower and fluctuate at any time up to a maximum of \$50,000,000.
- D. Total Payment amount:
 - a. Based on a maximum draw amount of \$50,000,000 for the remaining duration of the facility through March of 2021, then with a maximum unreimbursed draw on the letter of credit of \$30,000,000 through July of 2024, total payment amount accounting for interest and finance charges is estimated at \$5,671,000 based on an assumed LIBOR of 2.37%. Total payment under these assumptions, including principal repayment, is estimated at \$60,671,000.
 - b. Based on an average loan balance of \$10,000,000 in cash through March of 2021, and \$10,000,000 in issued, drawn and unreimbursed LC through July of 2024, total payment amount accounting for interest, finance charges, and commitment fees is estimated at \$3,270,000 based on an assumed LIBOR of 2.37%. Total payment under these assumptions, including principal repayment, is estimated at \$23,270,000.

Attachments:

- A. Resolution approving Amended and Restated Revolving Credit Agreement with Barclays Bank PLC, Authorizing the CEO to execute the same on behalf of the Authority; and
- B. Barclays Amended Credit Facility Agreement

RESOLUTION EBCE R-2019-___

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING AN
AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT WITH
BARCLAYS BANK PLC, AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO
EXECUTE THE SAME ON BEHALF OF THE AUTHORITY, AND CERTAIN
RELATED MATTERS**

WHEREAS, pursuant to Resolution No. R-2018-3, adopted on February 28, 2018 by the Board of Directors of the East Bay Community Energy Authority (“EBCE”), EBCE has previously entered into a Revolving Credit Agreement, dated as of March 15, 2018 (the “Original Agreement”), with Barclays Bank PLC (“Barclays”); and

WHEREAS, the Original Agreement provides EBCE with an all cash \$50 million credit facility with Barclays (the “Original Credit Facility”) for the purposes of increasing liquidity and purchasing power; and

WHEREAS, EBCE currently pays a borrowing rate equal to the 1-month LIBOR plus 5.25% against the facility and a 1.00% commitment fee for undrawn funds; and

WHEREAS, EBCE desires, and Barclays is willing, to amend the Original Agreement to provide EBCE with more flexibility and a lower cost of borrowing by the following amendments (collectively, the “Credit Facility Amendments”): (i) allocating \$30 million to be made available as a letter of credit in lieu of cash for essential collateral postings at an interest rate of 1.75%; (ii) reducing the borrowing rate for all outstanding, and any future, cash borrowings to a rate equal to the 1-month LIBOR plus 2.50%; and (iii) reducing the commitment fee for undrawn funds to 0.95%; and

WHEREAS, there has been presented at this meeting a proposed form of Amended and Restated Revolving Credit Agreement (the “Amended Agreement”) to be entered into by EBCE and Barclays to facilitate the Credit Facility Amendments; and

WHEREAS, in compliance with Government Code Section 5852.1, EBCE has obtained from Barclays the certain required good faith estimates and such estimates have been disclosed at this meeting;

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

SECTION 1. The above recitals, and each of them, are true and correct.

SECTION 2. The Board of Directors hereby approves and authorizes amendment of the terms of the Original Credit Facility to incorporate the Credit Facility Amendments. The proposed form of the Amended Agreement presented to this meeting and on file with the Secretary is hereby approved, and the Chief Executive Officer is hereby authorized and directed, for and in the name and on behalf of EBCE, to execute and deliver to Barclays the Amended

Agreement in substantially said form, with such changes thereto as the Chief Executive Officer, after consultation with counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The Chief Executive Officer and the Secretary of the Board, and other appropriate officers of EBCE, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of EBCE, to execute and deliver any and all documents, certificates, representations, and agreements as they, with the advice of counsel, shall approve, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Board of Directors has approved in this Resolution.

SECTION 4. All actions heretofore taken by the officers and agents of EBCE with respect to the Credit Facility Amendments and the Amended Agreement are hereby ratified, confirmed and approved.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

Originally dated March 15, 2018,
as amended and restated as of July __, 2019

Between

EAST BAY COMMUNITY ENERGY AUTHORITY

and

BARCLAYS BANK PLC

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Exhibit B – Form of Request for Extension - Request for Extension

Exhibit C – Notice of Extension

Exhibit D – Current Parties to Joint Powers Agreement

AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT

THIS AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT dated March 15, 2018, as amended and restated as of July __, 2019 (as amended, modified or restated from time to time, this “*Agreement*”), between **EAST BAY COMMUNITY ENERGY AUTHORITY**, a joint powers agency created pursuant to sections 6500 et seq. of the California Government Code (the “*Borrower*”) and **BARCLAYS BANK PLC**, together with any successors and assigns (the “*Bank*”).

RECITALS

WHEREAS, the Borrower has previously requested that the Bank provide one or more loans to the Borrower for use by the Borrower for purposes consistent with the Act and the purposes of the Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2;

WHEREAS, the Bank and the Borrower have previously entered into the Revolving Credit Agreement, dated as of March 15, 2018 (the “*Prior Agreement*”);

WHEREAS, the Borrower wishes to amend the Prior Agreement to obtain additional credit from the Bank in the form of letters of credit issued by the Bank;

WHEREAS, each of the Borrower and the Bank has agreed to amend and restate the Prior Agreement, and as a condition to such amendment and any advances thereunder, the Bank has required the Borrower to enter into this Agreement;

NOW, THEREFORE, to induce the Bank to extend credit to the Borrower, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Borrower and the Bank hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“*Act*” means the Joint Exercise of Powers Act, California Government Code §§ 6500 et seq., as amended.

“*Adjusted LIBOR Rate*” means, for any day, a per annum interest rate determined pursuant to the following formula:

$$\text{Adjusted LIBOR Rate} = \frac{\text{LIBOR}}{1 - \text{Reserve Percentage}}$$

“*Affiliate*” means, with respect to the Bank, any other Person controlling or controlled by, or under common control with, the Bank. For purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting rights, membership, the power to appoint members, trustees or directors, by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Alternate Rate*” means, for any day, the rate per annum equal to the sum of (i) the Prime Rate for such day minus 100 basis points (1.00%) plus (ii) the Applicable Spread for such day, rounded upward to the second decimal place (assuming such rate is expressed as a percentage); provided, however, the Alternate Rate shall never be below the Applicable Spread plus twenty-five (25) basis points.

“*Amortization Commencement Date*” means the earlier of (i) the date that is four (4) months after the date on which the Borrower has completed “Phase 2”, which is the mass enrollment of the Borrower’s residential customers and (ii) May 1, 2019.

“*Amortization Payment Date*” means, with respect to all outstanding Loans, (a) the Amortization Commencement Date, (b) the first Business Day of each calendar month occurring thereafter prior to the Maturity Date, and (c) the Maturity Date.

“*Amortization Period*” means the period commencing on, and including, the Amortization Commencement Date and ending on, and including, the Maturity Date.

“*Anti-Terrorism Laws*” has the meaning set forth in Section 4.24 hereof.

“*Applicable Spread*” means, as of any date of determination, (a) prior to July __, 2019, (i) with respect to Collateralized Loans (as defined in the Prior Agreement), one hundred forty basis points (1.40%) and (ii) with respect to Uncollateralized Loans (as defined in the Prior Agreement), five hundred twenty-five basis points (5.25%) and (b) on and including July __, 2019 and thereafter, two hundred fifty basis points (2.50%).

“*Authorized Officer*” means the Chief Executive Officer, the Chief Operating Officer or the Treasurer of the Borrower or any person designated in writing by the Chief Executive Officer, the Chief Operating Officer or the Treasurer of the Borrower to act as an Authorized Officer hereunder.

“*Availability Period*” means, with respect to (i) the agreement of the Bank to issue Letters of Credit for the account of the Borrower pursuant to the terms and conditions hereof, the period from and including the Effective Date to and excluding the Commitment Termination Date, and (ii) the agreement of the Bank to extend Loans pursuant to the terms and conditions hereof, the period from March 19, 2018 to and excluding the Loan Facility Scheduled Termination Date.

“*Available Commitment*” means an amount equal to \$50,000,000 adjusted from time to time as follows: (a) downward in an amount equal to any Loan made to, and an amount equal to the L/C Obligations related to any Letter of Credit issued for the account of, the Borrower under

the Commitment; (b) prior to the Loan Facility Scheduled Termination Date only, upward in an amount equal to the principal amount of any Loan made to the Borrower under the Commitment that is repaid or prepaid in the manner provided herein; (c) upward in an amount equal to the principal amount equal to the L/C Obligations related to any Letter of Credit issued for the account of the Borrower under the Commitment that is repaid, prepaid, expires or terminates, as applicable, in the manner provided herein; (d) downward in an amount equal to any reduction thereof effected pursuant to Section 2.04 hereof; (e) downward to the Letter of Credit Sublimit on the Loan Facility Scheduled Termination Date; and (f) downward to zero upon the Commitment Termination Date in accordance with the terms hereof; provided, that, after giving effect to any of the foregoing adjustments the Available Commitment shall never exceed (i) \$50,000,000 from March 19, 2018 to but excluding Loan Facility Scheduled Termination Date, and (ii) \$30,000,000 from and after the Loan Facility Scheduled Termination Date.

“*Bank*” has the meaning set forth in the introductory paragraph hereto.

“*Bank Agreement*” means any credit agreement, loan agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement), bond purchase agreement or other agreement or instrument under which, directly or indirectly, any Person or Persons undertake to loan, make or provide funds to make payment of, or to purchase, hedge or provide credit enhancement to or on behalf of the Borrower for any Indebtedness of the Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means a borrowing of Loans from the Bank pursuant to Section 2.01 hereof.

“*Borrowing Date*” means the date on which a Loan is funded by the Bank pursuant to Section 2.03.

“*Borrowing Request*” means a notice given by the Borrower pursuant to Section 2.02 in the form of Exhibit A.

“*Business Day*” means any day which is not (i) a Saturday or a Sunday, (ii) a day on which the Lending Office of the Bank is lawfully closed.

“*Cash Collateralize*” means, to pledge and deposit with or deliver to the Bank, as collateral for L/C Obligations, cash or deposit account balances, in each case, in Dollars and in such amount as the Bank may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to the Bank. “*Cash Collateral*” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Commitment*” means the Bank’s obligation to (a) make Loans to the Borrower pursuant to Section 2.01 and (b) issue Letters of Credit for the account of the Borrower pursuant to Section 2.03. Subject at all times to Sections 2.04 and 6.02 hereof, the Commitment from (x)

March 19, 2018 to but excluding the Loan Facility Scheduled Termination Date shall be \$50,000,000, and (y) the Loan Facility Scheduled Termination Date and at all times thereafter shall be \$30,000,000.

“*Commitment Fee*” has the meaning set forth in Section 2.17.

“*Commitment Fee Rate*” means (i) prior to July __, 2019, 1.00% per annum and (ii) on and after July __, 2019, 0.95% per annum; provided, that, upon the occurrence, and at all times during the continuation, of an Event of Default, the Commitment Fee Rate shall increase four percent (4.0%) per annum above the Commitment Fee Rate otherwise in effect.

“*Commitment Termination Date*” means the earlier of:

- (a) the Letter of Credit Scheduled Termination Date; and
- (b) the date the Commitment is reduced to zero pursuant to Section 2.05 or Section 6.02 hereof.

“*Computation Date*” means the second London Business Day preceding each applicable Rate Reset Date.

“*County*” means the County of Alameda.

“*Credit Extension*” means each of the following: (a) a Borrowing and/or (b) an L/C Credit Extension.

“*Custodial Operating Account*” has the meaning set forth in Section 5.29(f).

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“*Debt Service Coverage Ratio*” means, for each Financial Covenant Determination Date, the ratio determined by dividing (a) the Income Available for Debt Service for the twelve (12) months ending simultaneously with such Financial Covenant Determination Date by (b) the aggregate of the payments required to be made during such twelve (12) months in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment or otherwise) and interest on all outstanding Indebtedness of the Borrower, including all Letters of Credit outstanding, taking into account all amounts payable pursuant to Section 2.06(c) hereof.

“*Debt Service Coverage Ratio Requirement*” means 1.9x through and including December 31, 2019 and thereafter 1.75x.

“*Default*” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“*Default Rate*” means, for any day, the sum of the Prime Rate plus five percent (5.00%) per annum.

“*Dollar*” and “*\$*” mean lawful money of the United States.

“*Effective Date*” means [July __, 2019], subject to the satisfaction or waiver by the Bank of the conditions precedent set forth in Article 3.01(a) hereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 6.01 of this Agreement.

“*Event of Insolvency*” means, with respect to any Person, the occurrence of one or more of the following events:

(a) the Person shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization, arrangement, adjustment, winding-up, dissolution, composition or other similar relief with respect to itself or its indebtedness under any bankruptcy, insolvency, reorganization or other similar law for the relief of debtors now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official for it or a substantial part of its property, (ii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, (iii) make a general assignment for the benefit of creditors, (iv) fail generally to pay or admit in writing its inability to pay its indebtedness as it becomes due, or (v) take (through an authorized officer or representative) any official action to authorize any of the foregoing; or

(b) any of the following shall occur with respect to such Person: (i) an involuntary case or other proceeding shall be commenced against such Person seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and either (A) such Person shall consent in writing to such action or (B) such case shall not be dismissed within sixty (60) days, (ii) an order for relief shall be entered against such Person under the federal bankruptcy laws as now or hereafter in effect or pursuant to any other State or federal laws concerning insolvency or of similar purpose, (iii) a final and non-appealable debt moratorium, debt adjustment, debt restructuring or comparable extraordinary restriction with respect to the payment of principal or interest on the indebtedness of such Person shall be declared or imposed pursuant to a finding or ruling by such Person, the United States of America, the State, any instrumentality thereof or any other Governmental Authority of competent jurisdiction over such Person, or (iv) the issuance, under the laws of any state or under the laws of the United States of America, of an order of rehabilitation, liquidation or dissolution of such Person.

“*Executive Order*” has the meaning set forth in Section 4.24 hereof.

“*Expenses*” means, for any period, the aggregate of all expenses calculated under GAAP, including without limitation any taxes, incurred by the Borrower during such period, but excluding (a) interest on Indebtedness, (b) depreciation and amortization, (c) any unrealized loss resulting from changes in the value of investment securities, (d) extraordinary expenses and other non-recurring, non-cash expenses (including without limitation losses on the sale of fixed or capital assets other than in the ordinary course of business and losses on the extinguishment of debt), (e) losses resulting from any reappraisal, revaluation or write-down of assets (excluding revaluation of accounts receivable), and (f) any noncash loss or change in the value of a Swap Contract (including any change in the value of the termination value thereof) which loss or change in value is not the result of the expiration or termination (including early termination) of such Swap Contract; provided, however, that the provisions of (a) through (f) notwithstanding, no amount shall be subtracted from expenses more than once.

“*Financial Covenant Determination Date*” means each March 31, June 30, September 30 and December 31 and any such additional dates specified in Sections 2.01 and 5.29(c) hereof.

“*Financing Documents*” means the Security Agreement, the Intercreditor and Collateral Agency Agreement and the PPA Account Control Agreement.

“*Fiscal Year*” means the fiscal year of the Borrower ending on June 30 of each calendar year or such other fiscal year as may be adopted by the Borrower from time to time to the extent permitted hereunder.

“*Generally Accepted Accounting Principles*” or “*GAAP*” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Borrower, including, without limitation, those principles set forth in the statements and pronouncement of the Government Accounting Standards Board.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Guarantee*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Honor Date*” has the meaning set forth in Section 2.03(c) hereof.

“*Income Available for Debt Service*” means, as to any period of time, the excess of Revenues over Expenses of the Borrower for such period.

“*Indebtedness*” means for any Person (without duplication), all items that would be classified as a liability in accordance with generally accepted accounting principles, including, without limitation, (a) indebtedness or liability for borrowed money, or for the deferred purchase

price of property or services (including Trade Obligations); (b) obligations as lessee under leases which are, should have been, or should be, recorded as capital leases in accordance with generally accepted accounting principles; (c) current liabilities in respect of unfunded benefits under employee benefit, retirement or pension plans; (d) obligations issued for the account of any other Person; (e) all Guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor against loss; (f) obligations secured by any mortgage, lien, pledge, security interest or other charge or encumbrance on property, whether or not the obligations have been assumed; (g) obligations under Bank Agreements, and (h) obligations under Swap Contracts.

“Indemnitee” has the meaning set forth in Section 7.04(b) hereof.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of February 12, 2018, by and among River City Bank, as Collateral Agent, the PPA Providers from time to time party thereto and the Borrower.

“Interest Payment Date” means each of (i) the first Business Day of each calendar month, commencing on and including November 1, 2018, (ii) any date on which any principal amount of the related Loan or L/C Obligation, as applicable, is paid or prepaid, for any reason and (iii) the Commitment Termination Date.

“Interest Period” means, with respect to each Loan and Unreimbursed Amount, (i) the period from (and including) the date such Loan is issued or Unreimbursed Amount is paid by the Bank to (but excluding) the next succeeding Rate Reset Date, and (ii) thereafter, each period from (and including) a Rate Reset Date to (but excluding) the next succeeding Rate Reset Date (or, if sooner, to and including the Letter of Credit Scheduled Termination Date or the date the Loan and/or Unreimbursed Amount, as applicable, is paid in full, as applicable).

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Joint Powers Agreement” means that Joint Exercise of Powers Agreement, effective as of December 1, 2016, by and among each of the public entities identified on Exhibit D of this Agreement, pursuant to which the Borrower was established, as it may hereafter be amended from time to time in accordance with the terms hereof and thereof.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“*L/C Document*” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Bank and/or the Borrower relating to such Letter of Credit.

“*L/C Obligations*” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination, a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“*Lending Office*” means the Bank’s address and, as appropriate, account as set forth on Schedule I, or such other address or account as the Bank may from time to time notify the Borrower.

“*Letter of Credit*” means any standby letter of credit issued hereunder.

“*Letter of Credit Application*” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Bank.

“*Letter of Credit Expiration Date*” means the earlier of (i) the date on which the Bank declares its obligation to make Credit Extensions terminated under Section 6.02 hereof and (ii) the day that is thirty (30) days prior to the Letter of Credit Scheduled Termination Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“*Letter of Credit Fee*” has the meaning specified in Section 2.03(g) hereof.

“*Letter of Credit Scheduled Termination Date*” means July __, 2024, or such later date as may be established pursuant to Section 7.12 hereof.

“*Letter of Credit Sublimit*” means an amount equal to the lesser of (a) \$30,000,000 and (b) the Commitment. The Letter of Credit Sublimit is part of, and not in addition to, the Commitment.

“*LIBOR*” means, for any Rate Reset Date, the London interbank offered rate for deposits in United States dollars for a period of one month, which rate appears on the Reuters Screen LIBOR01 Page (or such other page as may replace LIBOR01 on that service or such other service as may be nominated by the ICE Benchmark Administration (or any entity that assumes responsibility for determining such rate) as an information vendor for the purpose of displaying such rate for U.S. Dollar deposits) as of 11:00 a.m., London, England time, on the Computation Date immediately preceding such Rate Reset Date, or if such rate is not available, another comparable rate determined by the Bank in its reasonable judgment upon notice thereof provided by the Bank to the Borrower.

“*LIBOR Index Rate*” means a fluctuating rate per annum, determined on each Computation Date for the period from and including the first succeeding Rate Reset Date to but

excluding the next succeeding Rate Reset Date thereafter, equal to the sum of (i) the Adjusted LIBOR Rate (as determined on such Computation Date) plus (ii) the Applicable Spread as of such first succeeding Rate Reset Date, rounded upward to the fourth decimal place.

“*Loan*” and “*Loans*” has the meaning specified in Section 2.01 hereof.

“*Loan Facility Scheduled Termination Date*” means March 15, 2021, unless extended pursuant to Section 7.12 hereof.

“*Loan Sublimit*” means an amount equal to the lesser of (a) \$25,000,000 and (b) the Commitment. The Loan Sublimit is part of, and not in addition to, the Commitment.

“*Lockbox Account*” means the account identified as such in the Security Agreement.

“*London Business Day*” means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the City of London, United Kingdom.

“*Margin Stock*” shall have the meaning assigned to that term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

“*Material Adverse Change*” means the occurrence of any event or change resulting in a material and adverse change in the business, condition (financial or otherwise), operations or prospects of the Borrower since December 21, 2017 or which materially and adversely affects the enforceability of this Agreement or the ability of the Borrower to perform its obligations hereunder.

“*Material Adverse Effect*” means: (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent) or condition (financial or otherwise) of the Borrower; (b) a material impairment of the ability of the Borrower to perform its obligations under this Agreement; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against the Borrower of this Agreement.

“*Maximum Interest Rate*” means the lesser of (i) twenty percent (20%) per annum and (ii) the maximum rate of interest on the relevant obligation permitted by applicable law.

“*Member*” means each city and town within Alameda County that is a signatory to the Joint Powers Agreement as specified in Exhibit D.

“*Minimum Collateral Amount*” means, at any time, with respect to Cash Collateral provided in accordance with the provisions of Section 2.18(a)(i) or 2.18(a)(ii), an amount or stated amount equal to 105% of the Outstanding Amount of all L/C Obligations.

“*Obligations*” means the obligations of the Borrower under this Agreement to repay (i) all Loans and all L/C Obligations, together with interest thereon, pursuant to and in accordance with this Agreement, (ii) all fees, and (iii) all expenses and charges payable or reimbursable hereunder to the Bank (including, without limitation, any amounts to reimburse the Bank for any

advances or expenditures by it under any of such documents) and all other payment obligations of the Borrower to the Bank arising under or in relation to this Agreement whether now existing or hereafter arising, due or to become due, direct or indirect (including those acquired by assumption), absolute or contingent, and howsoever evidenced, held or acquired, including interest and fees that accrue after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws naming the Borrower as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“*OFAC*” has the meaning set forth in Section 4.24 hereof.

“*Operating Expenses*” of the Borrower for any period means the excess, if any, of all operating expenses of the Borrower in such period (including interest expense and energy purchase expenses) over all amounts deducted by such Persons in calculating operating expenses in such period for or to make provisions for property retirement, depreciation, depletion, obsolescence, impairment, allowances for bad or uncollectible debt, and amortization of debt discount, issuance expense, and goodwill, all determined in accordance with GAAP.

“*Operating Fund Account*” means the account established with River City Bank, designated as the “EBCE Operating Fund Account”, together with any other fund or account held by or for the benefit of the Borrower into which Pledged Revenues or any portion thereof are deposited, including, without limitation, any Custodial Operating Account into which the Operating Fund Account is transferred or converted pursuant to the terms hereof.

“*Operating Reserve Fund*” means the account established with River City Bank, designated as the “EBCE Operating Reserve Fund Account” into which the amounts required pursuant to Section 5.29(e) hereof shall be deposited.

“*Operating Reserve Fund Requirement*” means an amount equal to \$7,000,000.

“*Outstanding Amount*” means (a) with respect to Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the aggregate amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“*Participant*” has the meaning set forth in Section 7.06(c) hereof.

“*Patriot Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

“*Person*” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*Pledged Revenues*” means the Receivables and other Collateral (each as defined in the Security Agreement) and all proceeds thereof, but only to the extent that such Receivables and other Collateral (each as defined in the Security Agreement) (or proceeds thereof) have been released from the pledge and lien of the Security Agreement in accordance with the terms thereof.

“*Power Purchase Agreement*” has the meaning set forth in the Security Agreement.

“*PPA Account Control Agreement*” means the Account Control Agreement, dated as of February 12, 2018, by and among River City Bank, as Account Bank, the Borrower and River City Bank, not in its individual capacity, but solely as collateral agent, as Secured Party.

“*PPA Provider*” means each seller of Product (as defined in the Security Agreement) under a Power Purchase Agreement that is a party to the Intercreditor and Collateral Agency Agreement.

“*Prepayment Funding Costs*” has the meaning set forth in Section 2.05(b) hereof.

“*Prime Rate*” means the rate established by Barclays Bank PLC, from time to time as its prime rate, with each change in the Prime Rate being effective from and including the date such change is publicly announced as being effective; provided, however, the Bank may lend to its customers at rates that are at, above or below the Prime Rate.

“*Property*” means any and all rights, titles and interests in and to any and all property, whether real or personal, tangible or intangible and wherever situated.

“*Rate Reset Date*” means the first Business Day of each calendar month commencing March 1, 2018.

“*Requested Issuance Date*” has the meaning set forth in Section 3.02(a) hereof.

“*Reserve Percentage*” means for any day, that percentage (expressed as a decimal) which is in effect from time to time under regulations issued from time to time by the Board of Governors of the Federal Reserve System of the United States for determining the maximum reserve requirement (including, without limitation, any basic, supplemental, emergency, special, marginal or other reserves) applicable with respect to Eurocurrency funding (or against any other category of funding liabilities that includes deposits by reference to which the interest rate of the Loans is determined), whether or not the Bank has any Eurocurrency liabilities subject to such reserve requirement at that time. The Loans shall be deemed to constitute a Eurocurrency liability and as such shall be deemed subject to reserve requirements without benefit of credit for any prorations, exceptions or offsets that may be available from time to time to the Bank. The Adjusted LIBOR Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Percentage.

“*Revenues*” means, for any period, the revenues of the Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course, (iii) earnings resulting from any reappraisal, revaluation

or write-up of fixed or capital assets, (iv) noncash gains or changes in the valuation of Swap Contracts which gain or change in value is not the result of the expiration or termination (including early termination) of such Swap Contracts and (v) any realized gain in excess of 10% on common and preferred stock during such period (measured by dividing the net realized gains on common and preferred stock for such period by the average of the market value of the common and preferred stock as of the first day and last day of such period).

“*Security Agreement*” means the Security Agreement, dated as of February 12, 2018, by and between the Borrower and River City Bank, as collateral agent.

“*Start-Up Expense*” means working capital expenses of the Borrower incurred prior to the earlier of (i) sixty (60) days following residential customer launch, currently expected to occur by October 31, 2018 and (ii) March 1, 2019, and specifically excludes any expenses for power purchases or the establishment or posting of reserves, collateral or other security related to current or future power purchases.

“*State*” means the State of California.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc. or any International Foreign Exchange Master Agreement, including any such obligations or liabilities thereunder.

“*Total Outstandings*” means the aggregate Outstanding Amount of all Loans and L/C Obligations.

“*Trade Obligations*” means all letters of credit, bank guarantees, bankers’ acceptances or similar instruments issued in respect of trade payables or similar obligations but in any event excluding performance obligations.

“*UCC*” means the Uniform Commercial Code in effect in the State of California from time to time.

“*UCP*” means the Uniform Customs and Practice for Documentary Credits in effect from time to time.

“*United States*” and “*U.S.*” mean the United States of America.

“Unreimbursed Amount” and “Unreimbursed Amounts” has the meaning set forth in Section 2.03(c) hereof.

Section 1.02 Other Interpretive Provisions. With reference to this Agreement, unless otherwise specified herein:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used herein, shall be construed to refer to this Agreement in its entirety and not to any particular provision thereof, (iv) all references in this Agreement to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

Section 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements of the Borrower delivered to the Bank pursuant to Section 5.02(a) hereof, *except* as otherwise specifically prescribed herein.

Section 1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

Section 1.05 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any L/C Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable).

ARTICLE II

THE COMMITMENT

Section 2.01 Loans; Use of Loan Proceeds. During the Availability Period, the Bank agrees, on the terms and conditions set forth in this Agreement (including the conditions contained in Section 3.02 hereof), to make loans (individually, a “*Loan*” and collectively, the “*Loans*”) to the Borrower from time to time in amounts not to exceed, at any time, the lesser of the Loan Sublimit and the Available Commitment on the date such Loan is to be made, to be used by the Borrower (a) to fund Start-Up Expenses in an aggregate amount not to exceed \$2,500,000, (b) for administrative purposes in an amount not to exceed \$100,000, and (c) purchases of power (including (1) the posting of reserve funds, collateral or other security related to current or future purchases of power; (2) registration related costs (including, but not limited to, CPUC registration), (3) regulatory related expenses (including, without limitation, the costs of delivering required customer notifications; and (4) long-term project Power Purchase Agreements, and for no other purpose; provided that if a requested Loan is for the purposes specified in clause (4), the Bank shall not be obligated to issue such Loan unless the Borrower shall demonstrate to the satisfaction of the Bank that the Debt Service Coverage Ratio of the Borrower, calculated based on Income Available for Debt Service for the twelve (12) months prior to the proposed Borrowing Date (which date shall be considered a Financial Covenant Determination Date under this Agreement) and the aggregate of the payments required to be made during the next twelve (12) months in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment or otherwise) and interest on all outstanding Indebtedness of the Borrower (taking into account all amounts payable pursuant to Section 2.05(c) hereof and taking into account such additional Loan), shall not be less than the Debt Service Coverage Ratio Requirement. At the time that each Loan is made, such Loan shall be in an aggregate amount that is a minimum of \$500,000 and integral multiples of \$100,000 in excess thereof; *provided further, however*, that after giving effect to any Borrowing, the (x) Total Outstandings shall not exceed the Commitment, subject to any reductions thereof pursuant to the terms hereof, and (y) the Outstanding Amount of the Loans shall not exceed the Loan Sublimit. Within the foregoing limits, the Borrower may borrow under this Section 2.01, prepay under Section 2.07 and reborrow under this Section 2.01 at any time during the Availability Period; provided that if the Requested Issuance Date of any Loan is on or after March 15, 2020, the Bank shall not be obligated to issue such Loan unless the Borrower shall demonstrate to the satisfaction of the Bank that the Debt Service Coverage Ratio of the Borrower, calculated based on Income Available for Debt Service for the twelve (12) months prior to the proposed

Borrowing Date (which date shall be considered a Financial Covenant Determination Date under this Agreement) and the aggregate of the payments required to be made during the next twelve (12) months in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment or otherwise) and interest on all outstanding Indebtedness of the Borrower (taking into account all outstanding Letters of Credit and all amounts payable pursuant to Section 2.06(c) hereof and taking into account such additional Loan), shall not be less than the Debt Service Coverage Ratio Requirement. The Borrower agrees to repay the Bank for the full amount of any Loans in accordance with this Agreement. The Borrower and the Bank acknowledge that, as of the Effective Date, Loans in the aggregate amount of \$[12,512,500] are outstanding under this Agreement.

Section 2.02 Method of Loans. If, on any Business Day during the Availability Period, the Bank receives at the location specified for the delivery of a Borrowing Request specified pursuant to Section 7.02, a Borrowing Request from an Authorized Officer of the Borrower, and the Borrower telephonically confirms the Bank's receipt of such Borrowing Request, not later than 12:00 noon, New York City time, the Bank shall, subject to satisfaction of the requirements of Section 2.01 and Article III, transfer to the Borrower not later than 2:00 p.m. on the third (3rd) Business Day (or such shorter period as may be agreed to by the Bank) following the Bank's receipt of the Borrowing Request, if such Business Day falls during the Availability Period, or such later day during the Availability Period as specified in such Notice, in immediately available funds, an amount equal to the Loan thereby requested. If a Borrowing Request is given by electronic transmission, the Borrower shall promptly deliver an original of such Borrowing Request by hand or overnight courier service; provided that the receipt of such original is not a condition to the Bank's obligation to advance funds hereunder. A Borrowing Request shall be irrevocable after receipt thereof by the Bank. Each Borrowing Request shall specify the following information:

- (i) the aggregate amount of the requested Loan;
- (ii) the requested Borrowing Date, which shall be a Business Day within the Availability Period at least three (3) Business Days following the Bank's receipt of such Borrowing Request; and
- (iii) the wire instruction for transfers of the proceeds of the proposed Loan.

Section 2.03 Letters of Credit.

(a) *The Letter of Credit Commitment.* (i) Subject to the terms and conditions set forth herein, the Bank agrees (A) from time to time on any Business Day during the period from the Effective Date until the Letter of Credit Expiration Date, to issue Letters of Credit in Dollars for the account of the Borrower, and to amend Letters of Credit previously issued by it, in accordance with Section 2.03(b) hereof, and (B) to honor drawings under the Letters of Credit through the maturity date of the relevant Letter of Credit; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Commitment and (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the Borrower for the issuance or amendment of a

Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Bank shall not be under any obligation to issue any Letter of Credit if:

(A) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless the Bank has approved such expiry date;

(B) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Bank from issuing the Letter of Credit, or any Law applicable to the Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Bank shall prohibit, or request that the Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Bank in good faith deems material to it;

(C) the issuance of the Letter of Credit would violate one or more policies of the Bank applicable to letters of credit generally;

(D) except as otherwise agreed by the Bank, the Letter of Credit is in an initial stated amount less than \$500,000;

(E) the Letter of Credit is to be denominated in a currency other than Dollars;

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(G) after giving effect to such L/C Credit Extension, (x) the Total Outstandings shall exceed the Commitment or (y) the Outstanding Amount of the L/C Obligations shall exceed the Letter of Credit Sublimit.

(iii) The Bank shall be under no obligation to amend any Letter of Credit if (A) the Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(b) *Procedures for Issuance and Amendment of Letters of Credit.* (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the Bank in the form of a Letter of Credit Application, appropriately completed and

signed by an Authorized Officer of the Borrower. Such Letter of Credit Application may be sent by fax transmission, by United States mail, by overnight courier, by electronic transmission using the system provided by the Bank, by personal delivery or by any other means acceptable to the Bank. Such Letter of Credit Application must be received by the Bank not later than 4:00 p.m. (New York City time) at least five (5) Business Days (or such later date and time as the Bank may agree in a particular instance in its sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Bank: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Bank (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the Bank may require. Additionally, the Borrower shall furnish to the Bank such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any L/C Documents, as the Bank may require.

(ii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Bank will also deliver to the Borrower a true and complete copy of such Letter of Credit or amendment.

(c) *Drawings and Reimbursements.* Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the Bank shall notify the Borrower thereof. Not later than 4:00 p.m. (New York City time) on the date of any payment by the Bank under a Letter of Credit (each such date, an “*Honor Date*”), the Borrower shall reimburse the Bank in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the Bank by such time on the Honor Date for such drawing, the amount equal to the amount of the unreimbursed drawing (each an “*Unreimbursed Amount*” and collectively, “*Unreimbursed Amounts*”) shall bear interest at the LIBOR Index Rate. Any notice given by the Bank pursuant to this Section 2.03(c) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(d) *Obligations Absolute.* The obligation of the Borrower to reimburse the Bank for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Financing Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Bank or any other Person, whether in connection with this Agreement or by such Letter of Credit, the transactions contemplated hereby or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the Bank of any requirement that exists for the Bank's protection and not the protection of the Borrower or any waiver by the Bank which does not in fact materially prejudice the Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the Bank in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under, such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the Bank. The Borrower shall be conclusively deemed to have waived any such claim against the Bank and its correspondents unless such notice is given as aforesaid.

(e) *Role of the Bank.* The Bank and the Borrower agree that, in paying any drawing under a Letter of Credit, the Bank shall not have any responsibility to obtain any document (other than any sight or time draft, certificates and documents expressly required by the Letter of

Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Bank, any of its related parties nor any correspondent, participant or assignee of the Bank shall be liable or responsible for any of the matters described in Section 2.03(d) hereof. In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the Bank shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The Bank may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("*SWIFT*") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(f) *Applicability of ISP and UCP; Limitation of Liability.* Unless otherwise expressly agreed by the Bank and the Borrower when a Letter of Credit is issued the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the Bank shall not be responsible to the Borrower for, and the Bank's rights and remedies against the Borrower shall not be impaired by, any action or inaction of the Bank required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the Bank or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(g) *Letter of Credit Fees.* The Borrower shall pay to the Bank a Letter of Credit fee (the "*Letter of Credit Fee*") equal to 1.75% per annum multiplied by the daily amount available to be drawn under such Letter of Credit; *provided, that* upon the occurrence, and at all times during the continuation, of an Event of Default, the Letter of Credit Fee shall increase to 5.75% per annum multiplied by the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. Letter of Credit Fees shall be (A) due and payable on (x) the first Business Day of each January, April, July and October, commencing with the first such date to occur after the issuance of such Letter of Credit, (y) on the Letter of Credit Expiration Date and (z) thereafter on demand and (B) computed on a quarterly basis in arrears. The Borrower shall also be responsible for the reasonable fees and miscellaneous handling charges in connection with the issuance of each Letter of Credit as set forth in the related Letter of Credit Application.

(h) *Letter of Credit Application Fee.* Upon the Bank's receipt of any Letter of Credit Application, the Bank shall invoice and the Borrower shall promptly pay to the Bank an application fee of \$600, or such other application fee amount then required by the Bank, in immediately available funds, which such fee shall be fully earned by the Bank and non-refundable.

(i) *Letter of Credit Amendment Fee.* The Borrower shall promptly pay to the Bank a fee for each amendment to a Letter of Credit in a minimum amount of \$135 or such amount then required by the Bank in connection with such amendment.

(j) *Conflict with Borrower Documents.* In the event of any conflict between the terms hereof and the terms of any L/C Document, the terms hereof shall control.

Section 2.04 Termination or Reduction of Commitment.

(a) *Optional.* (i) The Borrower may, upon notice to the Bank, terminate the Commitment, the Loan Sublimit or the Letter of Credit Sublimit or from time to time permanently reduce the Commitment, Loan Sublimit or the Letter of Credit Sublimit; *provided that* (i) any such notice shall be received by the Bank not later than 4:00 p.m. (New York City time) five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) Borrower shall not terminate or reduce the (A) Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Commitment, (B) Letter of Credit Sublimit if, after giving effect thereto and to any concurrent prepayments or Cash Collateralizations hereunder, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit or (C) Loan Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Loans not repaid hereunder would exceed the Loan Sublimit. Failure by the Borrower to designate in the notice required under this Section 2.04(a)(i) whether the Commitment, Loan Sublimit or Letter of Credit Sublimit is to be permanently reduced shall be deemed to be a permanent reduction in the Commitment.

(ii) The Borrower hereby agrees to pay to the Bank a Reduction and Termination Fee (as defined below) in connection with any permanent reduction to, or termination or replacement of, the Commitment, the Loan Sublimit or the Letter of Credit Sublimit by the Borrower prior to the first (1st) anniversary of the Effective Date, in an amount equal to the product of (1) the applicable Commitment Fee Rate in effect on the date of such permanent reduction or termination or replacement, (2) the amount of such permanent reduction, termination or replacement of the Commitment, Loan Sublimit or Letter of Credit Sublimit, as applicable, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination or replacement to and including the first (1st) anniversary of the Effective Date, and the denominator of which is 360 (the "Reduction and Termination Fee"), payable on the date of such termination or replacement.

(b) *Letter of Credit Sublimit.* If after giving effect to any reduction or termination of the Commitment under this Section 2.04, the Letter of Credit Sublimit exceeds the Commitment

at such time, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess.

Section 2.05 Interest.

(a) *Generally.* Each Loan shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Loan is made until it is paid in full, at a rate per annum equal to the applicable LIBOR Index Rate in effect as of each applicable Rate Reset Date, subject to Sections 2.05(f) and Section 2.05(h) hereof. Pursuant to Section 2.03(c) hereof, all Unreimbursed Amounts shall bear interest at the LIBOR Index Rate. While any Loan bears interest at the LIBOR Index Rate, the Bank shall use its best efforts to send to the Borrower an invoice for the interest on each Loan to be due on the succeeding Interest Payment Date at least fourteen (14) days prior to such Interest Payment Date; provided, however, that the failure by the Bank to provide such invoice shall not relieve the Borrower of its obligation to make payment of amounts as and when due hereunder. The Borrower hereby promises to pay interest on each Loan and Unreimbursed Amounts at the rates and times specified in this Section 2.05. All amounts required to be paid by the Borrower hereunder shall be paid in lawful money of the United States of America in immediately available funds. Any overdue principal and, to the extent permitted by law, overdue interest on any Loan or Unreimbursed Amount and all other amounts payable hereunder which are not paid when due shall bear interest, payable on demand, for each day until paid, at a rate per annum equal to the Default Rate.

(b) *LIBOR Index Rate.* While the outstanding principal amount of any Loan or the Unreimbursed Amount bears interest at a LIBOR Index Rate, the Bank shall determine the LIBOR Index Rate as of each applicable Computation Date, and such rate shall be effective (i) from the (A) Borrowing Date with respect to any Borrowing and (B) Honor Date with respect to any Unreimbursed Amount of L/C Obligations, in each case to but not including the immediately succeeding Rate Reset Date and (ii) thereafter, be effective for the period from and including the immediately succeeding Rate Reset Date to but not including the next succeeding Rate Reset Date; provided that, (i) for purposes of calculating the initial LIBOR Index Rate with respect to any Loan issued on the March 19, 2018, the Computation Date and the Rate Reset Date applicable solely to such Loan until the next succeeding Rate Reset Date shall be the date such Loan is advanced hereunder and (ii) for purposes of calculating the initial LIBOR Index Rate with respect to any subsequent Loan or any Unreimbursed Amount, the Rate Reset Date applicable solely to such Loan or Unreimbursed Amount, as applicable (and not to any other outstanding Loans or Unreimbursed Amounts) until the next succeeding Rate Reset Date shall be the date such Loan or Unreimbursed Amount is advanced hereunder.

(c) *Determination of Interest Rates.* Each determination by the Bank of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

(d) *Default Rate.* (i) While any Event of Default exists, the Borrower shall pay interest on all outstanding obligations of the Borrower hereunder (including, without limitation, all Loans and Unreimbursed Amounts) at a fluctuating interest rate per annum at all times equal to the Default Rate, payable on demand.

(ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) *Interest Payments.* Interest on each Loan and Unreimbursed Amount shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any bankruptcy or insolvency proceeding.

(f) *Discretion of Bank as to Manner of Funding.* Notwithstanding any provision of this Agreement to the contrary, the Bank shall be entitled to fund and maintain its funding of all or any part of the Loans or Unreimbursed Amount hereunder in any commercially reasonable manner, it being understood, however, that for the purposes of this Agreement all determinations hereunder shall be made as if the Bank had actually funded and maintained the Loans or Unreimbursed Amounts during each Interest Period applicable thereto through the purchase of deposits in the relevant market in the amount of the Loans, having a maturity corresponding to such Interest Period.

(g) *Absence of LIBOR Funding.*

(i) *Circumstances Affecting LIBOR Index Rate Availability.* If for any reason (A) the Bank shall determine (which determination shall be conclusive and binding absent fraud or manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount of any Loan and/or Unreimbursed Amount, or (B) the Bank shall determine (which determination shall be conclusive and binding absent fraud or manifest error) that reasonable and adequate means do not exist for ascertaining LIBOR for any Interest Period with respect to any Loan and/or Unreimbursed Amount, then the Bank shall promptly give notice thereof to the Borrower. Thereafter, each such Loan and/or Unreimbursed Amount shall automatically convert to bear interest at the Alternate Rate until the circumstance or condition requiring such conversion to the Alternate Rate ceases to apply or exist.

(ii) *Laws Affecting LIBOR Index Rate Availability.* If, after the date hereof, the enactment or effectiveness of, or any change in, any applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank (or any of its lending offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for the Bank (or any of its lending offices) to honor its obligations hereunder to make or maintain the Loans and/or Unreimbursed Amount with the LIBOR Index Rate applicable, the Bank shall promptly give notice thereof to the Borrower. Thereafter, each Loan and/or Unreimbursed Amount shall automatically convert to bear interest at the Alternate Rate until the circumstance or condition requiring such conversion to the Alternate Rate ceases to apply or exist.

Section 2.06 Prepayments and Mandatory Repayment.

(a) **Optional Prepayment.** (i) Subject to the terms of Section 2.05(a)(ii) below, the Borrower may, upon written notice to the Bank, voluntarily prepay any Loan, in whole or in part on any Business Day; provided that (i) such notice must be received by the Bank not later than 10:00 a.m. ten (10) Business Days prior to any date of prepayment and (ii) any prepayment shall be in a principal amount of \$500,000 and integral multiples of \$250,000 in excess thereof or, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment. Upon any prepayment of less than all of the outstanding Loans, the prepayment shall be applied: first to the interest accrued on any Loan, second to any applicable Prepayment Funding Costs, third to any Termination Fee payable and fourth to the principal component of any Loan.

(b) In the event the Bank shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Bank to fund or maintain the Loans or the Commitment or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Bank) as a result of any payment of any Loan on a date other than a Rate Reset Date for any reason (the “*Prepayment Funding Cost*”), whether before or after default (but excluding any such prepayment resulting from acceleration of the Loans by the Bank upon the occurrence of an Event of Default), then upon the demand of the Bank, the Borrower shall pay to the Bank such amount as will reimburse the Bank for such loss, cost, or expense, as determined by the Bank in good faith. If the Bank requests such a reimbursement, it shall provide to the Borrower a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for reimbursement in reasonable detail and such certificate shall be conclusive absent manifest error.

(c) **Mandatory Amortization Payments.** From and after the Amortization Commencement Date, each Loan shall be payable by the Borrower in monthly installments (each, a “*Monthly Principal Payment*”) on each Amortization Payment Date, with the final installment in an amount equal to the entire then outstanding principal amount of all Loans due and payable on the Termination Date. Each Monthly Principal Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Monthly Principal Payments over the applicable remaining portion of the Amortization Period, taking into account the principal amount of Loans outstanding as of the last day of the calendar month immediately prior to the related Amortization Payment Date.

(d) **Mandatory Prepayment.**

(i) **Outstandings.** If for any reason at any time the (a) Total Outstandings at any time exceed the Commitment, (b) the L/C Obligations exceed the Letter of Credit Sublimit or (c) the Loans exceed the Loan Sublimit, in each case, as applicable, the Borrower shall, without notice, prepay Loans (together with all accrued but unpaid interest thereon) and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.06(d)(i) unless, after the prepayment of the Loans, the Total Outstandings exceed the Commitment at such time. For the avoidance of doubt, the Minimum Collateral Amount shall not apply to the Cash Collateral required under this Section 2.06(d)(i) unless an Event of Default has occurred and is continuing.

(ii) *Application of Mandatory Prepayments.* Prepayments made pursuant to this Section 2.06(d), first, shall be applied to the outstanding Loans, and, second, shall be used to Cash Collateralize the remaining L/C Obligations; and, in the case of prepayments under the Commitment required pursuant to clause (i) of this Section 2.06(d), the amount remaining, if any, after the prepayment in full of all Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the “Reduction Amount”) may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower that has provided Cash Collateral) to reimburse the Bank.

All prepayments under this Section 2.06(d) shall be subject to Section 2.06(b), but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

Section 2.07 Repayment of Loans and Unreimbursed Amounts. The Borrower shall repay to the Bank, (a) on the earlier of (i) the Loan Facility Scheduled Termination Date and (ii) the Commitment Termination Date, the aggregate principal amount of Loans outstanding on such date, together with accrued interest thereon and (b) on the earlier of (i) the Letter of Credit Scheduled Termination Date and (ii) the Commitment Termination date, the aggregate principal amount of Unreimbursed Amounts outstanding on such date, together with accrued interest thereon. Subject at all times to Section 2.06(b) hereof, the Borrower shall repay to the Bank on the Commitment Termination Date all other Obligations payable hereunder.

Section 2.08 General Provisions as to Payments. All payments by the Borrower to the Bank hereunder shall be nonrefundable and made in lawful currency of the United States and in immediately available funds. Amounts payable to the Bank hereunder shall be transferred to the Bank’s account at Barclays Bank PLC, ABA# 026002574, Credit to Account No.: 050019104, Reference: East Bay Community Energy Authority (or to such other account of the Bank as the Bank may specify by written notice to the Borrower) not later than 3:00 p.m., on the date payment is due. Any payment received by the Bank after 3:00 p.m. shall be deemed to have been received by the Bank on the next Business Day. If any payment hereunder is due on a day that is not a Business Day, then such payment shall be due on the immediately succeeding Business Day, and, in the case of the computation of the interest or fees hereunder, such extension of time shall, in such case, be included in the computation of the payment due hereunder.

Section 2.09 Computation of Interest and Fees; Payments. (a) Computations of interest on the Loans and Unreimbursed Amounts shall be made on the basis of a 360-day year for the actual days elapsed. All computations of fees shall be made on the basis of a 360-day year for the actual days elapsed. Interest shall accrue on each Loan and Unreimbursed Amount for the day on which the Loan is made and on each Unreimbursed Amount on the Honor Date, and shall not accrue on such Loan or Unreimbursed Amount, as applicable, or any portion thereof, for the day on which such Loan or Unreimbursed Amount or such portion is paid. Each determination by the Bank of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) Interest on each Loan shall be paid by the Borrower on each Interest Payment Date; *provided* that accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) The Borrower agrees to pay the Bank, upon demand, interest on any and all amounts owed by the Borrower under this Agreement from the date such amounts are due and payable but not paid until payment thereof in full, at an interest rate per annum equal to the Default Rate.

Section 2.10 Maximum Interest Rate; Payment of Fee. If the rate of interest due hereunder shall exceed the Maximum Interest Rate for any period for which interest is payable, then (i) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period and (ii) if and to the extent permitted by applicable law, interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Interest Rate (the “Excess Interest”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time the Borrower shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder if and to the extent permitted by applicable law, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the repayment in full of any Loan or Unreimbursed Amount bearing Excess Interest, in consideration for the limitation of the rate of interest otherwise payable hereunder, the Borrower, if and to the extent permitted by applicable law, shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest on such Loan or Unreimbursed Amount, as applicable.

Section 2.11 Administrative Fees. The Borrower shall pay to the Bank a fee for each amendment to this Agreement made at the request of the Borrower in a minimum amount of \$2,500 plus the reasonable fees and expenses of counsel to the Bank. The Borrower shall pay to the Bank a fee for each waiver or consent relating to this Agreement in an amount to be mutually agreed upon between the Borrower and the Bank plus the reasonable fees and expenses of outside counsel to the Bank.

Section 2.12 Evidence of Debt. The Loans shall be evidenced by one or more accounts or records maintained by the Bank in the ordinary course of business. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations.

Section 2.13 Obligations Absolute. The payment obligations of the Borrower of Loans under this Agreement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

- (a) any lack of validity or enforceability of this Agreement;

(b) any amendment or waiver of or any consent to departure from all or any of this Agreement;

(c) the existence of any claim, set off, defense or other right which the Borrower may have at any time against the Bank or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; or

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Section 2.14 Yield Protection. (a) Reserves. If after the Effective Date, the Bank or any Participant shall have determined that the adoption or implementation of any change in any law, rule, treaty or regulation or any policy, guideline, or directive of, or any change in the enforcement, interpretation, implementation, or administration thereof by, any court, central bank, or other administrative authority or Governmental Authority or compliance by the Bank or any Participant with any request or directive of any such court, central bank, or other administrative authority or Governmental Authority (in each case, whether or not having the force of law) (a “Change in Law”), shall at any time (i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including, without limitation, pursuant to Regulation D of the Board of Governors of the Federal Reserve System) against letters of credit, credits or commitments to extend credit extended by, or assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds or bonds by the Bank or any Participant, (ii) subject credits or commitments to issue letters of credit or extend credit extended by the Bank or any Participant to any assessment or other cost imposed by the Federal Deposit Insurance Corporation or any successor thereto or the Prudential Regulation Authority or the Financial Conduct Authority or any successor thereto, (iii) change the basis of taxation of payments to the Bank or any Participant of any amounts payable hereunder (except for taxes on the overall net income of the Bank or any Participant), or (iv) impose on the Bank or any Participant any other or similar condition regarding this Agreement, the commitment or obligations of the Bank or any Participant hereunder, and the result of any event referred to in clause (i), (ii), (iii) or (iv) above shall be to increase the cost to the Bank or any Participant of agreeing to issue, issuing or maintaining the Letters of Credit, Unreimbursed Amounts and/or Loans or to reduce the amount of any sum received or receivable by the Bank or any Participant hereunder, then, upon demand by the Bank, the Borrower shall pay to the Bank for its account, or that of any such Participant as may be applicable, such additional amount or amounts as will compensate the Bank or such Participant for such increased costs or reductions in amount.

(b) Capital Charges. If after the Effective Date, the Bank or any Participant shall have determined that the adoption or implementation of any Change in Law shall impose, modify or deem applicable any capital adequacy or similar requirement (including, without limitation, a request or requirement that affects the manner in which the Bank or any Participant allocates capital resources to its commitments) that either (i) affects or would affect the amount of capital to be maintained by the Bank or such Participant or (ii) reduces or would reduce the rate of return on the Bank’s or such Participant’s capital to a level below that which the Bank or such Participant could have achieved but for such circumstances (taking into consideration the policies of the Bank or such Participant with respect to capital adequacy) then, upon demand by the Bank for its own account or that of such Participant as may be applicable, the Borrower shall

pay to the Bank for its own account, or such Participant, as applicable, such additional amounts as will compensate the Bank or such Participant for such event such that the Bank or such Participant shall enjoy the same economic benefit that the Bank or such Participant would have enjoyed if such event had not occurred.

(c) All payments of amounts referred to in clauses (a) and (b) above shall be paid by the Borrower to the Bank within thirty (30) days of such demand. A certificate as to such increased cost, increased capital, or reduction in return incurred by the Bank or any Participant as a result of any event mentioned in clause (a) or (b) of this subsection setting forth, in reasonable detail, the basis for calculation and the amount of such calculation shall be submitted by the Bank to the Borrower simultaneously with such demand for payment and shall be conclusive as to the amount thereof absent manifest error. In making the determinations contemplated by the above referenced certificate, the Bank or any such Participant may make such reasonable estimates, assumptions, allocations and the like that the Bank or such Participant in good faith determines to be appropriate. The obligations of the Borrower under this Section 2.14 shall survive the termination of this Agreement.

(d) Third Party Beneficiaries. The benefits of this Section 2.14 shall be available to each assignee of the Bank and each Participant; provided, however, that no assignee or Participant shall be entitled to receive (nor shall the Bank be entitled to receive on behalf of any assignee or Participant) any greater payment under this Section 2.14 than the Bank would have been entitled to receive without regard to any such assignment or participation unless any such assignment or participation is made with the express written consent of the Borrower.

Section 2.15 Withholding. All payments by or on behalf of the Borrower under this Agreement shall be made without counterclaim, setoff, condition or qualification, and free and clear of, and without deduction or withholding for, or by reason of any present or future taxes, levies, imposts, deductions or charges of any nature whatsoever; excluding, however, taxes imposed on or measured by the net income or capital of the Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes"). If requested, the Bank, any assignee and any Participant, from time to time, shall provide the Borrower and the United States Internal Revenue Service (to the extent such information and forms may be lawfully provided by the Bank or such assignee or Participant) with such information and forms as may be required by the Treasury Regulations Section 1.1441 (C.F.R.) or any other such information and forms as may be necessary to establish that the Borrower is not subject to any withholding obligation under Section 1442 or other comparable provisions of the Code. If as a result of a change of Law, the Borrower shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable hereunder to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If the Borrower shall make any payment under this Section 2.15 to or for the benefit of the Bank with respect to Taxes and if the Bank shall claim any credit or deduction for such Taxes against any other taxes payable by the

Bank to any taxing jurisdiction in the United States, then the Bank shall pay to the Borrower an amount equal to the amount by which such other taxes are actually reduced; provided, however, that the aggregate amount payable by the Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by the Bank with respect to such Taxes. All of the Borrower's obligations under this Section 2.15 shall survive the termination of this Agreement and the repayment in full of the Loans.

Section 2.16 Other Taxes. To the extent permitted by law, the Borrower agrees to indemnify and hold the Bank harmless (on a net after-tax basis) from any present or future claim or liability for stamp, transfer, documentary, excise or other similar tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any government authority in connection with the execution, delivery, performance, filing and recording of, or any payment made under, this Agreement, or any amendment hereto or thereto and any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees.

Section 2.17 Commitment Fee. The Borrower hereby agrees to pay to the Bank in arrears quarterly on the first Business Day of each January, April, July and October (commencing on the first Business Day of July, 2018) and on the Termination Date, for each day for which such fee has not yet been paid, a non-refundable commitment fee (the "Commitment Fee") in an amount equal to the product of the weighted average of the daily Available Commitment during such period and the rate per annum equal to the Commitment Fee Rate. Such Commitment Fee shall be payable in immediately available funds and computed on the basis of a year of 360 days and the actual number of days elapsed.

Section 2.18 Cash Collateral.

(a) *Certain Credit Support Events.* If (i) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, or (ii) the Borrower shall be required to provide Cash Collateral upon an Event of Default hereunder, the Borrower shall within five (5) Business Days following any request by the Bank, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount except as otherwise provided for herein. Additionally, if the Bank notifies the Borrower at any time that the Outstanding Amount of all L/C Obligations at such time exceeds the Letter of Credit Sublimit then in effect, then within five (5) Business Days after receipt of such notice, the Borrower shall provide Cash Collateral in respect of the Outstanding Amount of the L/C Obligations in an amount not less than the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit.

(b) *Grant of Security Interest.* The Borrower hereby grants to (and subjects to the control of) the Bank and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as Cash Collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.18(c). If at any time the Bank determines in good faith that Cash Collateral is subject to any right or claim of any Person other than the Bank, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, within five (5)

Business Days after receipt of a demand by the Bank, pay or provide to the Bank additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more interest-bearing deposit accounts at the Bank. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) *Application.* Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.18 or Sections 2.03, 2.04 or 6.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) *Release.* Cash Collateral (or the appropriate portion thereof) provided to secure obligations shall be released within five (5) Business Days following the determination by the Bank that there exists excess Cash Collateral; provided, however, (A) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under this Agreement and the other applicable provisions of this Agreement, and (B) the Person providing Cash Collateral and the Bank may agree that Cash Collateral shall not be released but instead held to support future anticipated obligations.

Section 2.19 Pledge and Security. (a) The Borrower hereby conveys, grants, pledges and assigns to the Bank and its successors and assigns a first priority security interest in (i) the Pledged Revenues, (ii) the Operating Reserve Fund and (iii) the Operating Fund Account to secure all of the Obligations (including, without limiting the foregoing, payments of principal of and interest on each Loan) of the Borrower hereunder.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Borrower hereby acknowledges and agrees that payment of all Obligations (including, without limiting the foregoing, payments of principal of and interest on each Loan) is a general obligation of the Borrower secured by a first priority lien on the Pledged Revenues, the Operating Reserve Fund and the Operating Fund Account and upon the Cash Collateral posted by the Borrower pursuant to the terms hereof. The Bank acknowledges that the Obligations of the Borrower hereunder are solely obligations of the Borrower and are not debts, liabilities or obligations of any of the Members and no taxing power of any of the foregoing is pledged therefor. The Borrower has no taxing powers.

ARTICLE III

CONDITIONS PRECEDENT TO CREDIT EXTENSION

Section 3.01 Conditions of Effectiveness. The effectiveness of this Agreement is subject to the following conditions precedent.

(a) The Bank shall have received, on or before the Effective Date, the items listed below, each dated and in form and substance as is satisfactory to the Bank:

(i) copies of the resolutions of the Borrower approving the execution and delivery of this Agreement and the other matters contemplated hereby and thereby, certified by the Authorized Officer of the Borrower as being a true and complete copy thereof and in full force and effect on the Effective Date;

(ii) a certificate by an Authorized Officer of the Borrower, delivered to the Bank at least two (2) Business Days prior to the Effective Date, certifying the names and signatures of the persons authorized to sign, on behalf of the Borrower, this Agreement and each Borrowing Request;

(iii) unaudited internally-produced cash flow and balance sheet projections of the Borrower;

(iv) an executed original of this Agreement;

(v) an opinion of Nixon Peabody LLP, special counsel to the Borrower, or other counsel acceptable to the Bank, addressed to the Bank or on which the Bank is otherwise expressly authorized to rely, as to the due authorization, execution, delivery and enforceability of this Agreement, validity of each security interest created hereunder and such other matters as the Bank may reasonably request;

(vi) a certificate dated the Effective Date and executed by an Authorized Officer certifying (i) that there has been no event or circumstance since _____, that has had or could be reasonably expected to have, either individually or in the aggregate, a material adverse effect upon the operations, business, properties, liabilities or financial condition of the Borrower, (ii) that the representations and warranties contained in Article IV hereof are true and correct in all material respects on the Effective Date and (iii) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default;

(vii) a written description of all actions, suits or proceedings pending or threatened against the Borrower in any court or before any arbitrator of any kind or before or by any Governmental Authority and such other statements, certificates, agreements, documents and information with respect thereto as the Bank may reasonably request; and

(viii) evidence satisfactory to the Bank that the Borrower has executed at least two (2) EEI Master Power Purchase & Sale Agreements.

(b) All other legal matters pertaining to the execution and delivery of this Agreement shall be satisfactory to the Bank and its counsel, and the Bank shall have received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by this Agreement as the Bank may reasonably request.

Section 3.02 Conditions Precedent to each Loan. The obligation of the Bank to advance each Loan is subject to the further conditions precedent that:

(a) The Bank shall have received the executed Borrowing Request at least three (3) Business Days prior to the requested date of issuance of such Loan (the “Requested Issuance Date”);

(b) The Bank shall have received, on or before the Requested Issuance Date, in form and substance as is satisfactory to the Bank, a certificate dated the Requested Issuance Date and executed by an Authorized Officer certifying (i) that the representations and warranties contained in Article IV hereof are true and correct in all material respects on the Requested Issuance Date and (ii) no event has occurred and is continuing, or would result from issuance of the requested Loan, which would constitute a Default or Event of Default;

(c) The principal amount of such Loan shall not exceed the Available Commitment on the date such Loan is to be advanced and that after giving effect to any Borrowing, the (x) Total Outstandings shall not exceed the Commitment, subject to any reductions thereof pursuant to the terms hereof, and (y) the Outstanding Amount of the Loans shall not exceed the Loan Sublimit;

(d) If the Requested Issuance Date is on or after March 15, 2020, either the Borrower shall have satisfied the provisions in Section 2.01 hereof or the Bank shall have consented to such Loan, in its sole discretion; and

(e) The Loan Facility Scheduled Termination Date shall not have occurred on or prior to the Requested Issuance Date.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Bank as of the Effective Date:

Section 4.01 Existence and Power. The Borrower (i) is a joint powers agency created pursuant to the Act, (ii) has full power and authority to own its properties and carry on its business as now conducted, and (iii) has full power and authority to execute (or adopt, if applicable), deliver and perform its obligations under this Agreement and to borrow hereunder.

Section 4.02 Regulatory Authority. The Borrower is duly authorized to conduct its business and activities under all applicable laws, rulings, regulations and ordinances and the departments, agencies and political subdivisions governing it or regulating its business and activities, and the Borrower has obtained all material and requisite approvals of the State and of federal, regional and local governmental bodies required to be obtained in connection with the execution and delivery of this Agreement prior to the date of the execution and delivery of this Agreement.

Section 4.03 Noncontravention. The execution and delivery by the Borrower of this Agreement and the performance of its obligations hereunder and thereunder, does not and will not violate any existing law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower or any of its assets, or result in a breach of any of the terms of, or constitute a default under or result in the creation or imposition of any lien on, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound or the Act, its bylaws (if any), or any of the rules or regulations applicable to it or its property or any decree or order of any court or other governmental body.

Section 4.04 Due Authorization. The execution, delivery and performance by the Borrower of this Agreement are within its corporate power and authority, and have been duly authorized by all necessary action and will not contravene any provision of the Act or its bylaws (if any).

Section 4.05 Valid and Binding Obligations. This Agreement is a valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

Section 4.06 Pending Litigation and Other Proceedings. Except as disclosed on Schedule II hereto, there is no action, suit or proceeding by or before any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, pending or, to the Borrower's knowledge, threatened action or proceeding affecting or involving the Borrower or any of its business, properties, revenues or assets before any court, governmental agency or arbitrator which, if adversely determined, could result in a Material Adverse Effect (in the reasonable judgment of the Borrower), or otherwise adversely affect (A) the validity or enforceability of this Agreement, or (B) the status of the Borrower as a joint powers agency created pursuant to sections 6500 et seq. of the California Government Code, validly existing under the laws of the State.

Section 4.07 Insurance. The Borrower currently maintains insurance with respect to its business, operations, assets and properties against such risks, in such amounts, with such companies and with such deductibles as is customarily carried by and insures against such risks as are customarily insured against by entities with business, operations, assets and properties of like size, location and character to those of the Borrower.

Section 4.08 Financial Projections. The projected balance sheet of the Borrower as provided to the Bank on _____ and the related statement of revenues and expenses fairly present the Borrower's expectation of its future financial condition, changes in financial position and results of operations at such dates and for such periods as set forth therein. Since _____ there has been no material adverse change (in the reasonable judgment of the Borrower) in the business, assets, revenues, properties, condition (financial or otherwise) or operations, present or prospective, of the Borrower not otherwise disclosed to the Bank in writing prior to the Effective Date.

Section 4.09 Complete and Correct Information. All information, reports and other papers and data with respect to the Borrower furnished to the Bank or its counsel by the Borrower were, taken in the aggregate and at the time the same were so furnished, complete and

correct in all material respects. No fact is known to the Borrower which materially and adversely affects or in the future may (so far as it can foresee) materially and adversely affect the business, revenues, properties, assets or liabilities, financial condition, results of operations of the Borrower, or any of its business prospects which has not been set forth in the financial statements referred to in Section 4.08 or in such information, reports, papers and data or otherwise disclosed in writing to the Bank by the Borrower. When taken in the aggregate, no document furnished or statement made by the Borrower in connection with the negotiation, preparation or execution of this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not misleading.

Section 4.10 Pending Legislation and Decisions. There is no amendment, or to the knowledge of the Borrower, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, which would materially adversely affect the Borrower's obligations under this Agreement, or the Borrower's ability to pay when due its obligations under this Agreement.

Section 4.11 Default. No Default or Event of Default has occurred and is continuing with respect to the Borrower.

Section 4.12 Employee Benefit Plan Compliance. The Borrower has no funding deficiency with respect to any employee benefit plan and is otherwise in compliance with terms of any such plan in which the Borrower or any of its employees participate in. Neither the Borrower nor any employee benefit plan maintained by the Borrower is subject to the Employee Retirement Income Security Act of 1974, as amended.

Section 4.13 [Reserved.]

Section 4.14 Sovereign Immunity. The Borrower is not entitled to immunity from legal proceedings to enforce this Agreement (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with this Agreement.

Section 4.15 Usury. The terms of this Agreement regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.16 Federal Reserve Board Regulations. The Borrower will not use any part of the proceeds of the Loans or Letters of Credit and has not incurred any indebtedness to be reduced, retired or purchased by the Borrower out of such proceeds, for the purpose of purchasing or carrying any Margin Stock, and the Borrower does not own and will not acquire any such Margin Stock.

Section 4.17 Investment Company Act. The Borrower is not an "investment company" or a company "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

Section 4.18 No Proposed Legal Changes. To the best knowledge of the Borrower, there is no proposed amendment to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any proposition or referendum (or proposed proposition or referendum) or other ballot initiative or any legislation that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Change.

Section 4.19 No Outstanding Indebtedness. The Borrower has no outstanding Indebtedness other than aggregate Trade Obligations not in excess of \$1,500,000.

Section 4.20 Prior Agreement. No Event of Default and no event which, with the giving of notice, the passage of time or both, would constitute an Event of Default, presently exists under the Prior Agreement.

Section 4.21 Reserved.

Section 4.22 Collateral. (a) The Borrower has the power to grant a security interest in and lien on any Cash Collateral it transfers as the pledgor under and has taken all necessary actions to authorize the granting of that security interest and lien;

(b) the Borrower is the sole owner of or otherwise has the right to transfer all Cash Collateral it transfers to or for the benefit of the Bank, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted hereunder; and

(c) upon the transfer of any Cash Collateral to or for the benefit of the Bank under the terms hereof, the Bank will have a valid and perfected first priority security interest therein.

Section 4.23 Parties to the Joint Powers Agreement. Each of the entities identified on Exhibit D hereto is currently a Party (as defined in the Joint Powers Agreement).

Section 4.24 Anti-Terrorism Laws. The Borrower is not in violation of any Laws relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Patriot Act;

(a) The Borrower is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“OFAC”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(b) The Borrower does not (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (a)(ii) above, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE V

COVENANTS

As long as this Agreement is in effect, and until all amounts payable hereunder are paid in full, the Borrower will perform and observe the covenants set forth below, unless the Bank shall otherwise consent in writing:

Section 5.01 Compliance With Laws and Regulations. The Borrower shall not violate any laws, rules, regulations, or governmental orders to which it is subject and of which it is aware after diligent inquiry, which violation involves a reasonable likelihood of resulting in a Material Adverse Change.

Section 5.02 Reporting Requirements. The Borrower shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Borrower on a consolidated or combined basis in accordance with generally accepted accounting principles consistently applied. The Borrower will deliver to the Bank either in hard copy or by electronic mail to xramunicipalcovenant@barclayscapital.com (or such other email address as shall be directed from time to time by the Bank):

(a) *Annual Financial Statements.* As soon as available, and in any event within two hundred seventy (270) days after the close of each Fiscal Year of the Borrower, commencing with the Fiscal Year ending June 30, 2019, the complete audited financial statements of the Borrower including the balance sheet as of the end of such Fiscal Year and the related statements of revenues, expenses and cash flows and changes in fund balance for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the preceding Fiscal Year all in reasonable detail, certified and prepared by an independent certified public accountant in accordance with generally accepted accounting principles, consistently applied.

(b) *Quarterly Financial Statements.* As soon as available, and in any event within forty-five (45) days after the last day of each of each quarter of each Fiscal Year of the Borrower, the unaudited financial statements of the Borrower including the balance sheet as of the end of such quarter and a statement of income and expenses, all in reasonable detail and certified, subject to year-end adjustment, by an Authorized Officer of the Borrower.

(c) *Certificate of Compliance.* Simultaneously with the delivery of each set of financial statements referred to in Section 5.02(a), a certificate signed by an Authorized Officer of the Borrower stating that (i) under his/her supervision the Borrower has made a review of its activities during the preceding annual period for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of this Agreement and (ii) to the best of his/her knowledge no Default or Event of Default has occurred with respect to the Borrower in the performance or observance of any of the terms, covenants, provisions or conditions of this Agreement, or if a Default or Event of Default shall have occurred with respect to the Borrower, such certificate shall specify each such Default or Event of Default, the nature and status thereof and any remedial steps taken or proposed to correct each such Default or Event of Default.

(d) *Financial Covenant Compliance.* The Borrower shall deliver to the Bank within thirty (30) days after each Financial Covenant Determination Date, a certificate of an Authorized Officer of the Borrower certifying, in form and substance acceptable to the Bank, the Borrower's Operating Reserve Fund balance and Debt Service Coverage Ratio as of such Financial Covenant Determination Date, and providing the basis for such calculation.

(e) *Amendments.* Promptly after the adoption thereof, copies of any amendments of or supplements to the Joint Powers Agreement, any Financing Document or any bylaws of the Borrower.

(f) *Parties to Joint Powers Agreement.* Promptly after any entity ceases to be a Party (as defined in the Joint Powers Agreement), notice thereof and copies of any notices or documents provided by or to the Borrower in connection therewith.

(g) *Other Reports.* Promptly upon request by the Bank, copies of any financial statement or report furnished to any other holder of long term securities of the Borrower pursuant to the terms of any long-term indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Bank pursuant to any other clause of this Section 5.02.

(h) *Financing Documents.* Promptly after the execution thereof, copies of any of the Financing Documents.

(i) *Other Information.* Such other information with respect to the business, properties, revenues, assets or the condition or operations, financial or otherwise, of the Borrower as the Bank may from time to time reasonably request.

Section 5.03 Notice of Default. As promptly as practical (but in no event more than five (5) days) after the date the Borrower shall have obtained knowledge of the occurrence of an Event of Default or breach of this Agreement, the Borrower shall provide notice of the same to the Bank and, in either case, provide to the Bank the written statement of the Borrower setting

forth the details of each such event and the action which the Borrower proposes to take with respect thereto.

Section 5.04 Further Assurances. The Borrower shall, upon the request of the Bank, from time to time, execute and deliver and, if necessary, file, register and record such further financing statements, amendments, confirmation statements and other documents and instruments and take such further action as may be reasonably necessary to effectuate the provisions of this Agreement. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Agreement and such instruments of further assurance.

Section 5.05 Right of Entry. The Borrower shall permit the duly authorized representatives of the Bank during normal business hours and upon reasonable notice to enter the premises of the Borrower, or any parts thereof, to examine and copy the Borrower's financial and corporate books, records and accounts, and to discuss the affairs, finances, business and accounts of the Borrower with the Borrower's officers and employees.

Section 5.06 Payment of Obligations; Removal of Liens. The Borrower shall pay (a) all indebtedness and obligations of the Borrower in accordance with the terms thereof and (b) all assessments or other governmental charges as the same respectively become due, all taxes, assessments (general or special) and governmental charges of any kind whatsoever that may be at any time lawfully assessed or levied against or with respect to any of its or its businesses, property, revenues and assets or any interest thereon and promptly discharge or cause to be discharged all liens, encumbrances and charges on such businesses, property, revenues and assets.

Section 5.07 Related Obligations. The Borrower shall promptly pay all amounts payable by it under this Agreement according to the terms hereof or thereof and shall duly observe, perform and fulfill each of its obligations under this Agreement.

Section 5.08 Insurance. The Borrower will at all times maintain insurance with respect to its business, operations, assets and properties against such risks, in such amounts, with such companies and with such deductibles as is customarily carried by and insures against such risks as are customarily insured against by entities with business, operations, assets and properties of like size, location and character to those of the Borrower.

Section 5.09 Employee Benefit Plan Compliance. The Borrower shall, in a timely fashion, comply in all material respects with all requirements under any employee benefit plan in which the Borrower or any of its employees participate.

Section 5.10 Disclosure of Participants. The Borrower permits the Bank to disclose any information received by the Bank in connection herewith to any Participant, including without limitation the financial information described in Section 5.02.

Section 5.11 Sovereign Immunity. The Borrower irrevocably agrees that it will not assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Borrower under this Agreement, the Financing Documents or the transactions contemplated hereby and thereby.

Section 5.12 Notice of Adverse Change. The Borrower shall provide to the Bank written notice as soon as possible of (i) the filing of actions, suits and proceedings before any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, against the Borrower, where the amount claimed is in excess of two million Dollars (\$2,000,000), (ii) any action, suit, proceeding, inquiry or investigation before or by any court, public board or body pending or threatened wherein an unfavorable decision, ruling or finding could result in a Material Adverse Change or (iii) any other event which, in the reasonable judgment of the Borrower, is likely to result in a Material Adverse Change.

Section 5.13 Taxes and Liabilities. The Borrower shall pay all its indebtedness and other obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its property, real, personal or mixed, or upon any part thereof, before the same shall become in default, which default could result in a Material Adverse Change.

Section 5.14 Legal Fee. On or prior to July __, 2019, the Borrower shall reimburse the Bank (or directly pay) for the legal fees and expenses of McDermott Will & Emery LLP, not to exceed \$_____.

Section 5.15 Preservation of Existence, Ownership, Etc. The Borrower shall (a) preserve and maintain its corporate existence, right (charter and statutory) and franchises, trade names and licenses, (b) qualify and remain qualified to do business in each jurisdiction in which such qualification is necessary in view of the Borrower's business or operations and (c) preserve all of the property of the Borrower used or useful in the conduct of the Borrower's business or operations and keep the same in good repair, working order and condition, and from time to time make, or cause to be made, all needful and proper repairs, renewals and replacements, betterments and improvements thereto, so that the business carried in connection therewith may be properly and advantageously conducted at all times.

Section 5.16 Certain Information. The Borrower shall not include in an offering document for any Indebtedness any information concerning the Bank that is not supplied in writing, or otherwise approved, by the Bank expressly for inclusion therein, which supply or approval shall not be unreasonably withheld.

Section 5.17 Disposition of Assets. The Borrower shall not dissolve nor shall it sell, lease, assign, transfer or otherwise dispose of all or a substantial portion of its properties and assets.

Section 5.18 Consolidation or Merger. The Borrower shall not consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into

it or acquire all or substantially all of the property and assets of any other Person without the consent of the Bank; provided, that nothing in this Section 5.18 is intended to preclude the addition of new Members to the Borrower in accordance with the Joint Powers Agreement.

Section 5.19 Proceeds of Loans. The proceeds of the Loans will be used by the Borrower solely for purposes consistent with the Act and the purposes of the Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2. The Borrower shall use Credit Extensions (i) in the case of Letters of Credit, to secure payments due under Power Purchase Agreements, (ii) in the case of Loans, solely for the purposes specified in Section 2.01 hereof.

Section 5.20 Disclosure in Financial Statements. The Borrower shall reflect the indebtedness evidenced by this Agreement in any statement of assets and liabilities prepared by or for the Borrower.

Section 5.21 Liens. The Borrower will not create, incur or permit to exist any lien of any kind on any Property of the Borrower senior to or on parity with the lien on Pledged Revenues in favor of the Bank except (i) the lien on Collateral (as defined in the Security Agreement) in favor of the Collateral Agent, for the benefit of the Secured Creditors, each as defined in the Security Agreement, (ii) the lien on Pledged Revenues in favor of the Bank and (iii) the lien on Collateral (as defined herein) in favor of the Bank. The Borrower will not create, incur or permit to exist any lien of any kind on any Property of the Borrower on a basis subordinate to the lien on Pledged Revenues in favor of the Bank securing Indebtedness in an aggregate amount in excess of twenty percent (20%) of the cash balance held by the Borrower.

Section 5.22 Burdensome Contracts With Members. The Borrower will not enter into any contract, agreement or business arrangement with any of its Members on terms and conditions which are less favorable to the Borrower than would be usual and customary in similar contracts, agreements or business arrangements between unrelated persons transacting with each other on an arm's length basis.

Section 5.23 Indebtedness. The Borrower shall not create, incur, assume or suffer to exist any Indebtedness except (i) Loans hereunder, (ii) any Power Purchase Agreements, (iii) Trade Obligations outstanding in aggregate at any time not to exceed \$1,500,000 and (iv) any other Indebtedness consented to by the Bank.

Section 5.24 Deposit of Pledged Revenues. The Borrower shall, on each Distribution Date (as defined in the Security Agreement) direct the Collateral Agent (as defined in the Security Agreement) to transfer the balance of the funds in the Deposit Accounts (as defined in the Security Agreement) into the Operating Fund Account in accordance with the terms of Section 6.02(iv) of the Security Agreement.

Section 5.25 Use of Pledged Revenues. The Borrower shall not spend, disburse, apply, lend or otherwise dispose of monies constituting Pledged Revenues except for purposes consistent with the purpose of the Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by

Borrower pursuant to California Public Utilities Code Section 366.2; provided that, following the occurrence of an Event of Default hereunder, the Borrower shall apply all Pledged Revenues solely to (i) the payment of Obligations hereunder, (ii) purchases of power and energy purchase expenses and, (iii) with the Bank's prior written consent, critical expenses necessary for core operations, including data, billing, and call center services, energy scheduling, regulatory fees, Pacific Gas and Electric Company fees, salaries and wages.

Section 5.26 Amendments. The Borrower shall not amend, modify or supplement, nor agree to any amendment or modification of, or supplement to the Joint Powers Agreement or the Financing Documents or its bylaws, if any, without the prior written consent of the Bank; provided, that nothing in this Section 5.26 is intended to preclude (a) the addition of new Members to the Borrower in accordance with the Joint Powers Agreement or (b) any amendment to the Joint Powers Agreement which does not materially adversely affect the rights of the Bank hereunder.

Section 5.27 Incorporation by Reference. From and after the date hereof and so long as this Agreement is in effect, except to the extent compliance in any case or cases is waived in writing by the Bank, the Borrower shall perform, observe, fulfill and comply with, abide by, and be restricted by the provisions of the Financing Documents to which it is a party, so long as any Obligations remain outstanding hereunder, which agreements, covenants, obligations and undertakings together with the related definitions, exhibits and ancillary provisions are incorporated herein by reference, mutatis mutandis, and made a part hereof to the same extent and with the same force and effect as if the same had been herein set forth in their entirety. No amendment to any such covenants or defined terms shall be effective to amend such covenants and defined terms as incorporated by reference herein without the prior written consent of the Bank.

Section 5.28 Reserved.

Section 5.29 Debt Service Coverage Ratio and Operating Reserve Fund Balance.
(a) As of each Financial Covenant Determination Date commencing on December 31, 2018, the Debt Service Coverage Ratio of the Borrower shall be not less than the Debt Service Coverage Ratio Requirement, unless waived in writing by the Bank; provided that, (i) for the Financial Covenant Determination Date occurring on December 31, 2018, such calculation shall be determined based on Income Available for Debt Service and interest (but not principal) for the prior three months, (ii) for the Financial Covenant Determination Date occurring on March 30, 2019, such calculation shall be determined based on Income Available for Debt Service and interest (not principal) for the prior six months, and (iii) for the Financial Covenant Determination Date occurring on June 30, 2019, such calculation shall be determined based on Income Available for Debt Service and principal and interest for the prior nine months.

(b) If the Debt Service Coverage Ratio of the Borrower is less than the Debt Service Coverage Ratio Requirement as of any Financial Covenant Determination Date (a "Noncompliance Date"), the Borrower shall (A) notify the Bank within one (1) Business Day thereof and (B) at its own expense, retain a Consultant within thirty (30) days of such Financial Covenant Determination Date, to make recommendations with respect to the rates, fees and charges of the Borrower and the Borrower's methods of operation and other factors affecting its

financial condition in order to increase the Debt Service Coverage Ratio of the Borrower above the Debt Service Coverage Ratio Requirement. Such Consultant shall be selected by the Borrower and shall be acceptable to the Bank and shall deliver its report and recommendations within forty-five (45) days of its appointment.

(c) A copy of the Consultant's report and recommendations shall be provided to the Bank. The Borrower shall comply with the recommendations of the Consultant to the extent commercially reasonable in the exercise of their business judgment and to the extent permitted by law. The Borrower shall be deemed in compliance with this Section so long as the Borrower remains in compliance with such recommendations, unless the Debt Service Coverage Ratio of the Borrower on the date which is six months after the Borrower retains the Consultant pursuant to clause (b) above (which date shall be considered a Financial Covenant Determination Date under this Agreement) or any subsequent Financial Covenant Determination Date thereafter is less than the Debt Service Coverage Ratio Requirement, such event being an Event of Default under this Agreement.

(d) The balance in the Operating Reserve Fund of the Borrower shall be not less than: (i) from and including January 1, 2019 to but excluding April 1, 2019, ten percent (10%) of the Operating Reserve Fund Requirement, (ii) from and including April 1, 2019 to but excluding July 1, 2019, twenty-five percent (25%) of the Operating Reserve Fund Requirement, (iii) from and including July 1, 2019 to but excluding November 1, 2019, fifty percent (50%) of the Operating Reserve Fund Requirement and (iv) from and including November 1, 2019 and as of each Financial Covenant Determination Date thereafter, one hundred percent (100%) of the Operating Reserve Fund Requirement, unless waived in writing by the Bank. The Borrower shall provide written evidence of its compliance with the requirements set forth in clauses (i), (ii) and (iii) above on the last day of each such period and shall provide written evidence of its compliance with the requirements of clause (iv) above on November 1, 2019 and on each Financial Covenant Determination Date thereafter.

(e) If, on any date, the balance in the Operating Reserve Fund of the Borrower shall be less than the amount required pursuant to clause (d) above, the Borrower shall, within thirty (30) days of such date, deposit sufficient additional funds into the Operating Reserve Fund to satisfy such requirement.

(f) In addition to the obligations set forth above, if the Debt Service Coverage Ratio of the Borrower is less than the Debt Service Coverage Ratio Requirement as of any Financial Covenant Determination Date or the balance in the Borrower's Operating Reserve Fund is less than the Operating Reserve Fund Requirement, the Borrower shall, within thirty (30) days thereof, take all necessary action to convert the Operating Fund Account to a custodial account (the "*Custodial Operating Account*"), in form and substance acceptable to the Bank, reflecting the Bank's first priority security interest therein and in the Pledged Revenues, authorizing the Bank to issue a notice of exclusive control in respect thereof upon the occurrence of an Event of Default hereunder, and accompanied by such opinions of counsel to the Borrower as the Bank may reasonably request in respect thereof. Following the occurrence of an Event of Default, the Borrower shall, upon written notice from the Bank, transfer such Custodial Operating Account to a third party financial institution custodian reasonably satisfactory to the Bank.

ARTICLE VI

EVENTS OF DEFAULT, REMEDIES

Section 6.01 Events of Default and Remedies. If any of the following events shall occur, each such event shall be an “*Event of Default*”:

(a) (i) the Borrower shall fail to pay the principal of or interest on any Loan or Unreimbursed Amount when due or (ii) the Borrower shall fail to pay any other Obligation when due;

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered; or

(c) the Borrower shall default in the due performance or observance of any of the covenants set forth in Section 2.18, 5.01, 5.03, 5.11, 5.17, 5.18, 5.19, 5.23, 5.24, 5.25, 5.26 or 5.29 hereof; or

(d) the Borrower shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement and such default shall remain unremedied for a period of thirty (30) days or more after knowledge by the Borrower or written notice to the Borrower from the Bank; or

(e) one or more final, unappealable judgments against the Borrower for the payment of money, which, individually or in the aggregate, equal or exceed \$3,000,000, shall remain unpaid, unstayed, undischarged, unbonded or undismissed for a period of sixty (60) days; or

(f) an Event of Insolvency shall have occurred with respect to the Borrower; or

(g) this Agreement or any material provision hereof shall at any time for any reason cease to be valid and binding on the Borrower as a result of a ruling or finding by a court or a Governmental Authority with competent jurisdiction or shall be declared by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be contested by the Borrower or any agent or trustee on their behalf or the Borrower or any agent or trustee on their behalf shall in writing repudiate or otherwise deny that it has any further liability or obligation with respect thereto; or

(h) (i) (A) default by the Borrower in the payment of any amount due in respect of any Indebtedness owed to the Bank, as and when the same shall become due or (B) default by the Borrower in the payment of any amount due in respect of any Indebtedness of the Borrower (excluding any amount due to any PPA Provider) in an aggregate amount in excess of \$100,000, as and when the same shall become due, or (ii) the occurrence of any default, event of default or other similar condition or event (however described) under any mortgage, agreement or other instrument under or pursuant to which any Indebtedness of the Borrower (excluding any amount due to any PPA Provider) having an aggregate principal amount in excess of \$100,000 is incurred or issued, and continuance of such default beyond the period of grace, if any, allowed with respect thereto; or

(i) default by the Borrower in the payment of any amount due to any PPA Provider unless such obligation is being contested in good faith by the Borrower through appropriate action; or

(j) a senior officer of the Borrower shall (i) claim in writing that this Agreement or any material provision herein or therein is not legal, valid or enforceable or (ii) repudiate in writing its obligations under this Agreement or under any Indebtedness of the Borrower having an aggregate principal amount in excess of \$500,000; or

(k) the Borrower or any Governmental Authority with jurisdiction over the Borrower shall initiate any legal proceedings to seek an adjudication that this Agreement or the obligation to pay or repay any Loan or any other Indebtedness of the Borrower having an aggregate principal amount in excess of \$500,000 is not valid or not binding on the Borrower; or

(l) there shall be appointed or designated with respect to the Borrower, an entity such as an organization, board, commission, authority, agency or body to monitor or declare a financial emergency or similar state of financial distress with respect to it or there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it.

Section 6.02 Remedies. Upon the occurrence of any Event of Default and at any time thereafter during the continuance of such Event of Default, the interest rate on the Loans and all other outstanding Obligations hereunder shall immediately and without further action convert to the Default Rate and the Bank at its option may take any one or more of the following actions:

(a) declare the Commitment and the obligation of the Bank to make Credit Extensions to be terminated, whereupon such Commitment and obligation shall be immediately terminated;

(b) by written notice to the Borrower, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto);

(d) at the expense of the Borrower, cure any Event of Default or event of nonperformance hereunder or under any other Financing Document; provided, however, that the Bank shall have no obligation to effect such a cure; and

(e) exercise, or cause to be exercised, any and all remedies as it may have under this Agreement and as otherwise available at Law and at equity;

(f) exercise its rights under any Custodial Operating Account or pursuant to any account control agreement or other agreement relating thereto; and/or

(g) pursue any action available at law or in equity.

Section 6.03 Remedies Cumulative; Solely for the Benefit of the Bank. To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Bank shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Bank, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to the Borrower or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower therefrom, shall be effective unless in writing signed by the Bank and the Borrower, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the case of any such waiver or consent relating to any provision hereof, any Default or Event of Default so waived or consented to shall be deemed to be cured and not continuing, but no such waiver or consent shall extend to any other or subsequent Default or Event of Default or impair any right consequent thereto.

Section 7.02 Notices; Effectiveness; Electronic Communication. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax transmission or e-mail transmission to the address, fax number or e-mail address specified for such Person on Schedule I, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number specified for such Person on Schedule I. Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by fax transmission shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (c).

(b) *Electronic Communications.* Notices and other communications to the Bank hereunder may be delivered or furnished by electronic communication (including e-mail)

pursuant to procedures approved by the Bank. The Bank or the Borrower, in its discretion, agrees to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it provided that the approval of such procedures may be limited to particular notices or communications.

(c) Unless the Bank otherwise prescribes, notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient following the sender's receipt of an acknowledgment from the intended recipient.

(d) *Change of Address, Etc.* Each of the Borrower and the Bank may change its address, fax number or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

(e) *Reliance by the Bank.* The Bank shall be entitled to rely and act upon any notices (including telephonic or electronic notices) purportedly given by or on behalf of the Borrower by an Authorized Officer even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Bank from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower; provided that the Borrower shall not be required to indemnify the Bank for any losses, costs, expenses or liabilities, to the extent, but only to the extent, caused by the willful misconduct or gross negligence of the Bank. All telephonic notices to and other telephonic communications with the Bank may be recorded by the Bank, and each of the parties hereto hereby consents to such recording.

Section 7.03 No Waiver; Cumulative Remedies. No failure by the Bank to exercise, and no delay by the Bank in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 7.04 Costs and Expenses; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Bank and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Bank in an amount not to exceed \$_____) in connection with the preparation, negotiation, execution, and delivery of this Agreement or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby shall be consummated), and (ii) all out of pocket expenses incurred by the Bank (including the fees, charges and disbursements of any counsel for the Bank), and all fees and time charges for attorneys who may be employees of the Bank, in connection with the enforcement or protection of its rights in connection with this

Agreement, including its rights under this Section, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such purchase.

(b) *Indemnification by the Borrower.* To the extent permitted by law, in addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Borrower hereby agrees to indemnify and hold harmless each of the Bank, each Participant and their respective officers, directors, employees and agents (each an "Indemnatee") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees) that an Indemnatee may incur (or which may be claimed against an Indemnatee by any Person whatsoever) that arises out of the transactions contemplated by this Agreement, including, without limitation, (i) the execution and delivery or transfer of, or payment or failure to pay under, this Agreement; and (ii) the use of the proceeds of the Loan; provided that the Borrower shall not be required to indemnify any Indemnatee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of such Indemnatee as determined by a final and nonappealable judgment of a court of competent jurisdiction. If any proceeding shall be brought or threatened against any Indemnatee by reason of or in connection with the events described in (i) or (ii), the Bank shall promptly notify the Borrower in writing and the Borrower shall assume the defense thereof, including the employment of counsel and the payment of all costs of litigation. The Borrower will not settle or compromise any such action or claim without the prior written consent of the relevant Indemnatee if the settlement or compromise involves any performance by or adverse admission of such Indemnatee. Notwithstanding the preceding sentence, if the interests of the Borrower and an Indemnatee are, in the reasonable judgment of the Indemnatee, in material conflict, an Indemnatee shall have the right to employ its own counsel and to determine its own defense of such action in any such case, but the fees and expenses of such counsel shall be at the expense of the Borrower.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person has or shall have, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Loans, the Letters of Credit or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnatee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the transactions contemplated hereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnatee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) *Payments.* All amounts due under this Section shall be payable not later than thirty (30) days after demand therefor.

(e) *Survival.* The agreements in this Section shall survive the payment in full of the Loans and Unreimbursed Amounts, the repayment, satisfaction or discharge of all other Obligations and the termination of this Agreement.

Section 7.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Bank, and such payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential or required (including pursuant to any settlement entered into by the Bank in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made.

Section 7.06 Successors and Assigns.

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted by this Section. The Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank.

(b) The Bank may at any time, without the consent of, or notice to, the Borrower, assign or otherwise transfer any of its rights or obligations hereunder to (i) an entity which is affiliated with the Bank or (ii) a funding entity or other special purpose arrangement established by the Bank or an Affiliate of the Bank. The Bank may at any time, with the written consent of the Borrower (such consent not to be unreasonably withheld or delayed), assign or otherwise transfer any of its rights or obligations hereunder to any other bank, institutional investor or other entity which, in each case, customarily purchases or holds loans.

(c) *Participations.* The Bank may at any time, without the consent of, or notice to, the Borrower, sell participations to any Person (other than a natural Person or the Borrower) who customarily makes, or whose Affiliate customarily makes, commercial loans (each, a "Participant") in all or a portion of the Bank's rights and/or obligations under this Agreement (including all or a portion of the Loans or Unreimbursed Amounts) and any such Participant, and any investors in any such Participant if such Participant is a funding vehicle, such as a tender option trust or similar vehicle, shall be entitled to receive from the Bank any information provided by the Borrower to the Bank; provided that (i) the Bank's obligations under this Agreement shall remain unchanged, (ii) the Bank shall remain solely responsible to the Borrower for the performance of such obligations and (iii) the Borrower shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement; and provided however, that (A) no such Participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such Participant; (B) no Participant shall be entitled to receive directly from the Borrower any notice required to be given by the Borrower to the Bank hereunder; and (C) no Participant shall be entitled to request or receive directly from the Borrower any other information required to be provided to the Bank hereunder. To the extent permitted by law, each Participant also shall be entitled to the benefits of Sections 2.14, 2.15, 2.16 and 7.04 as though it were the Bank.

(d) *Certain Pledges.* The Bank may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement to secure obligations of the Bank, including any pledge or grant to secure obligations to a Federal Reserve Bank; provided that no such pledge or grant shall release the Bank from any of its obligations hereunder or substitute any such pledge or grantee for the Bank as a party hereto.

Section 7.07 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.01, this Agreement shall become effective when it shall have been executed by the Bank and when the Bank shall have received counterparts hereof that, when taken together, bear the signatures of the other party hereto. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or e-mail transmission (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of this Agreement, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

Section 7.08 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other document delivered pursuant hereto or in connection herewith shall survive the execution and delivery hereof. Such representations and warranties have been or will be relied upon by the Bank, regardless of any investigation made by the Bank or on its behalf and notwithstanding that the Bank may have had notice or knowledge of any Default at the time of making the Loans or issuing Letters of Credit hereunder, and shall continue in full force and effect as long as any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 7.09 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.10 Governing Law; Jurisdiction; Etc. (a) This Agreement will be governed by and construed in accordance with the laws of the State of New York, except that the capacity, power and authority of the Borrower to enter into this Agreement shall be governed by and construed in accordance with the laws of the State of California.

(b) *Submission to Jurisdiction.* Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of any State or Federal court in the State of New York in the County of New York, in any action or proceeding arising out of or relating to this Agreement or any other related document, or for

recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court in the County of New York or in such Federal court in the State of New York in the County of New York. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Each of the parties hereto irrevocably and unconditionally waives any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other related document in any court referred to in paragraph (b) of this section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 7.11 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.12 Extension of Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date. The Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date may be extended from time to time by agreement in writing between the Bank and the Borrower. If no Event of Default has occurred and is continuing, the Borrower may request in writing to the Bank, in the form of Exhibit B to this Agreement not earlier than one hundred eighty (180) days prior to the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable, that the Bank extend the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable. The Borrower has no obligation to request an extension of the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date and the Bank has no obligation to agree to an extension of the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, and all terms of the extension (including the term, commitment and other fees, interest rates, amortization terms and other provisions) shall be mutually acceptable to the Bank and the Borrower. The Bank agrees to respond to a written extension request by the Borrower within thirty (30) days of receipt of such request by the Bank. If the Bank fails to respond to the Borrower within thirty (30) days of receipt of the Borrower's request or the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable shall have occurred, the Bank shall be deemed to have denied such request. If the Bank and the Borrower agree to an extension of the Loan Facility Scheduled

Termination Date or Letter of Credit Scheduled Termination Date, as applicable, the Bank shall give written notice, in the form of a Notice of Extension substantially in the form of Exhibit C hereto (a “Notice of Extension”) of its determination to extend the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable, to the Borrower. If the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable, is extended, the Borrower shall, except as otherwise agreed to in writing by the Bank, be deemed to have made the representations and warranties contained herein on and as of the date on which the Loan Facility Scheduled Termination Date or Letter of Credit Scheduled Termination Date, as applicable, is so extended.

Section 7.13 No Advisory or Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or thereof), the Borrower acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm’s-length commercial transactions between the Borrower, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary, for the Borrower, or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to the Borrower with respect to the transactions contemplated hereby except those obligations expressly set forth herein and therein; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by law, the Borrower, hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

Section 7.14 Electronic Execution of Certain Documents. The words “execute,” “execution,” “signed,” “signature,” and words of like import in this Agreement or any other document related hereto (including waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Bank, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7.15 USA Patriot Act. The Bank is subject to the Patriot Act and hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Bank, provide all documentation and other information that the Bank requests in order to

comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act.

Section 7.16 Time of the Essence. Time is of the essence of this Agreement.

Section 7.17 Entire Agreement. This Agreement represents the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

Section 7.18 Further Assurances. From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder and thereunder. At any time, and from time to time, upon request by the Bank, the Borrower will, at the Borrower’s expense, correct any defect, error or omission which may be discovered in the form or content of this Agreement. In addition, at any time, and from time to time, upon request by the Bank, the Borrower will, at the Borrower’s expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Bank, be necessary or desirable in order to verify the Borrower’s identity and background in a manner satisfactory to the Bank.

Section 7.19 Right of Setoff. Upon the occurrence of an Event of Default, the Bank and its Affiliates may, at any time and from time to time, without notice to the Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply, against and on account of, any obligations and liabilities of the Borrower to the Bank or its Affiliates arising under or connected with this Agreement, without regard to whether or not the Bank shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured, any and all deposits (general or special, including but not limited to indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other indebtedness or other payment obligation at any time held or owing by the Bank or its Affiliates to or for the credit or the account of the Borrower.

Section 7.20 Bail-In Action Acknowledgment. The Borrower acknowledges and agrees that notwithstanding any other term of this Agreement or any other agreement, arrangement or understanding with the Bank, any liability arising under or in connection with this Agreement may be subject to Bail-In Action, and accept to be bound by the effect of:

- (a) any Bail-In Action in relation to such liability, including (without limitation):
 - (i) a reduction, in full or in part, of any amount due in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, you; and
 - (iii) a cancellation of any such liability; and

(b) a variation of any term of this Agreement to the extent necessary to give effect to Bail-In Action in relation to any such liability.

“Bail-In Action” means the exercise by a resolution authority of any write-down or conversion power existing from time to time (including, without limitation, any power to amend or alter the maturity of eligible liabilities of an institution under resolution or amend the amount of interest payable under such eligible liabilities or the date on which interest becomes payable, including by suspending payment for a temporary period and together with any power to terminate and value transactions) under, and exercised in compliance with, any laws, regulations, rules or requirements in effect in the United Kingdom relating to the transposition of the Bank Recovery and Resolution Directive, as amended from time to time, including but not limited to, the Banking Act 2009 as amended from time to time, and the instruments, rules and standards created thereunder, pursuant to which our obligations (or those of the Bank’s affiliates) can be reduced (including to zero), cancelled or converted into shares, other securities, or other obligations of the Bank or any other person.

Section 7.21 No Recourse Against Constituent Members of Borrower or Individuals. Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent Members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Unreimbursed Amounts and the Loans. None of this Agreement, the Loans, the Unreimbursed Amounts or any other Obligations shall constitute a debt, liability or obligation of any of the constituent Members of the Borrower. The Bank shall not make any claims, take any actions or assert any remedies against any of the Borrower’s constituent Members in connection with any payment default by Borrower under this Agreement.

It is hereby recognized and agreed that no member of the Board of Directors, no officer, employee or agent of the Borrower, no member of the governing body or officer of the constituent Members of the Borrower shall be individually liable for the payment of the Loans or other Obligations hereunder or in respect of any undertakings by the Borrower under this Loan Agreement.

Section 7.22 No Third Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the Borrower, the Bank, any successors and assigns thereof, or any Participant, any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the aforementioned parties.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Effective Date.

**EAST BAY COMMUNITY ENERGY
AUTHORITY**

By _____
Name: Nick Chaset
Title: Chief Executive Officer

BARCLAYS BANK PLC

By _____
Name: R. Cassandra Bolz
Title: Authorized Signatory for and on
behalf of Barclays Bank PLC

SCHEDULE I

ADDRESSES

The Borrower:

East Bay Community Energy Authority
1111 Broadway Floor 3
Oakland, CA 94607

Attention: Nick Chaset, Chief Executive Officer
Telephone: (510) 219-2121
E-mail: nchaset@ebce.org

With a copy to: Howard Chang, Chief Operating Officer
E-mail: hchang@ebce.org

The Bank:

For a Borrowing Request and for billing and payment purposes:

Barclays Bank PLC
1301 6th Avenue
New York, New York 10019
Attention: Loan Operations
Telephone: (212) 320-7564
Fax: (917) 522-0569
Email: XrausLoanOps5@barcap.com and
liquiditydraw@barclayscapital.com

For all other purposes:

Barclays Bank PLC
745 Seventh Avenue, 19th Floor
New York, New York 10019
Attention: R. Cassandra Bolz
Facsimile: (646) 758-1419
Telephone: (212) 526-3974
Email: cassandra.bolz@barclays.com

SCHEDULE II *[Authority to Update]*

Section 4.06 Pending Litigation and Other Proceedings

California Public Utilities Commission (CPUC)

EBCE is a party:

-Power Choice Indifference Amount (PCIA) Rulemaking, R.17-06-026

This proceeding is reviewing the current PCIA methodology and considering alternatives to that mechanism. All customers who depart from their investor-owned utility for another load-serving entity, including EBCE's customers, pay the PCIA departed load charge as a separate line item in their bills. The investor-owned utilities have proposed an alternative to the current PCIA, and the other stakeholders including CCAs are proposing a variety of other alternatives and changes that should be made to the mechanism to ensure transparency, predictability, and fairness between different customer groups.

-PG&E Application for Energy Storage Cost Recovery, A.17-12-003

This proceeding is reviewing PG&E's request to recover costs associated with new storage contracts. EBCE intervened in the proceeding, as its customers will likely be subject to the costs of these contracts through the PCIA. The scoping memo ruled that PCIA-related issues are out of scope in the proceeding; the proceeding instead will focus only on the reasonableness of PG&E's contracts and cost recovery request.

-Resource Adequacy (RA) Rulemaking, R.17-09-020

This proceeding is overseeing the resource adequacy (capacity) program, making changes and refinements to the program, and establishing local and flexible procurement obligations applicable to load-serving entities beginning with the 2019 compliance year. EBCE will be subject to RA requirements as a load-serving entity, and has an interest in ensuring that procurement obligations are clear and fair, and that use of California Independent System Operator backstop procurement mechanisms is minimized if possible to prevent over-procurement and higher costs.

-Integrated Resources Plan (IRP) Rulemaking, R.16-02-007

This proceeding is implementing Senate Bill (SB) 350, which mandated that the CPUC adopt a process for integrated resource planning to ensure that load serving entities meet targets to be established by the California Air Resources Board, reflecting the electricity sector's contribution to achieving economy-wide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030. EBCE will be submitting its first integrated resources plan in accordance with the CPUC's requirements by 8/1/2018.

-PG&E Rate Design Window (RDW) Application, A.17-12-011

This proceeding is reviewing PG&E's request to change its rate design in order to implement a time-of-use default rate and eventually establish a fixed charge for its distribution customers. EBCE is interested in the rate design changes, as EBCE currently uses the same billing determinants and follows the same basic rate structure as PG&E. EBCE will have to decide whether to participate in defaulting its customers to time-of-use rates when PG&E defaults its bundled customers.

EBCE is not a party but is following and may be impacted by:

-Energy Storage Rulemaking, R.15-03-011

The rulemaking is now closed but working groups continue to work out the details of storage multi-use applications.

-PG&E Energy Storage Procurement Plan 2018, A.18-03-001

This proceeding will review PG&E's proposed 2018 Energy Storage Procurement Plan, covering the 2018-2019 biennial procurement period, and its proposed 2018 AB 2868 Storage Investments and Programs. EBCE is still evaluating the application and may not be directly impacted.

-PG&E 2019 ERRRA Forecast Application, A.18-06-xxx

This proceeding will approve a forecast of PG&E's cost recovery for energy in 2019, including the PCIA amount for 2019 rates. EBCE's customers will be affected by PG&E's calculation of the PCIA. In November, PG&E will file its 2019 ERRRA Compliance Application, seeking explicit cost recovery authority in rates beginning January 1, 2019.

-Joint IOU Tree Mortality Biomass Non-Bypassable Charges Application, A.16-11-005

This proceeding is reviewing the investor-owned utilities' joint application to create a new Tree Mortality Non-Bypassable Charge for recovery through the public purpose program distribution charge. EBCE is interested in ensuring that any non-bypassable charge that its customers will be subject to is fair and reasonable.

-CCA Bond Rulemaking, R.03-10-003

This proceeding was reopened to review and finally resolve the methodology for setting a CCA bond, in light of the actual operation of the several CCAs currently providing service, as well as the plans of several entities considering becoming CCAs. EBCE expects to be affected by the outcome of the proceeding, which may change the bond requirements to which it is currently subject.

-PG&E Electric Vehicle Applications, A.15-02-009 (light-duty), A.17-01-020 et al. (med- and heavy-duty)

PG&E has received authorization to implement transportation electrification programs and receive cost recovery for infrastructure. EBCE may be interested in partnering with PG&E on transportation electrification infrastructure build-out in its service territory in the future.

California Energy Commission (CEC)

-Updates to Power Source Disclosure Regulations, 16-OIR-05

This proceeding has not yet formally begun, but staff has issued a paper illustrating its thoughts on changes to the power content label. All load-serving entities have to disclose the source of power procured on behalf of customers each calendar year through the power content label and EBCE is interested in ensuring that any changes to disclosure requirements are fair, transparent, and helpful to customers.

California Air Resources Board (CARB)

-Assembly Bill 32 – Low Carbon Fuel Standard (LCFS)

CARB has recently issued a draft proposal to amend the LCFS and Alternative Diesel Fuel (ADF) Regulations to strengthen the LCFS through 2030 in-line with the Senate Bill 32 goals. CARB is considering whether CCA green tariffs may be recognized to reduce carbon intensity for electricity supplied to vehicles. EBCE is interested in ensuring that it enables customers to receive full credit for any carbon intensity reduction associated with the energy it supplies.

EXHIBIT A

FORM OF BORROWING REQUEST

Barclays Bank PLC
1301 6th Avenue
New York, New York 10019
Attention: Loan Operations

Borrowing Request

This Borrowing Request is being delivered pursuant to Section 3.02 of the Amended and Restated Revolving Credit Agreement dated as of March 15, 2018, as amended and restated as of July __, 2019 (the "Agreement"), between East Bay Community Energy Authority (the "Borrower") and Barclays Bank PLC. All capitalized terms used but not defined herein shall have the meaning specified for such terms in the Agreement.

The Borrower hereby irrevocably requests the distribution of the proceeds of a Loan and sets forth below the information required by the Agreement in connection therewith:

1. The aggregate amount of the requested Loan is: \$[_____].
2. The Business Day of the requested advance is:_____ and funding of the advance is requested no later than 4:00 p.m., New York City time.
3. The proceeds of the requested advance are being used solely for the following purpose:
 - Start-Up Expenses
 - Purchase(s) of power or associated costs
 - Administrative purposes in the amount of \$_____
 - Long-term project Power Purchase Agreements
 - Regulatory-related costs
 - Registration-related costs
4. The Borrower hereby authorizes and instructs the Bank to disburse the proceeds of the requested advance by wire transfer to the account identified as follows: [insert ABA number/account information].

The Borrower hereby certifies that the conditions to such borrowing set forth in Articles II and III of the Agreement have been satisfied on the date hereof and will be true on the date of the requested advance.

Dated: [_____]

**EAST BAY COMMUNITY ENERGY
AUTHORITY**

By: _____

Name:

Title:

EXHIBIT B

FORM OF REQUEST FOR EXTENSION

REQUEST FOR EXTENSION

Barclays Bank PLC

[ADDRESS]

Attention:

Ladies and Gentlemen:

Reference is hereby made to that certain Amended and Restated Revolving Credit Agreement dated as of March 15, 2018, as amended and restated as of July __, 2019 (the "Agreement"), between East Bay Community Energy Authority (the "Borrower") and Barclays Bank PLC (the "Bank"). All capitalized terms contained herein which are not specifically defined shall be deemed to have the definition set forth in the Agreement. The Borrower hereby requests, pursuant to Section 7.12 of the Agreement, that the _____ for the Agreement be extended by [IDENTIFY APPROPRIATE PERIOD], subject to such other terms as shall be mutually acceptable to the Bank and the Borrower. Pursuant to Section 7.12 of the Agreement, we have enclosed along with this request the following information:

1. The nature of any and all Defaults and Events of Default;
2. Confirmation that all representations and warranties of the Borrower as set forth in Article IV of the Agreement are true and correct as though made on the date hereof and that no Event of Default has occurred and is continuing on the date hereof except as referenced in paragraph 2 above; and
3. Any other pertinent information previously requested by the Bank.

The Bank is requested to notify the Borrower of its decision with respect to this request for extension within thirty (30) days of the date of receipt hereof. If the Bank fails to notify the Borrower of its decision within such thirty (30) day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

EAST BAY COMMUNITY ENERGY
AUTHORITY

By _____
Name _____
Title _____

EXHIBIT C

NOTICE OF EXTENSION

[DATE]

East Bay Community Energy Authority
1111 Broadway Floor 3
Oakland, CA 94607

Ladies and Gentlemen:

Reference is hereby made to that certain Amended and Restated Revolving Credit Agreement dated as of March 15, 2018, as amended and restated as of July __, 2019 (the "Agreement"), between East Bay Community Energy Authority (the "Borrower") and Barclays Bank PLC (the "Bank").

The undersigned, a duly authorized signatory of the Bank hereby advises you, with reference to the above-referenced Agreement (any capitalized term used herein and not defined shall have its respective meaning as set forth in the Agreement), that [Complete as Appropriate]:

1. On [date], the Borrower delivered to the Bank, pursuant to Section 7.12 of the Agreement, a Request For Extension requesting that the date referenced in the definition of "_____" in the Agreement (as such date may have been extended previously from time to time) be extended to _____.

2. At the request and for the account of the Borrower, we hereby extend the date referenced in the definition of "_____" in the Agreement (as such date may have been extended previously from time to time) to _____.

3. Except as specifically provided in paragraph (1) above, all of the terms and conditions of the Agreement remain unchanged and in full force and effect.

4. This Notice of Extension is an integral part of the Agreement.

5. [Specify such other terms (including the term, commitment and other fees, interest rates, amortization

terms and other provisions) as mutually agreed upon between the Bank and the Borrower.]

[The _____ will not be extended at this time.]

IN WITNESS WHEREOF, the undersigned, on behalf of the Bank, has executed and delivered this Notice of Extension as of the ____ day of _____.

BARCLAYS BANK PLC

By _____
Name _____
Title _____

EXHIBIT D

CURRENT PARTIES TO JOINT POWERS AGREEMENT

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Oakland

City of Piedmont

City of San Leandro

City of Union City



Staff Report Item 16

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: EBCE Rate Modifications (Informational Item)

DATE: July 17, 2019

Recommendation

Receive an update from staff regarding EBCE rate modifications

Background

PG&E changed their generation rates and the Power Charge Indifference Adjustment on July 1, 2019. Due to how EBCE sets our rates, residential customers will see a roughly 4% increase in their bills, while commercial customers will see an increase of approximately 3% to 6%.

At the September 2018 Board Meeting, the Board gave EBCE staff authority to modify EBCE rates in response to PG&E rate changes to ensure that EBCE continues to offer a 1.5% discount. Therefore, staff updated EBCE rates to reflect this increase and continue to maintain our value proposition of 1.5% discount for Bright Choice, parity for Brilliant 100, and a one cent adder for Renewable 100.

EBCE staff provided an email notice to the Board on June 26, 2019, indicating the intent to make July rate modifications. EBCE back-end systems were updated as of July 15, 2019. Customer bill cycles that begin on or after July 1 will reflect these updated rates. Customer bill cycles that began prior to May 1 will be billed for the entire bill cycle at the previous rates.

EBCE staff communicated this rate adjustment to customers through a message on customer bills indicating that EBCE is continuing to maintain its 1.5% discount relative to PG&E rates, provided talking points for call center representatives, updated EBCE Rate Sheets online, and called a small population of our largest customers to notify them of the changes in PG&E rates and the fact that EBCE is continuing to provide its stated 1.5% discount.

It is anticipated that this is the final PG&E rate change of 2019.

Fiscal Impact

Increase in PG&E rates will result in increased EBCE revenues. At the time of drafting this report, a precise number was not available.

CEQA

Not a project



Staff Report Item 17

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer
SUBJECT: Clearway, esVolta, and SunRun Contract Approvals (Action Item)
DATE: July 17, 2019

Recommendation

Adopt three resolutions authorizing the CEO to:

- A. Execute a 13-year 7MW/28MWh Local Greater Bay Area Resource Adequacy contract (“esVolta contract”) with esVolta/Tierra Robles Energy Storage, LLC;
- B. Complete negotiations and execute a 10-year 0.5MW Local Greater Bay Area Resource Adequacy contract (“SunRun contract”) associated with behind the meter low income multi-family housing with SunRun; and
- C. Execute a 15-year 112MWac Solar PV Power Purchase Agreement (“Clearway PPA”) with Clearway Energy Group/Golden Fields Solar III, LLC.

The esVolta contract is expected to begin delivering resource adequacy in Dec 2021 for a period of 13 years and the SunRun contract is expected to begin delivering in Dec 2021 for a period of 10 years. The Clearway PPA, which is associated with the Rosamond Solar Project, is expected to begin to deliver all associated output, which includes energy, RECs, and RA in March 2021, for a period of 15 years with hub-settlement pricing. All counterparties were awarded as part of competitive solicitations.

Background

The Oakland Clean Energy Initiative is a first-of-its-kind joint RFP that was issued with PG&E, where EBCE solicited resource adequacy from clean resources in downtown Oakland and PG&E sought local transmission related reliability needs. EBCE’s primary goal of this RFP is to bring local investment into the clean virtual transmission solutions in specific load pockets within downtown Oakland and drive the closure of the peaker plant currently located in Jack London Square. In doing so, EBCE can also secure valuable local Greater Bay Area Resource Adequacy in an affordable and reliable manner. The RFP was launched in June 2018 and targeted a minimum of 20MWs of resource adequacy located within two specific load pockets in downtown Oakland. In June, the board approved a 10-year RA contract with Vistra Energy that met the minimum 20MW RA volumes that EBCE sought in this RFP.

esVolta was awarded as part of the Oakland Clean Energy Initiative RFP (“OCEI”) and the contracting entity under esVolta is Tierra Robles Energy Storage, LLC. EBCE will be procuring 7MW/28MWH of local greater bay area resource adequacy for a period of 10 years. The 7MW energy storage project will serve a substation helps to address the transmission-related reliability needs in the downtown Oakland area. The contract is a contingent contract where PG&E is also expected to procure certain reliability-related products.

SunRun was awarded as part of the OCEI and is a residential solar and storage developer that will install on several low-income multi-family residences in Oakland and the surrounding areas in Alameda County. This contract is a non-contingent offer with just EBCE and SunRun moving forward. The 0.5MW SunRun contract is an aggregation of several behind the meter residential solar plus storage units to be installed on low income multi-family housing buildings. Resource adequacy will be provided through a product called proxy demand response.

With these additional contracts with esVolta and SunRun, EBCE is continuing to support this critical initiative with clean virtual transmission solutions. The 7.5MW of additional RA capacity will help EBCE meet its local greater bay area RA needs and further ensure the shutdown of the local fossil fuel peaker plant.

The CA Renewable Energy RFP is EBCE’s first long-term renewable energy contract solicitation that was launched in June 2018. The RFP sought several hundred MWs of contracts with renewable energy projects located in CA, with a minimum of 20MWs located in Alameda County. EBCE’s objective was to drive investments in new renewable energy projects in Alameda and CA, while securing affordable resources to manage future power price risk. EBCE received a very healthy response to its first RFP both in volume and quality of projects and proposals. EBCE worked with Edison Energy to administer the RFP and complete robust analytics to determine the optimal portfolio to meet its objectives. EBCE recently received approval for three separate long-term PPAs from this RFP.

Clearway Energy Group was awarded as part of the CA Renewable Energy RFP and this contract with Clearway Energy Group is the 4th utility scale renewable energy project that staff is bringing forward. The contracting entity under Clearway is Golden Fields Solar III, LLC. The Rosamond solar project is located in Kern County and with this PPA, EBCE will also execute a Right of First Refusal Agreement, which provides exclusivity for EBCE to procure all output from a 43MW Wind project located in Alameda County. The project is structured as a PG&E DLAP settled project, which allows EBCE to most effectively mitigate the pnode forward price risk that typical solar projects have. It is a 112MWac 15-year contract in which EBCE is procuring all energy, RECs, and RA that is generated from it. The project is located in Kern County, CA and, although it is located outside of Alameda County, Clearway has agreed to invest directly into Alameda County and through the community investment fund. This project helps to diversify EBCE’s renewables portfolio. Furthermore, EBCE is agreeing to an arrangement where it will receive exclusive rights to a 43MW project named Reclaimed Wind within Alameda County. It is an earlier stage project and under the terms of the agreement EBCE will have a Right of First Refusal for this project as it matures through the development cycle. We anticipate bringing forward additional projects for approval from the CA Renewable Energy RFP in the future.

Conclusion

EBCE is excited to continue securing the necessary clean virtual transmission solutions in downtown Oakland and to help drive the closing of the existing fossil fuel peaker plant through the efforts of the Oakland Clean Energy Initiative. Staff is seeking approval to execute the 13-year 7MW/28MWh local Greater Bay Area Resource Adequacy contract with esVolta and complete negotiations and execute the 10-year 0.5MW/2MWh local Greater Bay Area Resource Adequacy contract with SunRun. EBCE is also excited to continuing building on its long-term renewable energy procurement as part of the CA Renewable Energy RFP. Staff is seeking approval of the 112MWac solar PV PPA with Clearway Energy Group as a PG&E DLAP hub settled project.

Attachments:

- A. Resolution Approving an Agreement with Golden Fields Solar III, LLC;
- B. Resolution Approving an Agreement with Tierra Robles Energy Storage, LLC;
- C. Resolution Authorizing the CEO to Complete Negotiations and Execute an Agreement with SunRun, Inc.;
- D. esVolta RA Agreement;
- E. SunRun RA Agreement;
- F. Clearway PPA; and
- G. esVolta and Clearway overview presentation

RESOLUTION EBCE R-2019-

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING
AN AGREEMENT WITH GOLDEN FIELDS SOLAR III, LLC**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, the EBCE issued an open and competitive solicitation, the CA Renewable Energy RFP (the “RFP”), in June 2018 to solicit several hundred MWs of contracts with renewable energy projects located in CA, with a minimum of 20MWs located in Alameda County.

WHEREAS, the EBCE received many responses to the RFP both in volume and quality of projects and proposals; and

WHEREAS, Clearway Energy Group, the developer of the Rosamond Solar Project, a newly constructed 112MWac solar PV project in Kern County, CA, proposed a 15-year contract in which EBCE would procure all output including energy, RECs, and RA that is generated from the project; and

WHEREAS, although the Rosamond Solar Project is located outside Alameda County, Clearway Energy Group has agreed to invest directly into Alameda County through the community investment fund; and

WHEREAS, Golden Fields Solar III, LLC is the contracting entity for the Clearway Energy Group.

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

SECTION 1. The Agreement by and between Golden Fields Solar III, LLC and East Bay Community Energy Authority, attached hereto as Exhibit D, is hereby approved.

SECTION 2. The CEO is hereby authorized to execute the Agreement in substantially the form attached, with any non-substantive clarifying or clerical changes proposed by the CEO and approved by the General Counsel.

ADOPTED AND APPROVED this ___ day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Secretary

RESOLUTION EBCE R-2019-__

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING
AN AGREEMENT WITH TIERRA ROBLES ENERGY STORAGE, LLC**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, the EBCE was joined by PG&E to create an open and competitive solicitation, the Oakland Clean Energy Initiative (the “RFP”), which is a joint RFP that was issued to solicit resource adequacy from clean resources in downtown Oakland and local transmission related reliability needs; and

WHEREAS, the RFP targeted a minimum of 20MWs of resource adequacy located within two specific load pockets in downtown Oakland; and

WHEREAS, esVolta Energy, the developer of a 7MW battery storage system in downtown Oakland, CA, proposed the project for a 13-year contract in which EBCE would procure local Greater Bay Area resource adequacy; and

WHEREAS, the project, which is expected to be operational December 1, 2021, would help EBCE to address the technical transmission-related reliability needs in the downtown Oakland area; and

WHEREAS, Tierra Robles Energy Storage, LLC is the contracting entity for esVolta.

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

SECTION 1. The Agreement by and between Tierra Robles Energy Storage, LLC and East Bay Community Energy Authority, attached hereto as Exhibit B, is hereby approved.

SECTION 2. The CEO is hereby authorized to execute the Agreement in substantially the form attached, with any clarifying or clerical changes proposed by the CEO and approved by the General Counsel.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

RESOLUTION EBCE R-2019 -

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
AUTHORIZING THE CEO TO COMPLETE NEGOTIATIONS AND
EXECUTE AN AGREEMENT WITH SUNRUN, INC.**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, the EBCE was joined by PG&E to create an open and competitive solicitation, the Oakland Clean Energy Initiative (the “RFP”), which is a joint RFP that was issued to solicit resource adequacy from clean resources in downtown Oakland and local transmission related reliability needs; and

WHEREAS, the RFP targeted a minimum of 20MWs of resource adequacy located within two specific load pockets in downtown Oakland; and

WHEREAS, SunRun, Inc., a residential solar and storage developer, proposed an offer consisting of several solar plus storage installations on low income multi-family residential units located in downtown Oakland, CA and the surrounding areas in Alameda County, totaling 0.5MW, for a 10-year contract in which EBCE would procure local Greater Bay Area resource adequacy.

WHEREAS, the project is expected to be operational December 1, 2021.

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

SECTION 1. The CEO is hereby authorized to complete negotiations with SunRun, Inc. and to execute an Agreement substantially in the form attached hereto as Exhibit C, with any changes proposed by the CEO and approved by General Counsel.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**IN FRONT OF THE METER
ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT
COVER SHEET**

Seller: Tierra Robles Energy Storage, LLC, a California limited liability company

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

Execution Date: _____, 2019

Description of Project: Tierra Robles Energy Storage

Contract Amounts:

RA Attributes: 7 MW NQC

Local RA Attributes: 7 MW

Flexible RA Attributes: 7 MW EFC, Category

Payment Quantity: 7 MW

Contract Price:

Milestones:

Milestone	Date
Interconnection Agreement Execution Deadline	
Site Control Deadline	
Construction Start Deadline	
Commercial Operation Deadline	September 18, 2021
Expected Initial Delivery Date	December 1, 2021

Delivery Term: 13 Contract Years

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ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1: DEFINITIONS

1.1 **Contract Definitions.** Capitalized terms used in this Agreement have the following meanings, unless otherwise specified:

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

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

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

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

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

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

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator,

receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

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

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

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

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

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

“**Capacity Adjustment Date**” has the meaning set forth in Section 6.7(a).

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

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

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

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

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

“**Change of Control**” means any circumstance in which either (i) more than fifty percent (50%) of the outstanding equity interests in Seller’s Parent has been assigned or transferred or (ii) Seller’s Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing clause (ii):

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

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

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

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

“Commercial Operation Date” means the date stated in Seller's Notice, substantially in the form of Appendix IV, upon which the Project became Commercially Operable.

“Commercial Operation Deadline” means the date that is seventy-five (75) days before the Expected Initial Delivery Date, as set forth on the Cover Sheet.

“Commercial Operation Milestone” means the Project becoming Commercially Operable on or before the Commercial Operation Deadline.

“Commercially Operable” with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, the Project has been released by the EPC Contractor to Seller for commercial operations, and permission to operate has been formally obtained from the applicable transmission or distribution utility.

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

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

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

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

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

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

“Construction Delay Damages” means liquidated damages in an amount equal [REDACTED].

“Construction Start” has the meaning set forth in Section 3.1(c).

“Construction Start Deadline” means the construction start deadline set forth on the Cover Sheet.

“Contract Amount” has the meaning set forth in Section 5.2(a).

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

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

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

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

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

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

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

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to Seller or PG&E, which approves the PG&E Agreement in its entirety, subject to CPUC review of PG&E’s administration of the PG&E Agreement. CPUC Approval will be deemed to have occurred on the first day it can be legally determined that a final CPUC order containing such findings has become non-appealable.

“CPUC Approval Condition Precedent” has the meaning set forth in Section 2.1(c).

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

“**CPUC General Order No. 167**” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

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

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

“**Damage Payment**” means the dollar amount equal to [REDACTED]

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

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

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

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

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

“**Delivery Term Security**” means (i) cash in an amount equal to [REDACTED], (ii) Guaranty in an amount equal to [REDACTED], or (iii) a Letter of Credit in an amount equal to [REDACTED].

“**Development Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED].

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

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

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

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

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

“**Effective Date**” has the meaning set forth in Section 2.1(b).

“**Electric System Upgrades**” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Project such that the Project can provide Product at all times during the Delivery Term.

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

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

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

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

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

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

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

“**Expected Initial Delivery Date**” means the expected initial delivery date set forth on the Cover Sheet.

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

“**Flexible RA Attributes**” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental

Authority having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes, Local RA Attributes, or Other Capacity Attributes.

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

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

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

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

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

(b) Force Majeure does not include:

(i) a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

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

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

(iv) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement or Buyer's ability to purchase the Product at a price lower than the price set forth in this Agreement;

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

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

(vii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) 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; or

(ix) Seller's failure to obtain Site control, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above.

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

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

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

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

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

“Guarantor” means [REDACTED].

“Guaranty” means a guaranty issued by a Guarantor in the form and substance set forth in Appendix V-B or as otherwise deemed acceptable by Buyer.

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

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

“IDD Delay Damages” means liquidated damages in an amount equal to [REDACTED].

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

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

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

“Interconnection Agreement Execution Deadline” means the Interconnection Agreement execution deadline set forth on the Cover Sheet.

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

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

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

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

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

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

“**Licensed Professional Engineer**” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California in accordance with applicable Law including Cal. Bus. & Prof. Code §§ 6700 *et seq.*, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic or familial 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 Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

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

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

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits, grants, or benefits related to the Project or generation therefrom or any costs or fees related to the Site or Project.

“Mechanical Completion” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

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

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

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

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

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

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

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

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

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

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

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

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

“**NQC**” or “**Net Qualifying Capacity**” has the meaning given to “Net Qualifying Capacity” in the CAISO Tariff.

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

“**Other Capacity Attributes**” means, exclusive of RA Attributes, Local RA Attributes, and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person, (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

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

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

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

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

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

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

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

“**PG&E**” means Pacific Gas and Electric Company.

“**PG&E Agreement**” means all agreements between Seller and PG&E pertaining to the Oakland Clean Energy Initiative, as approved by CAISO on March 22, 2018.

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

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

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

“**Project**” means the energy storage facility described in Appendix I, as such may be revised from time to time in accordance with this Agreement.

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

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

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

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

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

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

(e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design

specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

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

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

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

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

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

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

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

“**Remediation Event**” means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Project’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.1 that the Project Safety Plan is not consistent with the Safety Requirements; or (g) any actual condition related to the Project or a Site that would reasonably be expected to adversely impact the safe construction, operation, or maintenance of the Project or a Site.

“**Remediation Period**” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension), and Seller may request an additional extension of the Remediation Period of up to ninety (90) days if Seller is unable to resolve the Remediation Event within the ninety (90) day extension period despite exercising diligent efforts, which Buyer may approve or reject in its sole discretion. The Remediation Period may not, under any circumstance, continue for more than two hundred and seventy (270) days from the first occurrence of the Remediation Event.

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

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

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

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

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

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

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

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

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

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

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

“Safety Requirements” means Prudent Operating Practices, CPUC General Order No. 167, and all applicable safety-related (construed broadly) requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC.

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

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

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

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

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

“**Seller’s Parent**” means [REDACTED].

“**Serious Incident**” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred fifty thousand dollars (\$150,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“**Settlement Amount**” means an amount equal to [REDACTED]. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

“**Site(s)**” means the real property on which the Project is located, as identified in Appendix I.

“**Site Control**” means that Seller owns the Site and the Project or has demonstrable contractual real property rights to the Site sufficient for the permitting, control, development and operation of the Project.

“**Site Control Deadline**” means the site control deadline set forth on the Cover Sheet.

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

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

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

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

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a

Governmental Authority, whether currently in effect or adopted during the Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2: TERM

2.1 **Effectiveness.**

(a) **Upon Execution Date.**

(i) Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date, but only to the extent required to give full effect to and enforce the rights and obligations of the Parties under: Articles 1, 2, 8, and 12-22; Sections 6.4(a) and 6.6; Sections 7.1(a)(i), 7.1(b)(ii), 7.1(b)(iii), as applicable, 7.1(b)(iv)-(vi) and 7.2-7.4; and Section 10.4.

(ii) As a condition precedent to Buyer's obligation to perform under this Agreement, Seller shall deliver to Buyer on or before the Execution Date correct and complete copies of: (A) Seller's most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller's organizational documents (including any certification of formation, certification of incorporation, charter, operating agreement, partnership agreement, bylaws, or similar documents) and any amendments thereto.

(b) **Upon Effective Date.** This Agreement shall be in full force and effect, enforceable and binding in all respects, upon the satisfaction (or written waiver by both Parties) of the CPUC Approval Condition Precedent ("**Effective Date**").

(c) **CPUC Approval Delayed.** CPUC Approval must be obtained on or before three hundred sixty-five (365) days from the date on which PG&E files the PG&E Agreement with the CPUC seeking CPUC Approval ("**CPUC Approval Condition Precedent**"). If CPUC Approval has not been obtained by such date, if the CPUC rejects the PG&E Agreement through a final and non-appealable order prior to such date, or if the PG&E Agreement is not fully executed (notwithstanding Seller's good faith efforts) on or before December 31, 2019, then the Parties shall discuss in good faith whether to proceed with this Agreement and waive the CPUC Approval Condition Precedent; provided that if the Parties have not reached such an agreement within ten (10) Business Days of such date, such rejection, or December 31, 2019, as applicable, then either Party may terminate this Agreement effective upon Notice to the other Party. Within ten (10) Business Days of such termination, Buyer shall return the Development Security to Seller. Following the return of the Development Security to Seller, neither Party shall have any obligation or liability to the other by reason of such termination.

2.2 **Term.**

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

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

ARTICLE 3: PROJECT DEVELOPMENT3.1 **Project Construction.**

(a) Seller shall achieve Site Control no later than the Site Control Deadline, subject to Section 3.5.

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

(c) Seller shall cause the following to occur ("**Construction Start**") no later than the Construction Start Deadline and shall provide Notice to Buyer certifying the satisfaction of this Section 3.1(c): (i) acquisition of all Governmental Approvals necessary for the construction of the Project, (ii) engagement of each Contractor, (iii) execution of the EPC Contract and issuance of a full notice to proceed thereunder that authorizes the contractor to mobilize to the Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements, as applicable) at the Site, and (iv) ordering of all essential equipment and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the Project may begin and proceed to completion without foreseeable interruption of material duration.

(d) If Construction Start is not achieved on or before the Construction Start Deadline (except to the extent due to one or more Force Majeure events or Buyer Events of Default), then for each day beginning with the day after the Construction Start Deadline through and including the date on which Construction Start occurs, for a period beyond the Construction Start Deadline lasting no more than ninety (90) days ("**Construction Delay Cure Period**"), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(d), Seller's failure to achieve Construction Start on or before the Construction Start Deadline shall not be deemed a Seller's Event of Default. If Seller achieves the Initial Delivery Date on the Expected Initial Delivery Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the Initial Delivery Date. Each Party agrees that (i) the damages that Buyer would incur due to Seller's delay in achieving the Construction Start Deadline would be difficult or impossible to predict with certainty and (ii) the Construction Delay Damages are an appropriate approximation of such damages.

3.2 **Interconnection.** Seller shall (a) execute all necessary Interconnection Agreements by the Interconnection Agreement Execution Deadline (subject to Section 3.5), (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company's applicable tariffs, the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering**. At Seller's expense, Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Project and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product.

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

3.5 **Remedial Action Plans**. The Site Control Deadline and the Interconnection Agreement Execution Deadline are each a "**Critical Milestone**." If Seller anticipates that it will not be able to timely satisfy a Critical Milestone or the Commercial Operation Milestone, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan ("**Remedial Action Plan**"), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller's proposed course of action to achieve the missed deadline, any subsequent Critical Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement. So long as Seller complies with its obligations under Section 3.4 and this Section 3.5, however, Seller shall not be considered in default of its obligations under this Agreement solely as a result of failing to timely satisfy a Critical Milestone.

ARTICLE 4: INITIAL DELIVERY DATE

4.1 **Timing of the Initial Delivery Date**.

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

(b) **Early Initial Delivery Date**. If Seller wishes for the Initial Delivery Date to occur prior to the Expected Initial Delivery Date, Seller may provide Buyer with a written request for a specified earlier date, so long as such written request is provided at least one (1) year prior to the Expected Initial Delivery Date. If Buyer agrees to the requested earlier date, the Parties shall execute a written amendment to this Agreement memorializing the agreement that each reference to the Expected Initial Delivery Date in this Agreement shall thereafter be deemed a reference to such earlier date.

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

(i) Seller shall provide Buyer with advance Notice of any delay in achieving the Initial Delivery Date on the Expected Initial Delivery Date, including a true and reasonably detailed explanation of the cause of such delay ("**Delay Notice**"), at least ninety (90) days in advance of the Expected Initial Delivery Date (or, if Seller's anticipation of such delay does not arise until after such advance window, then as soon as reasonably possible following such

anticipation arising). For each day beginning with the day after the Expected Initial Delivery Date until and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting no more than one hundred eighty (180) days (“**IDD Cure Period**”), Seller shall pay IDD Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any IDD Delay Damages. Buyer may draw any IDD Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due.

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

(iii) Each Party agrees that (A) the damages that Buyer would incur due to Seller’s delay in achieving the Expected Initial Delivery Date would be difficult or impossible to predict with certainty and (B) the IDD Delay Damages are an appropriate approximation of such damages.

4.2 **Conditions Precedent to the Initial Delivery Date.** Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the “**Conditions Precedent**”) and must be satisfied at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is set forth below, in which case such other deadline shall govern, to Buyer’s reasonable satisfaction:

(a) Seller shall have provided to Buyer updated correct and complete copies of the items identified in Section 2.1(a)(ii).

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

(c) Seller has secured and maintained Site Control.

(d) Intentionally omitted.

(e) On or before the Commercial Operation Deadline, Seller shall have caused the Project to become Commercially Operable.

(f) Seller or Contractor shall have constructed or caused to be constructed the Project as of the Initial Delivery Date in accordance with this Agreement to enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product from the Project.

(g) Seller shall have provided to Buyer a certification of Seller and a Licensed Professional Engineer, substantially in the form attached hereto as Appendix IV, demonstrating (i) that the Commercial Operation Date has occurred and (ii) satisfactory completion of the Project at the Site.

(h) Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Project successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets.

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

(j) On or before the Commercial Operation Deadline, Seller shall have provided Delivery Term Security to Buyer as required by Section 10.2.

(k) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(l) Seller shall have submitted to Buyer a Project Safety Plan.

(m) Intentionally omitted.

(n) Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product (i) resulting in certifications of not less than the Contract Amounts and (ii) so as to ensure the Project is fully deliverable such that Seller is able to deliver Product in the Contract Amounts to Buyer for purposes of counting towards Buyer's Compliance Obligations.

(o) As of the dates required under Section 5.2(b) and Section 5.2(c), as applicable, (i) Seller shall have submitted, or shall have caused its SC to have submitted, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month in accordance with Section 5.2(b) and (ii) Seller shall have submitted, or shall have caused its SC to have submitted, a Supply Plan to CAISO in accordance with Section 5.2(c).

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

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

(r) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

4.3 **Cooperation in Connection with Initial Delivery Date.** The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Product beginning on the Initial Delivery Date and Seller agrees to cause the Project's SC to cooperate in order to achieve the same.

4.4 **Confirmation of Initial Delivery Date.** Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller's Notice. On or promptly following the Initial Delivery Date (in no event later than five (5) Business Days thereafter), Buyer shall provide a Notice to Seller confirming the occurrence of the Initial Delivery Date.

ARTICLE 5: TRANSACTION

5.1 Product.

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer, for Buyer's exclusive use, all Capacity Attributes that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Project (collectively, the "**Product**"), pursuant to the terms and conditions contained herein. Operational Characteristics shall not be modified during the Term.

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

(c) Product does not confer to Buyer any right to dispatch or receive Energy or Ancillary Services from the Project.

5.2 Purchase and Sale Obligation.

(a) For each day of each Showing Month during the Delivery Term, Seller agrees to deliver all Capacity Attributes of Product to Buyer, including in the amounts and categories set forth on the Cover Sheet ("**Contract Amounts**").

(b) No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to the CAISO. In the event that Buyer does not Notify Seller of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

(c) After following the procedure in Section 5.2(b), Seller shall submit, or cause to be submitted, a Supply Plan to CAISO, in accordance with the applicable Compliance Showing deadlines for each Showing Month, to identify and confirm the Product to be delivered to Buyer (or, with regard to Resold Product, Buyer’s designee) for each day within the applicable Showing Month. For each of the Capacity Attributes of Product that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the Contract Amount of each of the respective Capacity Attributes. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of the respective Capacity Attributes that Seller has delivered for such Showing Month (“**Delivered Quantities**”).

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

$$MP = (DQ / CA) \times PQ \times CP$$

where,

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

CA = The sum of the Contract Amounts of all RA Attributes, Local RA Attributes, and Flexible Attributes;

PQ = The payment quantity set forth on the Cover Sheet (“**Payment Quantity**”); and

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

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

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

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

ARTICLE 6: OPERATIONS

6.1 **Operations.** Seller shall at all times retain operational control of the Project and be responsible for operation and maintenance of the Project.

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

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

6.4 **Buyer's Compliance Obligations; Certification of Product.**

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

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

6.5 **Scheduling.**

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

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

(c) Buyer shall have no liability for the failure of Seller or SC to comply with any applicable Law, Requirements, or other requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance. In no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize a Shortfall.

(d) Seller shall not accept, and shall cause the Project's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation in a Notice. In addition, Seller shall promptly Notify, or cause the Project's SC to promptly Notify, Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation. During the Delivery Term, Buyer has exclusive right to enter into a RMR Contract with respect to the Product or any component thereof, provided that the RMR Contract would not require the Project to operate beyond the Operational Characteristics or beyond the end of the Delivery Term.

6.6 **Information Sharing and Shared Learning.** Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer's portfolio of assets to meet its customers' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data but excluding cost or similar proprietary information, upon Buyer's request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. For information related to Seller's multiple uses of the Project, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Project to a third party.

6.7 **Changes in Law.**



[REDACTED]

(b) In the event a centralized capacity market develops within the WECC region, [REDACTED]

[REDACTED]

(c) If a change in CAISO or CPUC Requirements renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

ARTICLE 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

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

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

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

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Project;

(iv) Seller fails to achieve Construction Start by the Construction Start Deadline for reasons other than Force Majeure or a Buyer Event of Default, subject to Section 3.1(d);

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

(vi) Any failure by Seller

[REDACTED]

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Party's Event of Default"):"

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with Sections 5.1, 5.2, or 6.4 or with any Requirement or Safety Requirement in accordance with Section 6.3, in any case except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising diligent efforts;

(iv) such Party becomes Bankrupt;

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount. The Non-Defaulting Party shall calculate a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure.

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

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

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

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

(i) if during the Delivery Term:

(A) due to a Force Majeure event, Seller is unable to meet its obligations under this Agreement (including any failure to deliver Delivered Quantities to Buyer equal to the Contract Amounts) on more than one hundred eighty (180) days within any three hundred sixty-five (365) day period; or

(B) the Project is destroyed or rendered inoperable by an event of Force Majeure; provided that Seller may repair or restore the Project if: (1) Seller provides to Buyer within the sixty (60) day period following the conclusion of the Force Majeure event a certificate from a non-affiliated, licensed professional engineer attesting that the Project can be restored to original operational status within the six (6) month period following the conclusion of

the Force Majeure event; (2) Seller provides Buyer with Notice of Seller's election to repair or restore the Project within the sixty (60) day period following the conclusion of the Force Majeure event; and (3) Seller completes such repair or restoration to original operational status within the six (6) month period following the conclusion of the Force Majeure event;

(ii) if Seller is unable, due solely to a Force Majeure event, to achieve the Initial Delivery Date by [REDACTED] the Expected Initial Delivery Date.

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

ARTICLE 9: INVOICING AND PAYMENT

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

9.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the three-month LIBOR, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.


9.3 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

ARTICLE 10: PERFORMANCE ASSURANCE

10.1 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver

 Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon the earlier of (a) Seller's delivery of the Delivery Term Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Deadline, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

10.2 **Seller's Delivery Term Security.** To secure its obligations under this Agreement, Seller shall deliver Delivery Term Security to Buyer on or before the Commercial Operation

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

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

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of a Seller's Event of Default or a Party's Event of Default on the part of Seller, an Early Termination Date resulting from a Seller's Event of Default or a Party's Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

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

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

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

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

10.4 **Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. This information shall be deemed to be Confidential Information for purposes of this Agreement.

ARTICLE 11: SAFETY

11.1 **Safety.**

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

(b) Prior to Seller's execution of a Contractor's contract (i) with a value of \$250,000 or more (calculated on an aggregated basis with any other contract with such Contractor) or (ii) relating to any element of the Work that involves significant safety considerations, Seller shall demonstrate to Buyer's reasonable satisfaction that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Project, as applicable; provided that Seller has pre-approved the Contractors set forth in Appendix IX. During the period that a Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements.

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

develop, construct, operate, or maintain the Project safely or in accordance with the Safety Requirements.

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

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

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

11.3 **Remediation.**

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

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

ARTICLE 12: TAXES

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

indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

ARTICLE 13: LIMITATIONS

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

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

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

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

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(d), 4.1(c), [REDACTED], 7.2 AND 7.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN

ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 14: REPRESENTATIONS; WARRANTIES; COVENANTS

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

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

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

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

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

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

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

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

(h) The Seller's Parent is esVolta, LP.

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

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

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

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

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

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

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

14.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Term it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

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

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

(b) Seller will use reasonable efforts to ensure that all employees hired by Seller, and its Contractors, that will perform construction work or provide services at the Site related to construction of the Project are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California Law, if any. Nothing herein shall require Seller or its Contractors to comply with, or assume liability created by other inapplicable provisions of any California labor Laws. Buyer agrees that Seller's obligations under this Section 14.4(b) will be satisfied upon the execution of a project labor agreement related to construction of the Project.

(c) Seller shall perform the obligations related to workforce development and community investment set forth in Appendix XX.

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

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

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

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

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

ARTICLE 15: INDEMNITIES

15.1 Indemnity by Seller.

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

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

15.2 Notice of Claim.

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

to as a “**Notice of Claim.**” A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

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

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

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

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

ARTICLE 16: INSURANCE

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

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

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

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

(b) **Commercial General Liability.**

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

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

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

(c) **Business Auto.**

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

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement."

(d) **Construction All-Risk Insurance.** During the construction of the Project prior to the Commercial Operation Date, construction all-risk form property insurance covering

the Project during such construction periods, and naming Seller (and Lender if any) as the loss payee.

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

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

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

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

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

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

ARTICLE 17: RECORDS AND AUDIT RIGHTS

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

17.2 **Records and Audit.**

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

(b) To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this

Agreement, for a period of at least five (5) years or as otherwise required by Law. Seller will make all records available to Buyer at its principal place of business during normal working hours.

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

17.4 **State Auditor.** In accordance with Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement if the compensation under this Agreement exceeds ten thousand dollars (\$10,000.00).

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

17.6 **Access Rights.** Buyer, its authorized agents, employees and inspectors, have, while observing and abiding by safety and security procedures of the Parties, the right of ingress to and egress from the Project, including the Site(s) with reasonable advance Notice and for any purposes connected with this Agreement. To the extent reasonably possible, Buyer will limit its requests to access the Project or the Site to normal business hours and coordinate its emergency activities with the safety and security departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security departments.

ARTICLE 18: ASSIGNMENT

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

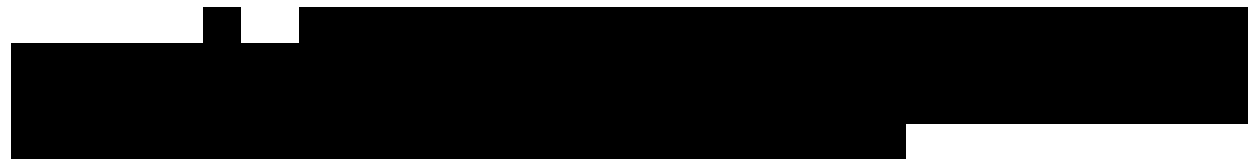
18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Project.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Project by Seller, Buyer agrees to work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender.

18.3 Permitted Assignment by Seller.

(a) Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller.



18.4 Unauthorized Assignment; Costs.

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

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

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

ARTICLE 19: DISPUTE RESOLUTION

19.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

19.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not

include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 19.2.

ARTICLE 20: CONFIDENTIAL INFORMATION

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

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

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

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

is a public entity subject to the provisions of the California Public Records Act, and that disclosures made thereunder shall not be considered a violation of this Agreement.

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

ARTICLE 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

21.5 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as Product seller and Product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Project, the Product or any business related to the Project. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or indemnitee. In no event shall Buyer's receipt or review of any Seller submission, or Buyer's monitoring of Project data or cooperation

in Project operations be construed as an assumption of any responsibility, liability or obligation of Seller for the design, construction or operation of the Project.

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

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

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

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

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

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

the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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

ARTICLE 22: NOTICES

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

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

SIGNATURES

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

TIERRA ROBLES ENERGY STORAGE,
LLC

EAST BAY COMMUNITY ENERGY
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX I

DESCRIPTION OF PROJECT

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

A. PROJECT DESCRIPTION

Project name: Tierra Robles Energy Storage

Project Site name: 1850 Campbell

Technology type: Lithium-Ion Battery Energy Storage

Project physical address: 1850 Campbell Street, Oakland, CA 94607

Project elevation: 10 feet above sea level

Project latitude: 37.815339° (decimal form)

Project longitude: -122.292235° (decimal form)

Interconnection:

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

Point of interconnection: Oakland L, Feeder 1103

Point of interconnection address: 2600 Campbell Street, Oakland

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

PNode: TBD

CAISO Resource ID: TBD

Substation: Oakland L

B. PROJECT SIZE

Nameplate capacity: 7 MW

APPENDIX II

OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Capacity Attributes of Product.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): 7 MW

Minimum continuous discharge power (Dmin): 0.25 MW

Maximum discharge duration at constant Dmax : 4 (hours)

Maximum continuous charge power (Cmax): -7 MW

Minimum continuous charge power (Cmin): 0.25 MW

Maximum charge duration at constant Cmax: 4.7 (hours)

Amount of Energy released to fully discharge: 28 MWh

Amount of Energy required to fully charge: 32.95 MWh

Round-trip efficiency: 85 %

Ramp Rates

Dmin to Dmax: 7 MW/second

Cmin to Cmax: -7 MW/second

Dmax to Dmin: -7 MW/second

Cmax to Cmin: 7 MW/second

System Response Time

Idle to Dmax: 1 second

Idle to Cmax: 1 second

Dmax to Cmax: 1 second

Cmax to Dmax: 1 second

Dmin to Cmin: 1 second

Cmin to Dmin: 1 second

Discharge Start-up time (from notification to Dmin): 5 seconds

Charge Start-up time (from notification to Cmin): 5 seconds

Discharge Start-up Fuel: 0 MMBtu

Starts and other Run Time Limitations

Start limitations: None

Run hour limitations: None

The minimum run time after a Discharge Start-up is 0 seconds

The minimum run time after a Charge Start-up is 0 seconds

The minimum down time after a shutdown is 0 seconds

Ancillary Services (defined terms below have the meaning found in the CAISO Tariff as of the Execution Date):

At ISO conditions, normal efficiency mode:

Spinning Reserves: Range: -7 to 7 MW

Non-Spinning Reserves: Range: -7 to 7 MW

Regulation Up: Range: -7 to 7 MW

Regulation Down: Range: -7 to 7 MW

Black Start capability (if applicable):

Other:

Voltage Services

Generator voltage regulation range (+/-): 0.90 volts per unit

Maximum reactive power leading: 7 mega volt amps reactive (MVar)

Maximum reactive power lagging: 7 mega volt amps reactive (MVar)

APPENDIX III
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

APPENDIX IV

CERTIFICATION

FOR COMMERCIAL OPERATION

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

Seller and Engineer each hereby certifies and represents to Buyer the following, severally and not jointly:

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

SELLER:

ENGINEER:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

License
Number: _____

LPE Stamp: _____

APPENDIX V-A
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

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

Beneficiary:

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

Ladies and Gentlemen:

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

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry

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

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

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

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

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Resource Adequacy Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

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

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

APPENDIX V-B

FORM OF GUARANTY

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

Recitals

A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Energy Storage Resource Adequacy Agreement (as amended, restated or otherwise modified from time to time, the “**RA Agreement**”) dated as of [_____] 2019.

B. Guarantor is entering into this Guaranty as Delivery Term Security to secure Seller’s obligations under the RA Agreement, as required by Section 10.2 of the RA Agreement.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the RA Agreement.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the RA Agreement.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the RA Agreement, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the RA Agreement (the “**Guaranteed Amount**”)

This

Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the RA Agreement, Guarantor shall promptly pay such amount as required herein.

- 2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the RA Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the RA Agreement for ten (10) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.
- 3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the following have occurred: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller) and the Delivery Term has expired or terminated early or (y) replacement Delivery Term Security is provided in an amount and form required by the terms of the RA Agreement. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
- (i) the extension of time for the payment of any Guaranteed Amount,
or
 - (ii) any amendment, modification or other alteration of the RA Agreement, or
 - (iii) any indemnity agreement Seller may have from any party, or
 - (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
 - (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the RA Agreement imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the RA Agreement or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the RA Agreement, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the RA Agreement, or

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

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

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

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

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

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

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

- 5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.
- 7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[]
 Attn: []
 Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

- 8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.
- 9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the RA Agreement. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

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

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

APPENDIX VI

PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

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

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

Part Two: Project Design and Description

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

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

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

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

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

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

APPENDIX VII

MUA DECISION ATTESTATION

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

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

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

Signature: _____

Name: _____

Title: _____

APPENDIX VIII

NOTICES

SELLER	BUYER
<p>All Notices:</p> <p>Name: Tierra Robles Energy Storage, LLC Street: 65 Enterprise, 3rd Floor City: Aliso Viejo, CA. 92656 Attn: Development</p> <p>Phone: (949) 330-6300 Email: Lizette.Vidrio@esVolta.com</p> <p>With a copy to:</p> <p>Philip Reeves, Director Development 65 Enterprise, 3rd Floor Aliso Viejo, CA 92656 Philip.Reeves@esVolta.com</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org</p> <p>With a copy to:</p> <p>Email: legal@ebce.org</p>
<p>Invoices:</p> <p>Attn: Lizette Vidrio Phone: E-mail: Lizette.Vidrio@esVolta.com</p>	<p>Invoices:</p> <p>E-mail: powerresources@ebce.org; ap@ebce.org</p>
<p>Scheduling:</p> <p>Attn: Lizette Vidrio Phone: Email: Lizette.Vidrio@esVolta.com</p>	<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com</p>
<p>Payments:</p> <p>Attn: Lizette Vidrio Phone: E-mail: Lizette.Vidrio@esVolta.com</p>	<p>Payments:</p> <p>Attn: Jason Bartlett, Finance Manager Phone: (510) 650-7584 E-mail: jbartlett@ebce.org</p>
<p>Wire Transfer:</p>	<p>Wire Transfer:</p>
<p>Emergency Contact:</p> <p>Attn: Lizette Vidrio, Director of Asset Management Phone: E-mail: Lizette.Vidrio@esVolta.com</p>	<p>Emergency Contact:</p> <p>Attn: <u>Mike Susko, Power Resources Manager</u> Phone: (510) 282-2657 E-mail: powerresourcesr@ebce.org, msusko@ebce.org</p>

APPENDIX IX
APPROVED CONTRACTORS

1. Powin Energy Corporation

APPENDIX X

[NOT USED]

APPENDIX XI

[NOT USED]

APPENDIX XX

WORKFORCE DEVELOPMENT AND COMMUNITY INVESTMENT OBLIGATIONS

Seller shall conduct outreach with qualified local contractors, so that local firms have a fair opportunity to compete for Project construction contracts. In addition, Seller shall require that construction contractors utilize locally sourced and union labor to the extent practicable.

Seller shall collaborate with the Oakland Public Education Fund to adopt a school program (<http://www.oaklandedfund.org>), to make a financial donation to a school, as well as establish a hands-on educational opportunity such as a field trip or tech talk that will inform students about the benefits of advanced energy storage technology, with the aim of inspiring students toward future career paths in the sustainable energy business.

Seller shall hold an annual charity day in Oakland at least once following the construction of the Project, which may include making a contribution of volunteer labor hours as well as a corporate donation, with the aim of Seller contributing to a sustainable energy environment in Oakland.

END OF AGREEMENT

WSGR 7/11/2019

ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT

COVER SHEET

Seller: Sunrun, Inc., a Delaware corporation**Buyer:** East Bay Community Energy Authority, a California joint powers authority**Execution Date:****Description of Project:** Energy Storage Systems sited behind EBCE customer meters which will be enrolled as Proxy Demand Response resources with the California Independent System Operator in order to provide Resource Adequacy to East Bay Community Energy.**Contract Amounts:**RA Attributes: 0.5 MW NQCLocal RA Attributes: 0.5 MWFlexible RA Attributes: 0.0 MW EFC, Category ████████**Payment Quantity:** 0.5 MW**Contract Price:** ████████████████████**Milestones:**


Milestone	Date
Interconnection Agreement Execution Deadline	████████████████████
Site Control Deadline	████████████████████
Construction Start Deadline	████████████████████
Commercial Operation Deadline	October 18, 2021
Expected Initial Delivery Date	[January 1, 2022] [Note to Sunrun: Subject to ongoing discussion.]

Delivery Term: Ten Contract Years

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ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1: DEFINITIONS

1.1 **Contract Definitions.** Capitalized terms used in this Agreement have the following meanings, unless otherwise specified:

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

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

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

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

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

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

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

substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

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

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

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

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

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

“**Capacity Adjustment Date**” has the meaning set forth in Section 6.7(a).

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

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

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

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

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

“**Change of Control**” means, except in connection with public market transactions of equity interests of Seller’s Ultimate Parent, any circumstance in which Seller’s Ultimate Parent as of the Execution Date ceases to be the Ultimate Parent or in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent

(50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

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

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

“Commercial Operation Date” means the date stated in Seller's Notice, substantially in the form of Appendix IV, upon which the Project became Commercially Operable.

“Commercial Operation Deadline” means the date that is seventy-five (75) days before the Expected Initial Delivery Date, as set forth on the Cover Sheet.

“Commercial Operation Milestone” means the Project becoming Commercially Operable on or before the Commercial Operation Deadline.

“Commercially Operable” with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, the Project has been released by the EPC Contractor to Seller for commercial operations, and permission to operate has been formally obtained from the applicable transmission or distribution utility.

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

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

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

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

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

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

“**Construction Delay Damages**” means liquidated damages in an amount equal to [REDACTED].

“**Construction Start**” has the meaning set forth in Section 3.1(c).

“**Construction Start Deadline**” means the deadline for Construction Start [REDACTED] as set forth on the Cover Sheet.

“**Contract Amount**” has the meaning set forth in Section 5.2(a).

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

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

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

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

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

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

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

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

“**CPUC Decisions**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-

025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

“**CPUC General Order No. 167**” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL_ORDER/108114.htm

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

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

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

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

“**Damage Payment**” means the dollar amount equal to [REDACTED].

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

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

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

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

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

“**Delivery Term Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED].

“**Development Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED].

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

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

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

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

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

“**Electric System Upgrades**” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Project such that the Project can provide Product at all times during the Delivery Term.

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

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

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

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

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

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

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

“**Expected Initial Delivery Date**” means the expected initial delivery date set forth on the Cover Sheet.

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

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

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

“**Force Majeure**” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

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

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

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

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

(b) Force Majeure does not include:

(i) per terms of the applicable CAISO tariff, a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service;

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

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

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

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

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

(vii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) 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;

(ix) Seller's failure to obtain Site control, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

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

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

"Governmental Approval" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for

the development, use and operation of the Project, including any approvals required under the California Environmental Quality Act.

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

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

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

“IDD Delay Damages” means liquidated damages in an amount equal to [REDACTED].

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

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

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

“Interconnection Agreement Execution Deadline” means the Interconnection Agreement execution deadline set forth on the Cover Sheet.

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

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

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the

Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

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

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

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

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California in accordance with applicable Law including Cal. Bus. & Prof. Code §§ 6700 *et seq.*, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic or familial 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 Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

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

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

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

local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits, grants, or benefits related to the Project or generation therefrom or any costs or fees related to the Site or Project.

“**Mechanical Completion**” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

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

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

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

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

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

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

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

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

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

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

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

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

“**NQC**” or “**Net Qualifying Capacity**” has the meaning given to “Net Qualifying Capacity” in the CAISO Tariff.

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

“**Other Capacity Attributes**” means, exclusive of RA Attributes, Local RA Attributes, and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person, (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

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

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

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

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

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

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

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

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

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

(b) At least two (2) years of experience in the ownership and operations of facilities similar to the Project, or has retained a third-party with such experience to operate the Project.

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

“PG&E” means Pacific Gas and Electric Company.

“PG&E Agreement” means all agreements between Seller and PG&E pertaining to the Oakland Clean Energy Initiative, as approved by CAISO on March 22, 2018.

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

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

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

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

“Project” means the energy storage facility described in Appendix I, as such may be revised from time to time in accordance with this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Remediation Event” means any of the following with respect to the Project or a Site: (a) the circumstances resulting in an Exigent Circumstance (b) the circumstances resulting in a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.1, in its reasonable discretion, that the Project Safety Plan is not consistent with the Safety Requirements;

or (g) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Project or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension), and Seller may request an additional extension of the Remediation Period of up to ninety (90) days if Seller is unable to resolve the Remediation Event within the ninety (90) day extension period despite exercising diligent efforts, which Buyer may approve or reject in its sole discretion. The Remediation Period may not, under any circumstance, continue for more than two hundred and seventy (270) days from the first occurrence of the Remediation Event.

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

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

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

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

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

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

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

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

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

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

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

“Safety Requirements” means Prudent Operating Practices, CPUC General Order No. 167, and all applicable safety-related (construed broadly) requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC.

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

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

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

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

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

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

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

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

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

“Settlement Amount” means an amount equal to [REDACTED]. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

“**Site Control**” means that Seller owns the Site and the Project or has demonstrable contractual real property rights to the Site sufficient for the permitting, control, development and operation of Units [REDACTED].

“**Site Control Deadline**” means the site control deadline set forth on the Cover Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Unit**” or “**Units**” means the behind-the-retail-meter energy storage facilities installed at the Sites, five hundred (500) kilowatts of which shall be installed at low-income housing facilities, as more particularly described in Appendices I, II, and IX, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide the Product to Buyer pursuant to this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2: TERM

2.1 **Effectiveness.**

(a) Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date.

(b) As a condition precedent to Buyer's obligation to perform under this Agreement, Seller shall deliver to Buyer on or before the Execution Date correct and complete copies of: (A) Seller's most recently-filed 10-Q form, as available via the US Security and Exchange Commission's EDGAR database; and (B) Seller's organizational documents (including any certification of formation, certification of incorporation, charter, operating agreement, partnership agreement, bylaws, or similar documents) and any amendments thereto.

2.2 **Term.**

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

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

ARTICLE 3: PROJECT DEVELOPMENT

3.1 **Project Construction.**

(a) Seller shall achieve Site Control [REDACTED] no later than the Site Control Deadline, subject to Section 3.5.

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

(c) Seller shall cause the following to occur ("**Construction Start**") [REDACTED]
[REDACTED]
no later than the Construction Start Deadline and shall provide Notice to Buyer certifying the satisfaction of this Section 3.1(c): (i) acquisition of all Governmental Approvals necessary for the construction of the Project, (ii) engagement of each Contractor, (iii) execution of all agreements with Customers whose Units are to be a part of the Project, and (iv) ordering of all essential equipment and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the Project may begin and proceed to completion without foreseeable interruption of material duration.

(d) If Construction Start [REDACTED] is not achieved on or before the Construction Start Deadline, then for each day beginning with the day after the Construction Start Deadline through and including the date on which Construction Start [REDACTED] occurs, for a period beyond the Construction Start Deadline lasting no more than ninety

(90) days (“**Construction Delay Cure Period**”), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(d), Seller’s failure to achieve Construction Start on or before the Construction Start Deadline shall not be deemed a Seller’s Event of Default. If Seller achieves the Initial Delivery Date on the Expected Initial Delivery Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the Initial Delivery Date. Each Party agrees that (i) the damages that Buyer would incur due to Seller’s delay in achieving the Construction Start Deadline [REDACTED] would be difficult or impossible to predict with certainty and (ii) the Construction Delay Damages are an appropriate approximation of such damages.

3.2 **Interconnection.** Seller shall (a) execute all necessary Interconnection Agreements by the Interconnection Agreement Execution Deadline (subject to Section 3.5), (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company’s applicable tariffs, the Participating Transmission Owner’s applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering.** At Seller’s expense, Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Project and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product.

3.4 **Progress Reports.** Within fifteen (15) days after the close of every other calendar month, starting on December 1, 2019 and until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Critical Milestones within ten (10) Business Days of receipt of such request by Seller.

3.5 **Remedial Action Plans.** The Site Control Deadline and the Interconnection Agreement Execution Deadline are each a “**Critical Milestone**.” If Seller anticipates that it will not be able to timely satisfy a Critical Milestone or the Commercial Operation Milestone, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer at least thirty (30) days prior to the relevant deadline (or as soon as reasonably practicable if such anticipation arises less than thirty (30) days in advance of the relevant deadline) a remedial action plan (“**Remedial Action Plan**”), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller’s proposed

course of action to achieve the missed deadline, any subsequent Critical Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement. So long as Seller complies with its obligations under Section 3.4 and this Section 3.5, however, Seller shall not be considered in default of its obligations under this Agreement solely as a result of failing to timely satisfy a Critical Milestone.

ARTICLE 4: INITIAL DELIVERY DATE

4.1 Timing of the Initial Delivery Date.

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

(b) **Early Initial Delivery Date.** If Seller wishes for the Initial Delivery Date to occur prior to the Expected Initial Delivery Date, Seller may provide Buyer with a written request for a specified earlier date, so long as such written request is provided at least one (1) year prior to the Expected Initial Delivery Date. If Buyer agrees to the requested earlier date, the Parties shall execute a written amendment to this Agreement memorializing the agreement that each reference to the Expected Initial Delivery Date in this Agreement shall thereafter be deemed a reference to such earlier date.

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

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

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

(iii) Each Party agrees that (A) the damages that Buyer would incur due to Seller's delay in achieving the Expected Initial Delivery Date would be difficult or impossible to predict with certainty and (B) the IDD Delay Damages are an appropriate approximation of such damages.

4.2 **Conditions Precedent to the Initial Delivery Date.** Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the "**Conditions Precedent**") and must be satisfied at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is set forth below, in which case such other deadline shall govern, to Buyer's reasonable satisfaction:

(a) Seller shall have provided to Buyer updated correct and complete copies of the items identified in Section 2.1(a)(ii).

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

(c) On or before the Commercial Operation Deadline, Seller has secured and maintained Site Control.

(d) As of the Commercial Operation Deadline and as of the Initial Delivery Date, Seller shall have executed all agreements with Customers whose Units are to be a part of the Project as necessary for the safe and lawful operation of the Project and to enable Seller to deliver the Product to Buyer, and such agreements shall remain valid and in full force and effect.

(e) On or before the Commercial Operation Deadline, Seller shall have caused the Project to become Commercially Operable.

(f) Seller or Contractor shall have constructed or caused to be constructed the Units that are to be part of the Project as of the Initial Delivery Date in accordance with this Agreement to enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product from the Project.

(g) Seller shall have provided to Buyer a certification of Seller and a Licensed Professional Engineer, substantially in the form attached hereto as Appendix IV, demonstrating (i) that the Commercial Operation Date has occurred, (ii) satisfactory completion of the Unit(s) at the Site(s) that are comprising the Project as set forth in Seller's Initial Portfolio List as of the Initial Delivery Date and (iii) that the Unit(s) comprising the Project as set forth in Seller's Initial Portfolio List can deliver, in aggregate, Capacity Attributes of Product in the Contract Amounts.

(h) Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Project successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets.

(i) On or before the Commercial Operation Deadline, Seller shall have executed and complied with any necessary Interconnection Agreement(s) and installed any necessary metering to deliver Product to Buyer, in each case in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(j) On or before the Commercial Operation Deadline, Seller shall have provided Delivery Term Security to Buyer as required by Section 10.2.

(k) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(l) Seller shall have submitted to Buyer a Project Safety Plan.

(m) At least ninety (90) days prior to the Initial Delivery Date, Seller shall have provided Buyer with (i) Seller's Portfolio List in accordance with Section 5.4(d) that demonstrates Units and Customers under contract to Seller sufficient for Seller to deliver, in aggregate, Capacity Attributes of Product in the Contract Amounts, as of the Initial Delivery Date ("**Seller's Initial Portfolio List**") and (ii) a description of the Project and Units set forth in Appendix I. If Seller provides to Buyer Seller's Initial Portfolio List, but prior to the occurrence of the Initial Delivery Date Seller changes Seller's Initial Portfolio List, then this Condition Precedent shall not be satisfied and the date on which Seller provides to Buyer a changed Seller's Initial Portfolio List in accordance with this Agreement shall constitute provision of Seller's Initial Portfolio List for purposes of this Condition Precedent.

(n) Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product (i) resulting in certifications of not less than the Contract Amounts and (ii) so as to ensure the Project is fully deliverable such that Seller is able to deliver Product in the Contract Amounts to Buyer for purposes of counting towards Buyer's Compliance Obligations.

(o) As of the dates required under Section 5.2(b) and Section 5.2(c), as applicable, (i) Seller shall have submitted, or shall have caused its SC to have submitted, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month in accordance with Section 5.2(b) and (ii) Seller shall have submitted, or shall have caused its SC to have submitted, a Supply Plan to CAISO in accordance with Section 5.2(c).

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

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

(r) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

4.3 **Cooperation in Connection with Initial Delivery Date.** The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Product beginning on the Initial Delivery Date and Seller agrees to cause the Project's SC to cooperate in order to achieve the same.

4.4 **Confirmation of Initial Delivery Date.** Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller's Notice. On or promptly following the Initial Delivery Date (in no event later than five (5) Business Days thereafter), Buyer shall provide a Notice to Seller confirming the occurrence of the Initial Delivery Date.

ARTICLE 5: TRANSACTION

5.1 Product.

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer, for Buyer's exclusive use, all Capacity Attributes that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Project (collectively, the "**Product**"), pursuant to the terms and conditions contained herein. Operational Characteristics shall not be modified during the Term.

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

(c) Product does not confer to Buyer any right to dispatch or receive Energy from the Project.

5.2 Purchase and Sale Obligation.

(a) For each day of each Showing Month during the Delivery Term, Seller agrees to deliver all Capacity Attributes of Product to Buyer, including in the amounts and categories set forth on the Cover Sheet ("**Contract Amounts**").

(b) No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to the CAISO. In the event that Buyer does not Notify Seller

of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

(c) After following the procedure in Section 5.2(b), Seller shall submit, or cause to be submitted, a Supply Plan to CAISO, in accordance with the applicable Compliance Showing deadlines for each Showing Month, to identify and confirm the Product to be delivered to Buyer (or, with regard to Resold Product, Buyer's designee) for each day within the applicable Showing Month. For each of the Capacity Attributes of Product that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the Contract Amount of each of the respective Capacity Attributes. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of the respective Capacity Attributes that Seller has delivered for such Showing Month ("**Delivered Quantities**").

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

$$MP = (DQ / CA) \times PQ \times CP$$

where,

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

CA = The sum of the Contract Amounts of all RA Attributes, Local RA Attributes, and Flexible Attributes;

PQ = The payment quantity set forth on the Cover Sheet ("**Payment Quantity**"); and

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

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

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

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

5.4 **Customers.**

(a) **Seller Obligation to Obtain Customers.** Seller shall obtain or cause to be obtained, the Customers necessary to enable the safe and reliable delivery of Capacity Attributes of Product in the Contract Amounts to Buyer during the Delivery Term. Seller shall contract directly with Customers to develop, install, operate, and maintain the Project in order for Seller to deliver Capacity Attributes of Product in the Contract Amounts during the Delivery Term. Seller shall identify all such Customers, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority.

(b) **Customers Eligible for Inclusion in Project.** Seller shall provide to Buyer the Product during the Delivery Term only from Units installed at Sites listed in Seller's Portfolio List in accordance with Section 5.4(d). Customers who are added to Seller's Portfolio List after the Initial Delivery Date and during the Delivery Term must meet the definition of a "Customer" during the Delivery Term in order to be included in Seller's Portfolio List. Seller shall be responsible, at its sole cost and expense, for maintaining the metering, interconnection and data collection systems necessary to perform its obligations and complying with all Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority rules and regulations required to deliver Product during the Delivery Term.

(c) **Seller's Portfolio.** Seller's Portfolio will at all times solely contain the Customers associated with the Project. The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio (a "**Portfolio Modification**") at any time during the Delivery Term, subject to the requirements of this Section 5.4 and Article 11. Notwithstanding the prior sentence, changes to Seller's Portfolio shall not alter the Product or Contract Amounts Seller must deliver. Seller shall cause Seller's Portfolio at all times during the Delivery Term to contain at least one (1) multi-family housing unit that is electrically interconnected to one of the substations or feeders associated with one of the substations listed in Appendix XI.

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

(e) **Portfolio Modification.** During the Term, Seller may perform a Portfolio Modification, provided that Seller shall Notify Buyer of any proposed Portfolio Modification at least ten (10) Business Days in advance, and provided further that Seller shall not, and shall not permit any other Person to take any other action that would, or may reasonably be expected to, alter (i) the Project from the Project description set forth in Appendix I as of the Execution Date, (ii) the Operational Characteristics, or (iii) the Project's ability to deliver Capacity Attributes of Product in the Contract Amounts throughout the Delivery Term. Within sixty (60) days of a

Portfolio Modification, Seller shall provide Buyer a signed Portfolio Modification certification in the form set forth in Appendix X. A Portfolio Modification will not alter nor relieve any of Seller's obligations under this Agreement.

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

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

ARTICLE 6: OPERATIONS

6.1 **Operations.** Seller shall at all times retain operational control of the Project and be responsible for operation and maintenance of the Project.

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

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

6.4 **Buyer's Compliance Obligations; Certification of Product.**

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

(b) During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and use such Product, including use of such Product to satisfy its Compliance Obligations. If

Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

6.5 **Scheduling.**

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

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

(c) Buyer shall have no liability for the failure of Seller, any Customer, or any Unit owner or operator, or SC to comply with any applicable Law, Requirements, or other requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance. In no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize a Shortfall.

(d) Seller shall not accept, and shall cause the Project's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation in a Notice. In addition, Seller shall promptly Notify, or cause the Project's SC to promptly Notify, Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation. During the Delivery Term, Buyer has exclusive right to enter into a RMR Contract with respect to the Product or any component thereof, provided that the RMR Contract would not require the Project to operate beyond the Operational Characteristics or beyond the end of the Delivery Term.

6.6 **Information Sharing and Shared Learning.** Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer's portfolio of assets to meet its customers' needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data at least

on an aggregated basis but excluding cost or similar proprietary information, upon Buyer's request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. For information related to Seller's multiple uses of the Project, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Project to a third party.

6.7 **Changes in Law.**

[REDACTED]

(b) In the event a centralized capacity market develops within the WECC region, [REDACTED]

(c) If a change in CAISO or CPUC Requirements renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed

or administered, or constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

ARTICLE 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

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

(i) Seller fails to satisfy a Performance Assurance requirement set forth in Article 10 and Seller fails to provide replacement Performance Assurance within fifteen (15) Business Days of Buyer’s written demand therefor in accordance with Article 10;

(ii) any material misrepresentation or omission, in any metering or submetering, Supply Plan, Seller’s Portfolio List, report, or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation or undue delay or withholding is not cured within fifteen (15) Business Days of Buyer’s receipt thereof;

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Project;

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

(v) (A) Seller fails to deliver a Delay Notice in accordance with Section 4.1(c)(i) or (B) Seller fails to achieve the Initial Delivery Date by the Expected Initial Delivery Date for reasons other than Force Majeure, subject to Section 4.1(c)(ii) and the IDD Cure Period identified therein; or

(vi) Any failure by Seller [REDACTED]

[REDACTED]

[REDACTED]

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with Sections 5.1 or 6.4 or with any Requirement or Safety Requirement in accordance with Section 6.3, in any case except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(iv) such Party becomes Bankrupt;

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 Termination Payment. The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount. The Non-Defaulting Party shall calculate a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

7.5 **Disputes with Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 19.

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

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure.

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

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

(c) **Mitigation of Force Majeure.** The suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force

Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with this Agreement, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

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

(i) if during the Delivery Term:

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

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

(ii) if Seller is unable, due solely to a Force Majeure event, to achieve the Initial Delivery Date by [REDACTED] the Expected Initial Delivery Date.

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

ARTICLE 9: INVOICING AND PAYMENT

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

9.2 **Payment**. Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment

charge shall be calculated based on an annual interest rate equal to the three-month LIBOR, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

ARTICLE 10: PERFORMANCE ASSURANCE

10.1 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver [REDACTED]. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon

the earlier of (a) Seller's delivery of the Delivery Term Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Deadline, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

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

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

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of a Seller's Event of Default or a Party's Event of Default on the part of Seller, an Early Termination Date resulting from a Seller's Event of Default or a Party's Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

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

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

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

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

10.4 **Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles.

ARTICLE 11: SAFETY

11.1 Safety.

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

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

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

operating, or maintaining the Project, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Project safely or in accordance with the Safety Requirements.

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

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

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

11.3 **Remediation.**

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

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

ARTICLE 12: TAXES

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

Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

ARTICLE 13: LIMITATIONS

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

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

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

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

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(d), 4.1(c), [REDACTED], 7.2 AND 7.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE

DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 14: REPRESENTATIONS; WARRANTIES; COVENANTS

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

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

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

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

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

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

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

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer

or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

14.3 **General Covenants.** Each Party covenants that commencing on the Execution Date and continuing throughout the Term it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

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

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

(b) Seller will use reasonable efforts to ensure that all employees hired by Seller, and its Contractors, that will perform construction work or provide services at the Site related to construction of the Project are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California Law, if any. Nothing herein shall require Seller or its Contractors to comply with, or assume liability created by other inapplicable provisions of any California labor Laws. Buyer agrees that Seller's obligations under this Section 14.4(b) will be satisfied upon the execution of a project labor agreement related to construction of the Project.

(c) Seller shall perform the obligations related to workforce development and community investment set forth in Appendix XX.

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

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

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

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

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

ARTICLE 15: INDEMNITIES

15.1 Indemnity by Seller.

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

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

15.2 Notice of Claim.

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

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

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

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

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

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

ARTICLE 16: INSURANCE

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

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

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

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

(b) **Commercial General Liability.**

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

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

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

(c) **Business Auto.**

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

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement."

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

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

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

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

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

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

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

ARTICLE 17: RECORDS AND AUDIT RIGHTS

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

17.2 **Records and Audit.**

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

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

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

17.4 **State Auditor.** In accordance with Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement if the compensation under this Agreement exceeds ten thousand dollars (\$10,000.00).

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

17.6 **Access Rights.** Seller agrees, and shall use reasonable efforts to cause each Customer to agree, to allow Buyer, the Utility Distribution Company, the Commission, and/or the CEC, and the authorized representatives of such entities, reasonable access to Seller's and the Customers' facilities to conduct measurement and evaluation activities related to this Agreement.

ARTICLE 18: ASSIGNMENT

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

18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Project.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Project by Seller, Buyer agrees to work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender.

18.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller. In addition, Buyer's written consent will not be unreasonably withheld for the transfer or assignment of this Agreement, including through a Change of Control, to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or Change of Control), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment or Change of Control;
- (iii) such assignment does not violate applicable Law, including any Law relating to conflicts of interests; and
- (iv) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment, (y) certifies that such Person meets the definition of a Permitted Transferee, and (z) certifies that such assignment does not violate applicable Law, including any Law relating to conflicts of interests.

18.4 **Unauthorized Assignment; Costs.**

- (a) Any assignment or purported assignment in violation of this Article 18 is void.
- (b) No assignment of this Agreement shall be effective unless such assignment is memorialized in a written agreement signed by the assignee and, except in connection with a collateral financing, in which agreement the assignee assumes all of the assignor's obligations and liabilities under this Agreement.
- (c) Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

ARTICLE 19: DISPUTE RESOLUTION

19.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

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

ARTICLE 20: CONFIDENTIAL INFORMATION

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

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

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

(b) **Disclosure Requests.** If a Party ("**Receiving Party**") receives a request from a third party for access to, or inspection, disclosure or copying of, any of the other Party's

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

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

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

ARTICLE 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

end of the Term without limit, and (iv) all provisions relating to limitations of liability survive without limit.

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

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

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

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

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

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

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

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

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

[REDACTED]

ARTICLE 22: NOTICES

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

22.2 **Time of Delivery.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b)

if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery, United States mail, or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

SIGNATURES

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

[SELLER]

EAST BAY COMMUNITY ENERGY
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX I

DESCRIPTION OF PROJECT

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

A. PROJECT DESCRIPTION

Project name:

Energy storage technology of Units: lithium ion

Interconnection:

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

Point of interconnection: to be determined pending establishment of Seller's Portfolio List

B. PROJECT SIZE

Nameplate capacity (aggregate): 0.5 MW

APPENDIX II

[OPERATIONAL CHARACTERISTICS] *[Note to Sunrun: Subject to ongoing EBCE review.]*

The following describes the Operational Characteristics to determine the amount of Capacity Attributes of Product.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): 0.005 MW

Minimum continuous discharge power (Dmin): 0 MW

Maximum discharge duration at constant Dmax : 1.6 (hours)

Maximum continuous charge power (Cmax): -0.005 MW

Minimum continuous charge power (Cmin): 0 MW

Maximum charge duration at constant Cmax: 1.8 (hours)

Amount of Energy released to fully discharge: 0.0081 MWh

Amount of Energy required to fully charge: 0.00936 MWh

Round-trip efficiency: 87 %

Ramp Rates

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

Dmin to Dmax: 0.005 MW/second

Cmin to Cmax: -0.005 MW/second

Dmax to Dmin: -0.005 MW/second

Cmax to Cmin: 0.005 MW/second

System Response Time

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

Idle to Dmax: __second or sub-second__

Idle to Cmax: second or sub-second__

Dmax to Cmax: second or sub-second__ ____

Cmax to Dmax: second or sub-second__

Dmin to Cmin: second or sub-second__

Cmin to Dmin: second or sub-second__

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

Discharge Start-up time (from notification to Dmin): _1 or less__ seconds

Charge Start-up time (from notification to Cmin): _1 or less__ seconds

Discharge Start-up Fuel: _n/a__ MMBtu

Starts and other Run Time Limitations

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

Start limitations: ____once per each 24-hour period_____

Run hour limitations: ____4 hours per 24-hour period_____

[Describe minimum times.]

The minimum run time after a Discharge Start-up is _1__ seconds

The minimum run time after a Charge Start-up is _1__ seconds

The minimum down time after a shutdown is __1_ seconds

APPENDIX III
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

APPENDIX IV

CERTIFICATION

FOR COMMERCIAL OPERATION

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

Seller and Engineer each hereby certifies and represents to Buyer the following, severally and not jointly:

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

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER:

Signature: _____

Name: _____

Title: _____

Date: _____

License

Number: _____

LPE Stamp: _____

APPENDIX V

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

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

Beneficiary:

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

Ladies and Gentlemen:

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

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry

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

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

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

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

[Bank Name]

[Insert officer name]
[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Resource Adequacy Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

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

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

APPENDIX VI

PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

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

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

Part Two: Project Design and Description

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

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

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

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

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

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

APPENDIX VII

MUA DECISION ATTESTATION

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

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

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

Signature: _____

Name: _____

Title: _____

APPENDIX VIII**NOTICES**

SELLER	BUYER
<p>All Notices:</p> <p>Street: City: Attn:</p> <p>Phone: Facsimile: Email:</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org</p> <p>With a copy to:</p> <p>Email: legal@ebce.org</p>
<p>Invoices:</p> <p>Attn: Phone: E-mail:</p>	<p>Invoices:</p> <p>E-mail: powerresources@ebce.org; ap@ebce.org</p>
<p>Scheduling:</p> <p>Attn: Phone: Email:</p>	<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com</p>
<p>Payments:</p> <p>Attn: Phone: E-mail:</p>	<p>Payments:</p> <p>Attn: Jason Bartlett, Finance Manager Phone: (510) 650-7584 E-mail: jbartlett@ebce.org</p>
<p>Wire Transfer:</p> <p>BNK: ABA: ACCT:</p>	<p>Wire Transfer:</p> <p>██████████ ██████████ ██████████</p>
<p>Emergency Contact:</p> <p>Attn: Phone: E-mail:</p>	<p>Emergency Contact:</p> <p>Attn: Mike Susko, Power Resources Manager Phone: (510) 282-2657 E-mail: powerresources@ebce.org, msusko@ebce.org</p>

APPENDIX IX**SELLER'S PORTFOLIO LIST**

as of [_____]

Customer Service Account Number	Customer name	Physical address of Site	Total Unit capacity installed as part of the Project	Unit capacity installed to meet capacity associated with Operational Characteristics	Unit capacity installed in excess of capacity associated with Operational Characteristics	Unit manufacturer(s) and model number(s) installed at Site with corresponding Unit capacity	Customer type (i.e., residential, commercial, municipal)	Unit description (e.g., stand-alone storage, solar + storage, multi-family, disadvantaged community, etc.)	CAISO Resource ID

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

Signature:

Name: _____

Title: _____

Date: _____

APPENDIX X

PORTFOLIO MODIFICATION CERTIFICATION

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

Seller and Engineer each hereby certifies and represents to Buyer the following, severally and not jointly:

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

SELLER:

ENGINEER:

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

License
Number: _____

LPE Stamp: _____

APPENDIX XI

LIST OF SUBSTATIONS

PG&E Oakland C substation
PG&E Oakland L substation
Maritime Port of Oakland substation
Schnitzer Steel substation

APPENDIX XX**WORKFORCE DEVELOPMENT AND COMMUNITY INVESTMENT OBLIGATIONS**

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

- Seller shall make commercially reasonable efforts to: Cause Alameda County residents to provide at least 50% of the work hours associated with the construction, operation, and maintenance of the Project.
- Hire graduates of state-certified apprenticeship training programs, such as Cypress Mandela and Rising Sun Energy Center, in support of the construction, operation, and maintenance of the Project.
- Beginning on the Initial Delivery Date, Seller shall cause the Project to at all times be comprised of at least five hundred (500) kilowatts of Units that are installed at low-income housing facilities.

END OF AGREEMENT

**CONFIDENTIAL DRAFT
 BIDDER: CLEARWAY
 EBCE PRO FORMA PPA
 9 JULY 2019 (EBCE DRAFT)**

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Golden Fields Solar III, LLC

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

Description of Facility: A 112 MW portion of an approximately 192 MW solar photovoltaic electric generating project located near [REDACTED], Rosamond, California.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	[REDACTED]
CEC Pre-Certification Obtained	[REDACTED]
Documentation of Conditional Use Permit if required: CEQA <input checked="" type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR	[REDACTED]
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	[REDACTED]
Executed Interconnection Agreement	[REDACTED]
Financing Milestone	[REDACTED]
Financial Close	[REDACTED]
Expected Construction Start Date	[REDACTED]
Guaranteed Construction Start Date	[REDACTED]
Full Capacity Deliverability Status Obtained	[REDACTED]
Initial Synchronization	[REDACTED]
Network Upgrades completed as required for commercial operation under the Interconnection Agreement	3/31/2021
Expected Commercial Operation Date	3/31/2021

Milestone	Date for Completion
Guaranteed Commercial Operation Date	████████

Delivery Term: The period for Product delivery will be for 15 Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████

Guaranteed Capacity: 112 MW, as may be adjusted by Section 2.5 or Exhibit B, Section 5.

Contract Price: The Contract Price (in \$/MWh) of the Product for each Contract Year shall be:

Contract Year	Contract Price
1	████████

2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Product:

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

Scheduling Coordinator: Seller /Seller Third Party

Security, Damage Payment, and Guarantor

Development Security: [REDACTED]

Performance Security: [REDACTED]

Damage Payment: See definition of "Damage Payment"

Guarantor: [REDACTED]

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of July _____, 2019 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All initially capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

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

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

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

“**Ancillary Services**” means all Ancillary Services as defined in the CAISO Tariff that the Facility is capable of providing, if any, without incremental cost or expense to Seller and without

affecting Seller's ability to deliver Expected Energy and meet the performance specifications of this Agreement and Seller's economic expectations as of the Effective Date.

"Approved Forecast Vendor" means a vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

"Available Generating Capacity" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

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

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

"Buyer" means East Bay Community Energy Authority, a California joint powers authority.

"Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

"Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Buyer Default" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

"Buyer Group" has the meaning set forth in Section 16.1(a).

"Buyer Indemnifiable Loss(es)" has the meaning set forth in Section 16.1(a).

"Buyer's WREGIS Account" has the meaning set forth in Section 4.8(a).

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

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

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Schedules, scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

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

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“CAISO Revenues” means the credits and other payments incurred or received by Seller, as the Facility’s Scheduling Coordinator, as a result of Schedules, scheduling or Facility Energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

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

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

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

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

A Change of Control will not be deemed to occur due to any transfer of the direct or indirect interests in the Facility (or any direct or interest ownership interest in Seller) by a Lender following the exercise of remedies by the Lender, including any foreclosure on Lender’s interests in the Facility or in Seller or Seller’s owners; provided that the entity that is the Seller following any such transfer is a Permitted Transferee.

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

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

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

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

“**Commercial Operation Delay Damages**” means an amount equal to [REDACTED]

“**Compliance Actions**” has the meaning set forth in Section 3.12.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

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

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

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

“**Contract Price**” has the meaning set forth on the Cover Sheet for each Contract Year.

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

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

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

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

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to [REDACTED]

“Curtailment Order” means any of the following:

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

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any conditions or

situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator;

provided, however, that Buyer may not issue any Curtailment Order or any other instruction to curtail or reduce deliveries or output associated with Energy, Scheduled Energy or Facility Energy

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Customer Market Results Interface" has the meaning set forth in the CAISO Tariff.

"Daily Delay Damages" means an amount equal to [REDACTED]

"Damage Payment" means the dollar amount that equals the amount of the Development Security.

"Day-Ahead Forecast" has the meaning set forth in Section 4.3.

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period or a Market Curtailment Period, which amount shall be calculated as the difference between (a) the EIRP Forecast (except if an alternative forecast has been agreed to by the Parties for the relevant period pursuant to paragraph (e) of Exhibit D, in which case such alternative forecast shall be used), expressed in MWh, applicable to the Buyer Curtailment Period or the Market Curtailment Period, as applicable, whether or not Seller is participating in EIRP during such Buyer Curtailment Period or Market Curtailment Period, less (b) the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period or Market Curtailment Period, if any; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"Defaulting Party" has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.8(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

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

“Delivery Point PNode” means the PNode set forth in Exhibit A, to be mutually agreed by Buyer and Seller prior to the delivery of Test Energy based on the PNode then closest to the Facility.

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

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

“Development Security” means [REDACTED]

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

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

“Effective FCDS Date” means 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.

“EIRP Forecast” means the current CAISO forecast for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

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

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

“Energy” means electrical energy generated by the Facility.

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

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

“**Excess MWh**” has the meaning set forth in Exhibit C.

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

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

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

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year or other applicable period in the quantity specified on the Cover Sheet.

“**Facility**” means the 112 MW portion of an approximately 192 MW solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point; provided, that the “Facility” does not include the Shared Facilities.

“**Facility Energy**” means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

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

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

“**Fifteen Minute Market**” or “**FMM**” has the meaning set forth in the CAISO Tariff.

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

“**Financing Milestone**” means that Seller has provided proof of an agreement executed by Seller or its Affiliate for the purchase of modules for use at the Facility.

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

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

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.8(a).

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

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

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

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

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

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its

displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

"Guaranteed Capacity" means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.5 or Exhibit B, Section 5.

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

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

"Guaranteed Energy Production" means an amount of Adjusted Energy Production, as measured in MWh, equal to [REDACTED] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"Guarantor" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of [REDACTED]

██████████ (d) has a tangible net worth of at least ██████████, (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or another form reasonably acceptable to Buyer.

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

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

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

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

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I.

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

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

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

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

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

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

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

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

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

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

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

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

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

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

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Major Project Development Milestone**” has the meaning set forth in in Exhibit B.

“**Market Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price.

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

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

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

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

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

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP [REDACTED] is less than Zero dollars (\$0).

“**Negative LMP Strike Price**” means zero dollars per MWh (\$0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C; provided, however, that in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh (\$0/MWh).

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

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

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

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

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

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

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

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

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

“**Performance Measurement Period**” means each two (2) consecutive Contract Year period during the Delivery Term.

“**Performance Security**” means [REDACTED]

“**Permitted Transferee**” means any entity that, or is controlled directly or indirectly by, another Person or Persons that:

(a) Has or together have a tangible net worth of not less than [REDACTED]

[REDACTED] and

(b) Has or together have at least [REDACTED] of experience in the ownership and operations of solar powered generation facilities that are [REDACTED], or has retained a third-party with such experience to operate the Facility.

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

“**Planned Outage**” has the meaning set forth in Section 4.6(a).

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

“**Portfolio**” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category**” means PCC1, PCC2 or PCC3, as applicable.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

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

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

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

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

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

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer.

“Replacement Product” has the meaning set forth in Exhibit G.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to any flex attributes associated with the Facility.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy scheduled by Seller that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Interest**” has the meaning set forth in Section 8.9.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Group**” has the meaning set forth in Section 16.1(b).

“**Seller Indemnifiable Loss(es)**” has the meaning set forth in Section 16.1(b).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Settlement Point**” means PG&E DLAP.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“**Site Control**” means that, for the Delivery Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3.

“Test Energy” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

“Ultimate Parent” means [REDACTED].

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WECC**” means the Western Electricity Coordinating Council or its successor.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits necessary for the operation of the Facility have been obtained and all conditions thereof required for such operation have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed before the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages, and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than [REDACTED], except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone

completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Guaranteed Capacity Adjustment.** At any time prior to the Construction Start Date, Seller may, upon ten (10) Business Days’ Notice to Buyer, adjust the Guaranteed Capacity upward by up to five (5) MW. Upon such Notice, each reference to Guaranteed Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties.

2.6 **Expected Energy Adjustment.** If Seller installs additional capacity pursuant to Section 2.5, then promptly following the later of (a) the Commercial Operation Date, and (b) if applicable, the Guaranteed Capacity build-out period described in Section 5 of Exhibit B, the Expected Energy shall be adjusted pro rata in proportion to such additional installed capacity without the need for written amendment by the Parties.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product provided that such re-sale or use shall not relieve Buyer of any of its obligations under this Agreement or conflict with Seller’s scheduling role under Exhibit D or any other provision of this Agreement. Subject to Buyer’s obligation to pay for Deemed Delivered Energy and Capacity Attributes as set forth herein, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, Negative LMPs, or a Curtailment Order. As Scheduling Coordinator, Seller shall be entitled to retain all CAISO revenues and payments related to the Product.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver the Scheduled Energy. Buyer and Seller recognize that in any given Settlement Interval or Settlement

Period the amount of Facility Energy may deviate from the amount of Scheduled Energy and that to the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Seller.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5, and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the "**Test Energy Rate**"), minus (b) the FMM LMP applicable to the Delivery Point PNode for such Settlement Interval. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes available from the Facility.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and, subject to Section 3.12, shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied [REDACTED] provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and the timing requirements of this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply

with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term (subject to Section 3.12) the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default (and the Buyer's payment obligations hereunder for Product shall not be reduced solely as a result thereof) if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (including any obligations set forth in Section [REDACTED] then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses Seller shall be required to bear (a) during the Delivery Term to comply with all Compliance Actions (as defined below) shall be capped at [REDACTED] per MW of Guaranteed Capacity, and (b) in any Contract Year to comply with all Compliance Actions (as defined below) shall be capped at [REDACTED] of Guaranteed Capacity ("**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the out-of-pocket costs and expenses of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time,

either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer has reimbursed Seller for Accepted Compliance Costs in any Contract Year, and if Seller’s out-of-pocket costs and expenses incurred in a subsequent Contract Year in order to take any Compliance Action are less than the Compliance Expenditure Cap in such subsequent Contract Year, then within thirty (30) days after the end of such subsequent Contract Year, Seller will reimburse Buyer for the Accepted Compliance Costs that Buyer previously paid (up to the remaining Compliance Expenditure Cap for such subsequent Contract Year).

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller’s Lenders) as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Facility Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and Imbalance Energy charges. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with Exhibit D for Buyer’s account.

(b) Green Attributes. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Facility Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Forecasting. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Facility Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Facility Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("Monthly Delivery Forecast").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Facility Energy, in each case, for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Expected Energy for relevant periods. Seller shall provide each Day-Ahead Forecast through Seller's (or its SC's) Customer Market Results Interface for the Facility. If the Customer Market Results

Interface is not available, Seller shall provide the Day-Ahead Forecast in the form of a CSV file delivered to Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) Real-Time Forecast Updates. Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System ("OMS") based on CAISO protocols, and (ii) with respect to hourly expected Energy quantities, via the Facility's EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer and, in the case of Energy forecasts, the Approved Forecast Vendor. Among other information provided through such procedures, Buyer shall be notified if, past the deadlines for Day-Ahead Forecasts provided in Section 4.3(c), there are change(s) in such Day-Ahead Forecasts of one (1) MW/ (1) MWh or more, as applicable, in (i) Available Generating Capacity or (ii) hourly expected Facility Energy, in each case, whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause including (as appropriate) information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Facility Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order or Buyer Curtailment Order.

(b) Buyer Curtailment. Buyer shall have the right to elect to not purchase Product by issuing Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Contract Price; provided, further, that during any Buyer Curtailment Period, Seller shall have the right to operate the Facility and sell Product into applicable markets and to retain associated revenues.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and (B) is any penalties assessed by the CAISO against Buyer or other charges assessed by the CAISO against Buyer resulting from Seller's failure to comply with the Buyer Curtailment Order or Curtailment Order.

4.5 Seller Equipment Required for Curtailment 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 and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility in accordance with this Agreement or a Governmental Authority, including to implement Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Subject to providing Buyer [REDACTED], Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer's Default or other failure to perform, and Curtailment Periods, Market Curtailment Periods, or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of (1) any Deemed Delivered Energy

and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer's Default or other failure to perform, and Curtailment Periods ("**Lost Output**"), and (3) the amount of undelivered Energy during such Performance Measurement Period with respect to which Seller has already (a) paid damages in accordance with Exhibit G or (b) provided Replacement Product in accordance with Exhibit G. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G. Subject to Buyer's agreement, Seller may as an alternative provide Replacement Product (as defined in Exhibit G) (i) upon a schedule acceptable to Buyer and (ii) provided such deliveries do not impose additional costs upon Buyer (or if they do, that Seller shall reimburse Buyer for such additional costs). Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 in accordance with Exhibit C, with such Replacement Product treated as if it were Product under this Agreement.

4.8 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through 4.8(g) below. In addition:

(a) Prior to the Commercial Operation Date, or, if per the WREGIS rules it is not capable of being done prior to the Commercial Operation Date then as soon as reasonably possible thereafter, Seller shall take all actions necessary to register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Product (as defined in Exhibit G) delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

4.9 **Green-e Certification.** Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that the Facility is Green-e certified.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than

withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility

Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit P. The Facility 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. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the Facility Meter.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If the Facility Meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than twenty (20) days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the applicable LMP for each Settlement Period, and the Contract Price in accordance with Exhibit C; (b) copies of or access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within (a) ten (10) days after Buyer's receipt of the invoice or (b) thirty (30) days after the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to

the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month LIBOR rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

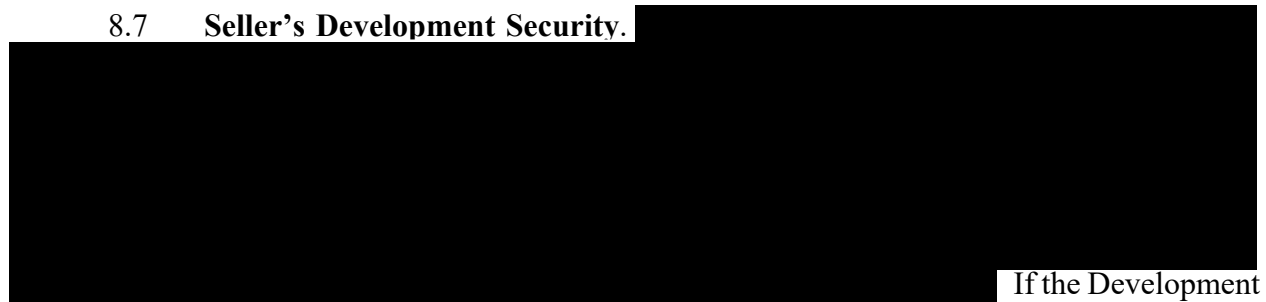
8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual

debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.**

 If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7

and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10

[REDACTED]

8.11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war;

blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price for any Contract Year unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to promptly remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of either Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in a Development Cure Period, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has

occurred [REDACTED]

[REDACTED] then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; [REDACTED]

[REDACTED] Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.8, and (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.8), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) [REDACTED]

(iii) if not remedied within thirty (30) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty

from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii), [REDACTED]) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Termination Payment. The (“**Termination Payment**”) for a Terminated Transaction (except for a Terminated Transaction due to an Event of Default by Seller occurring before the Commercial Operation Date, which is addressed in Section 11.2(b)) shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting

Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 THIRD PARTY INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES

CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, and

[REDACTED], Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) [REDACTED]

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law, including, for avoidance of doubt, conflict of interest Laws.

13.4 **Prevailing Wage.** Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("**Prevailing Wage Requirement**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development.** Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Except as provided under Section 14.3, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation,

review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender 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 sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 Permitted Assignment by Seller. Except as may be prohibited by applicable Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller. In addition, Buyer's prior written consent will not be unreasonably withheld, conditioned or delayed for the transfer or assignment of this Agreement, including through a Change of Control, to any Person succeeding to all or substantially

all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or Change of Control), if, and only if:

- (a) the assignee is a Permitted Transferee;
- (b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment or transfer;
- (c) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment (unless the same entity remains the Seller, in which case the foregoing is not required), and (y) certifies that such Person or the Seller following a Change of Control meets the definition of a Permitted Transferee; and
- (d) Such transfer or assignment is not in violation of applicable Law

14.4 **Shared Facilities; Portfolio Financing.** Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax and/or cash equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments [REDACTED], in each case as may be reasonable and necessary to facilitate such transactions; provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer, create unreasonable administrative burden, or create expenses for Buyer that are not paid or reimbursed by Seller, including all reasonable attorneys' and accounting fees incurred by Buyer in connection with the review of such consents, approvals and acknowledgments, [REDACTED], which shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the

state of California, without regard to principles of conflicts of Law. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement (collectively, "Indemnifiable Losses").

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise

to an Indemnifiable Loss under Section 16.1 (“Claim”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to the indemnified Party regarding the Indemnifiable Loss.

16.3 Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, neither Party is obligated to indemnify the other Party for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 Defense of Claims. If, within ten (10) days after delivering a Notice of Claim regarding a Claim pursuant to Section 16.2, the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses for which it is responsible relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.5 Subrogation of Rights. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnifying Party is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and

subjected in right of payment to the Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Contractor's Pollution Liability.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California

Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or

any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and subsequent decisions of the United States Supreme Court interpreting and applying such decisions. Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

GOLDEN FIELDS SOLAR III, LLC

By: _____
Name: _____
Title: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Rosamond Central

Site includes all or some of the following APNs: [REDACTED]

County: Kern

CEQA Lead Agency: Kern County

Type of Facility: Solar Photovoltaic

Operating Characteristics of Facility:

Guaranteed Capacity: 112 MW

Maximum Output: 112 MW

Delivery Point: [REDACTED]

Facility Meter: [to be determined]

P-node: [REDACTED]

Participating Transmission Owner: Southern California Edison


EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Major Project Development Milestones.**

a. **“Construction Start”** will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site (including, at a minimum, excavation for foundations or the installation or erection of improvements). The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. **“Major Project Development Milestone”** means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Daily Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed, subject to Section 11.7 of this Agreement. Daily Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Daily Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestones;

 On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when (a) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) and (b) Seller has notified Buyer in writing that it has provided the required

documentation to Buyer and met the conditions for achieving Commercial Operation. The “**Commercial Operation Date**” shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) [REDACTED]

- A. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- B. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- C. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, subject to Section 11.7 of this Agreement. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer’s receipt of Daily Delay Damages and Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** [REDACTED]

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall

[REDACTED]

If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to [REDACTED] that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
COMPENSATION

Compensation

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Facility Energy. For each MWh of Facility Energy in each Settlement Period, Buyer shall pay Seller

[REDACTED]

(b) Deemed Delivered Energy.

[REDACTED]

(c) Excess Contract Year Deliveries Over [REDACTED]. Notwithstanding the foregoing clauses (a) and (b) of this Exhibit C, if, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, then Buyer shall not purchase or pay for such additional Facility Energy or Deemed Delivered Energy and Seller shall have the right, for the remainder of such Contract Year, to sell all Facility Energy and associated Green Attributes (but not Capacity Attributes) in excess of that amount into available markets and to retain all associated market revenues.

(d) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; provided, however, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh (\$0/MWh).

(e) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then Buyer shall not purchase or pay for such Excess MWh in such Settlement Interval, and Seller shall have the right to sell the Excess MWh into available markets and to retain all associated market revenues.

(f) Curtailement Payments. Seller shall receive no compensation from Buyer for Delivered Energy or Deemed Delivered Energy during any Curtailement Period, or to the extent of the applicable curtailement in the case of partial curtailements.

(g) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(h) Tax Credits. The Parties agree that the neither the Contract Price for any Contract Year nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point, and bid the Facility Energy [REDACTED] consistent with the EIRP Forecast (subject to paragraph (e) below) and consistent with Prudent Operating Practice. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) for Buyer's account.

(b) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for CAISO Costs and shall be entitled to all CAISO Revenues; provided, that, any net costs or charges assessed by the CAISO which are due to a Buyer Default shall be Buyer's responsibility. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller's responsibility.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(d) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for the Facility.

(e) EIRP Forecast. If either Party determines that an alternative forecast is more accurate than the EIRP Forecast, based upon no less than six months of recorded data comparing the alternative forecast, the EIRP Forecast, and the actual Facility Energy data, then, subject to the other Party's written consent, such alternative forecast may be used in place of the EIRP Forecast. Any such successor alternative forecast will itself be subject to periodic review by the Parties under the foregoing criteria. If the Parties are not able to agree upon a commercially reasonable replacement forecast, either Party may submit the matter to Dispute Resolution in accordance with Article 15 of this Agreement. For clarity, any alternative forecast implemented in accordance with this paragraph (e) will be used for determining Deemed Delivered Energy on a prospective but not retrospective basis.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY¹
[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

¹ **EBCE NTD: Seller to populate this exhibit.**

EXHIBIT F-2

AVAILABLE GENERATING CAPACITY²

[Available Generating Capacity, MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

² [EBCE NTD: Seller to populate this exhibit.]

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Contract Year, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Settlement Point, plus [REDACTED]

D = the Contract Price, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Lost Output**” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“**Replacement Ancillary Services**” means Ancillary Services available under the Ancillary Services portion of the Product that would have been generated by the Facility during the Performance Measurement Period, if any, for which the Replacement Ancillary Services are being provided.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

“**Replacement Energy**” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, (c) Replacement Green Attributes, and (d) Replacement Ancillary Services.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase 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.

As of _____[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1.1 The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

1.2 Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

1.3 Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.

1.4 The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

1.5 Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

1.6 The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

1.7 The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(i) The performance test for the Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**");

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority, a California joint powers authority
1111 Broadway, Suite 300
Oakland, CA 94607

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of East Bay Community Energy Authority, a California joint powers authority (“Beneficiary”), 1111 Broadway, Suite 300, Oakland, CA 94607, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on the date that is one year after the issue date (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] [*optional if bank needs fax confirmation -*, confirmed by [e-mail to [*bank email address*]] [telephone confirmation to the Issuer at [XXX-XXX-XXXX]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored. Under no circumstances will this Letter of Credit be extended beyond December 31, 2026.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1111 Broadway, Suite 300, Oakland, CA 94607. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to East Bay Community Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [*SELLER ENTITY*], a _____ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [_____] 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) termination or expiration of the PPA according to its terms. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity

or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance

with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
 Attn:
 Fax:

If delivered to Guarantor, to it at
 Attn:
 Fax:

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior

or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [*SELLER ENTITY*] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[*SELLER ENTITY*]

By: _____

Its: _____

Date: _____

EXHIBIT N
NOTICES

[SELLER'S NAME] ("Seller")	EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority ("Buyer")
<p>All Notices:</p> <p>Street: City: Attn:</p> <p>Phone: Facsimile: Email:</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org</p> <p>With a copy to:</p> <p>Hall Energy Law PC PO Box 10406 Portland, Oregon 97296 Attn: Stephen Hall Phone: (503) 477-9354 Email: steve@hallenergylaw.com</p>
<p>Reference Numbers:</p> <p>Duns: Federal Tax ID Number:</p>	<p>Reference Numbers:</p> <p>Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices:</p> <p>Attn: Phone: Facsimile: E-mail:</p>	<p>Invoices:</p> <p>Attn: Phone: E-mail: powerresources@ebce.org; ap@ebce.org</p>
<p>Scheduling:</p> <p>Attn: Phone: Facsimile: Email:</p>	<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com</p>
<p>Confirmations:</p> <p>Attn: Phone: Facsimile: Email:</p>	<p>Confirmations:</p> <p>Attn: Power Resources Phone: E-mail: powerresources@ebce.org</p>

<p><i>[SELLER'S NAME]</i> ("Seller")</p>	<p>EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority ("Buyer")</p>
<p>Payments: Attn: Phone: Facsimile: E-mail:</p>	<p>Payments: Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 E-mail: AP@ebce.org; jbartlett@ebce.org</p>
<p>Wire Transfer: BNK: ABA: ACCT:</p>	<p>Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: *****3199</p>
<p>With additional Notices of an Event of Default to:</p> <p>Attn: Phone: Facsimile: E-mail:</p>	<p>With additional Notices of an Event of Default to:</p> <p>Howard Chang, Chief Operating Officer 1111 Broadway, Suite 300 Oakland, CA 94607 Phone: (510) 809-7458 Email: hchang@ebce.org; legal@ebce.org</p> <p>With a copy to:</p> <p>Hall Energy Law PC PO Box 10406 Portland, Oregon 97296 Attn: Stephen Hall Phone: (503) 477-9354 Email: steve@hallenergylaw.com</p>
<p>Emergency Contact: Attn: Phone: Facsimile: Email:</p>	<p>Emergency Contact: Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 E-mail: hchang@ebce.org</p>

EXHIBIT O

[Intentionally Reserved]

EXHIBIT P
METERING DIAGRAM

EXHIBIT Q
WORKFORCE DEVELOPMENT

Seller shall use commercially reasonable efforts to achieve the following objectives related to the construction and operations of the Facility:

- (a) Seller or its construction contractor for the Facility shall either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility, or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity's existing labor agreements.
- (b) The workforce related to the construction and operations of the Facility shall be paid a prevailing hourly wage rate.

- [REDACTED]
- [REDACTED]
- [REDACTED]

Buyer is a not-for-profit public agency whose core mission includes local investment in the communities that it serves. Given that the Facility is planned to be located well outside the Buyer's service territory, Seller hereby pledges to contribute [REDACTED] [REDACTED] during the first five (5) years of the Delivery Term to various Community Development Initiatives that directly benefit the residents of Alameda County, California, to be selected by Seller. Examples of Community Development Initiatives could include programs focused on housing, education, workforce training, clean energy and environmental stewardship. Seller shall consult with Buyer to identify Community Development Initiatives that are of mutual interest.



OCEI and CA Renewable Energy Project Approvals

PRESENTED BY: Howard Chang

DATE: July 17, 2019



RFP Details

Oakland Clean Energy Initiative (OCEI)

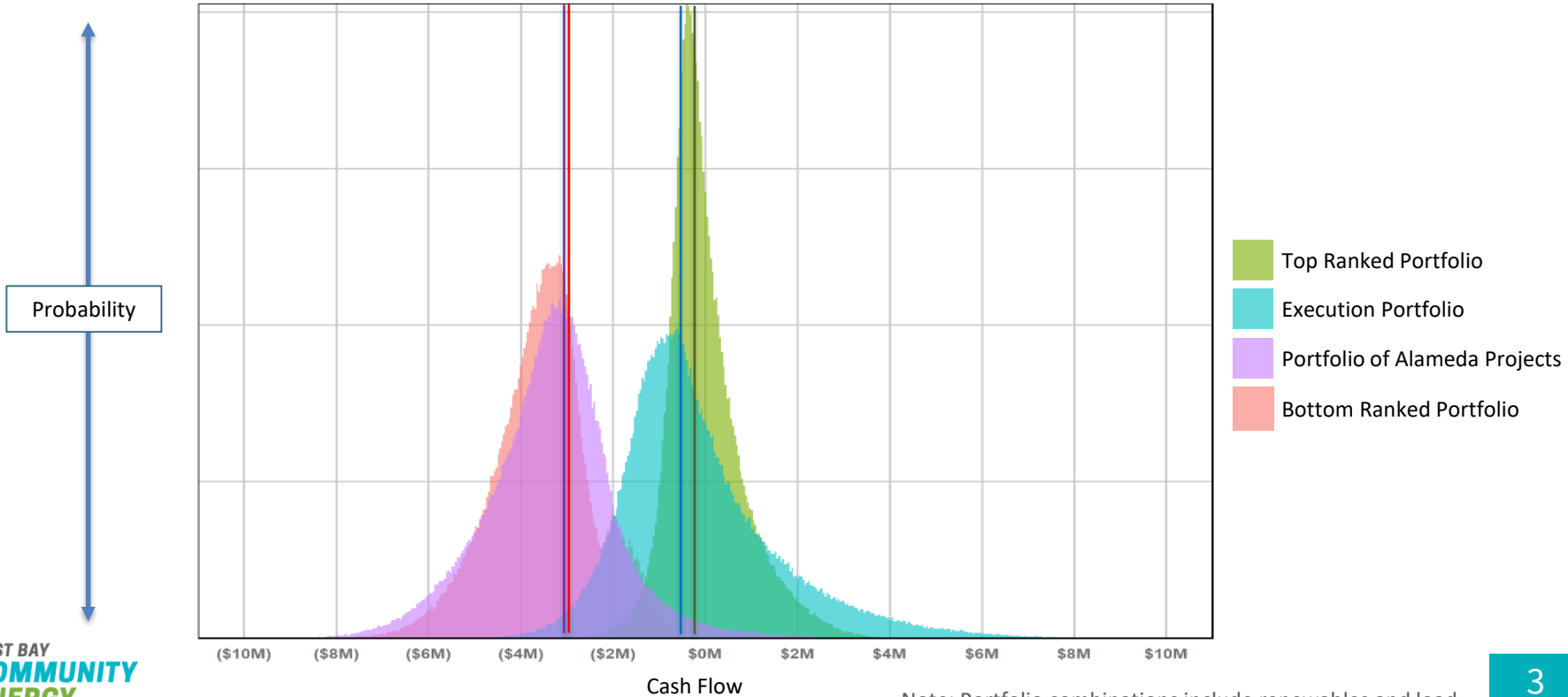
- First-of-its-kind joint RFP with PG&E issued in June 2018
- Purpose: To meet local transmission needs to enable the shut down of the natural gas peaker plant in Jack London Square
- EBCE sought local Greater Bay Area resource adequacy and PG&E sought reliability needs to serve as a virtual transmission solution
- RFP eligibility requires local resources located in downtown Oakland
- Minimum target of 20MW

CA Renewable Energy RFP (CA RFP)

- EBCE's first long-term (10+year) renewable energy solicitation issued in June 2018
- CA-located projects with a preference for new-build capacity
- Established standard offer and encouraged additional bid variations (e.g. size, term length, pricing structure, storage etc.)
- Received over 550 unique offers associated with 75 projects, representing approximately 20GW of nameplate capacity
- Minimum target of 20MW in Alameda County

Portfolio Analysis Impact

Comparison of monthly cash flows for best and worst ranked portfolio combination



Introduction

Seeking authorization to execute:

- 13-year 7MW Local Greater Bay Area Resource Adequacy (RA) contract with esVolta
 - Expected to begin delivering local resource adequacy in December 2021
- 10-year 0.5MW Local Greater Bay Area RA contract with SunRun (authorization to complete negotiation and execute)
 - Expected to begin delivering local resource adequacy in December 2021
 - Residential solar + storage installation on low-income multi-family units
- 15-year 112MWac Solar PV Power Purchase Agreement with Clearway Energy Group
 - Expected to be operational in March 2021 and will contract for all energy, RECs, and RA for a period of 15 years with hub-settlement pricing.
 - EBCE is also executing a Right of First Refusal exclusivity agreement with Clearway on a 43MW Alameda County based Wind project

esVolta RA Project Details



- Selected via Oakland Clean Energy Initiative RFP
- Standalone in front of the meter battery storage to deliver 7MW / 28MWh to deliver local Greater Bay Area Resource Adequacy
- 13-year contract
- Expected Initial Delivery Date is December 2021
- Delivery Point: Oakland Substation L, where there is a specific transmission need to allow for the closure of the downtown Oakland peaker plant
- The storage project is still undergoing the interconnection study process to evaluate feasibility
- Project is contingent on PG&E receiving CPUC approval for its contract related to reliability
- The contracting entity under esVolta is Tierra Robles Energy Storage, LLC

esVolta Company Overview



- esVolta is a developer/owner/operators of utility-scale energy storage projects in North America with a battery storage asset portfolio totaling 522 MWh including project in operations and PPA-contracted backlog. Customers include PG&E, SCE, and SDG&E
- Headquartered in Aliso Viejo, CA
- All necessary approvals have been received from esVolta to move forward on the project
- esVolta is well resourced to executed large-scale storage projects, with sponsorship by Powin Energy Corporation – a leading US manufacturer and integrator of energy storage systems, and Blue Sky Alternative Investments – a major international energy and infrastructure investor, as well as esVolta management
- The esVolta team is highly experienced with all aspects of energy storage project development, financing, and operations
- Committed to utilizing union labor and to the extent practicable local labor

SunRun RA Project Details



- Selected via Oakland Clean Energy Initiative RFP
- An aggregation of behind the meter solar + storage residential installations on low-income housing units in downtown Oakland and Alameda County to deliver 0.5MW local Greater Bay Area Resource Adequacy. RA will be provided in the form of proxy demand response
- 10-year contract
- Expected Initial Delivery Date is December 2021
- Project was initially proposed as a contingent offer and is now a standalone arrangement between SunRun and EBCE for RA. To maintain the project viability the geographic constraints were broadened to allow project locations across Alameda County
- Staff is seeking approval to complete negotiations and execute the contract. Additional terms need to be finalized to appropriately account for the proxy demand response structure and filing regulations

SunRun Company Overview



- Founded and headquartered in San Francisco, Sunrun has led the industry since 2007 with its solar-as-a-service model, which provides clean energy to households for little to no upfront cost and at a saving compared to traditional electricity
- Sunrun is a public company and the largest residential solar, storage, and home energy services company, with more than 233,000 customers
- Sunrun has deployed 1.6GW of residential solar and currently operates in 23 states, plus DC and Puerto Rico.
- In 2017, Sunrun expanded its offering to battery storage (over 5,000 units installed to date) and is the leading residential grid services provider.
- Sunrun has made a commitment to install 100 MW of solar on affordable multifamily housing in CA over the next 10 years.
- Committed to prevailing wage labor

Clearway Project Details



- 112MW PPA accounts for a majority of the new construction of a solar project called Rosamond Solar located in Kern County
 - PG&E DLAP hub-settled location, favorable basis risk profile of the project
 - Commercial Operation Date expected Mar 2021
 - Estimated to produce over 300,000MWhs of energy annually
- Interconnection agreement is signed, site control secured, and construction expected in early 2020
- Clearway is investing into EBCE's first Community Investment fund as well as committing to contributing staff volunteer hours for community development initiatives
- The contracting entity under Clearway is Golden Fields Solar III, LLC
- Clearway is committed toward utilizing union labor and prevailing wages

Clearway Energy Group



- In conjunction with the Rosamond PPA, EBCE is executing a Right of First Refusal agreement, which gives EBCE the exclusive right to procure all of the output of a proposed 43MW wind project in Alameda County
 - The Reclaimed Wind Project is currently in early to mid development stage and as the project moves forward in development EBCE will further evaluate a proposal
- Clearway Energy Group is one of the largest renewable energy companies in the US and is made of up the former NRG Renewables platform
- 4.1GW of projects in operations (over 330 projects) and over 9GW in development, including both solar and wind assets
- Large office in San Francisco (6 offices across the US) with 600 employees overall
- Clearway is owned by Global Infrastructure Partners, an infrastructure fund manager with \$51bn in assets under management

Next Steps

- Complete PPA negotiations (currently in active contract discussions) for additional projects and anticipate bringing forth contracts for board approval in June and July board meeting
- Board presentation on renewable energy integration and decarbonization
- IRP process to begin this summer to look at the 5-10 year time frame and EBCE renewable energy procurement targets above SB350 requirements
- Additional RFP/RFI planning to take place after completion of the CA Renewable Energy RFP focused on more specific shaped hourly needs and potential storage