Staff Report Item 11

To:	Ava Community Energy Authority
From:	Director of Origination, Power Resources
Subject:	Approving a Resolution of the Board of Directors of Ava Community Energy Authority Authorizing the CEO to Negotiate and Execute Agreements with Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC for Solar and Energy Storage
Date:	November 18, 2026

Summary/Recommendation

This Staff Report proposes the Board authorize the Chief Executive Officer ("CEO") to finalize negotiations and execute agreements with the contracting entities Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC ("Las Camas") for the multiple products described herein. In order to reduce emissions with renewable energy, support Ava's Resource Adequacy ("RA") compliance obligations and provide valuable energy optimization capabilities from energy storage, the proposed contracts are necessary.

Analysis and Context

Ava Community Energy ("Ava") operates under the jurisdiction of the California Public Utilities Commission ("CPUC") and must comply with its RA and renewable energy compliance obligations. The proposed transactions are structured to support Ava's RA compliance obligations and contribute to the Risk Oversight Committee-approved hedging strategies for both energy/financial transactions and for RA. They are also intended to reduce greenhouse gas emissions.

The 2026 Long-Term Resource Request for Offers ("RFO") was Ava's sixth long-term contract solicitation. The RFO was launched in May 2026. The RFO sought contracts with renewable energy and battery storage projects, with a preference for projects located in California, and

more preferentially, those located in Alameda or San Joaquin County. Ava's objective was to drive investments in new renewable and energy storage projects within our jurisdiction and throughout California, while securing affordable resources to manage future power price risk. Ava received a very healthy response to its RFO, both in volume and quality of projects and proposals. Ava administered the RFO and conducted robust analytics, using internal tools and the cQuant.io valuation platform to calculate the net present value of proposed projects and determine the optimal portfolio to meet its objectives.

In addition to the RFO submissions, Ava has received and evaluated numerous offers outside of the RFO and evaluated them with a similar evaluation process.

Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC proposed a co-located 200 megawatt ("MW") solar project and a 200 MW/800 megawatt-hour ("MWh") battery storage project (the "Las Camas Project") located in Merced County, California, to be developed by EDP Renewables.

The proposed Las Camas Project was offered to Ava and negotiated bilaterally. It was, nonetheless, evaluated for portfolio fit and value/risk against projects offered in the May 2026 Ava & San Jose Clean Energy ("SJCE") Long-Term Resource RFOs, and was found to be among the top ranked projects for cost and portfolio fit to Ava's supply portfolio.

The proposed agreements will provide Ava with the full 200MW of solar paired with 200MW/800MWh renewable energy, resource adequacy, renewable energy credits, ancillary services and storage optimization capabilities. Ava will enter into a 15-year agreement for the storage portion of the project and 16-year agreement for the solar portion of the project to align contract expiration dates. The planned commercial operation date is June 30, 2029 for the solar portion of the facility, and June 30, 2030 for the energy storage portion of the facility, to be developed by EDP Renewables..

Staff seeks Board approval for the CEO to continue negotiations and when complete, execute the solar and storage power purchase agreements with Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC.

Attachments

A. Resolution of the Board of Directors of Ava Community Energy Authority Authorizing the Chief Executive Officer to Negotiate and Execute Agreements with Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC for Solar and Energy Storage
B. PowerPoint presentation
C. Sample Las Camas Energy Storage LLC Master Agreement
D. Sample EDPR CA Solar Park III LLC Agreement

RESOLUTION NO. R-2026-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE AGREEMENTS WITH LAS CAMAS ENERGY STORAGE LLC AND EDPR CA SOLAR PARK III LLC FOR SOLAR AND ENERGY STORAGE

WHEREAS Ava Community Energy Authority ("Ava") was formed as a community choice aggregation agency ("CCA") on December 1, 2016, under the Joint Exercise of Powers Act, California Government Code sections 6500 *et seq.,* among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The Cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the Joint Powers Agreement ("JPA") in March of 2020. The City of Stockton was added as a member to Ava in September of 2022. The City of Lathrop was added as a member to Ava in October of 2023. San Joaquin County was added as a member to Ava in July 2024. On October 24, 2023, Ava legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception;

WHEREAS Ava issued the 2026 Long-Term Resource Request for Offers ("RFO") in May 2026 and observed bi-lateral offers simultaneously;

WHEREAS Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC proposed a co-located 200 Mega-Watt ("MW") and 200 MW/800 Mega-Watt hour ("MWh") battery storage project (the "Las Camas Project") located in Merced County, CA, to be developed by EDP Renewables;

WHEREAS the Las Camas Project was evaluated against offers in the 2026 RFO, and Ava found it to be among the top ranked projects for cost and portfolio fit to Ava's supply portfolio;

WHEREAS the solar portion of the Las Camas Project is expected to begin delivery on June 30, 2029 and the storage portion of the Las Camas Project is expected to begin delivery on June 30, 2030, to provide renewable energy credits, resource adequacy and storage tolling to Ava Community Energy for a period of fifteen (15) years where the solar portion of the project may be extended to sixteen (16) years.

WHEREAS Ava staff is negotiating a 200 MW Solar and 200MW/800MWh Storage Power Purchase Agreement with Las Camas Energy Storage LLC and EDPR CA Solar Park III LLC (together "EDP Renewables").

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

Section 1. The Chief Executive Officer is hereby authorized to negotiate and execute, subject to approval of General Counsel, the Las Camas Energy Storage LLC Master Agreement and EDPR CA Solar Park III LLC Agreement for 200 MW of solar and 200 MW/800 MWh of battery storage for a fifteen (15) year term with the possibility to extend the solar portion of the project to sixteen (16) years. The Las Camas Project is to be developed by EDP Renewables. The final agreements will be structured similarly to the documents attached to the Staff Report associated with this Resolution.

ADOPTED AND APPROVED this 18th day of November, 2026.

_____

Betsy Andersen, Chair

ATTEST:

_____

Adrian Bankhead, Clerk of the Board

Attachment Staff Report Item 11B

Ava Community Energy

Bilateral Transaction for Approval – Las Camas

Scott Harding | November 18th, 2026

Agenda

1. 2026 RFO Process
2. EDPR Las Camas Project Overview
3. Position Impacts – How does Las Camas fit with Ava's portfolio?
4. Las Camas impacts on Positions
   - Positions (Energy/RA/RECs)
   - Markets/RFO
   - Uncertainty of PCIA – What will Ava decide
   - Risk Analysis

2026 Request for Offers (RFO)

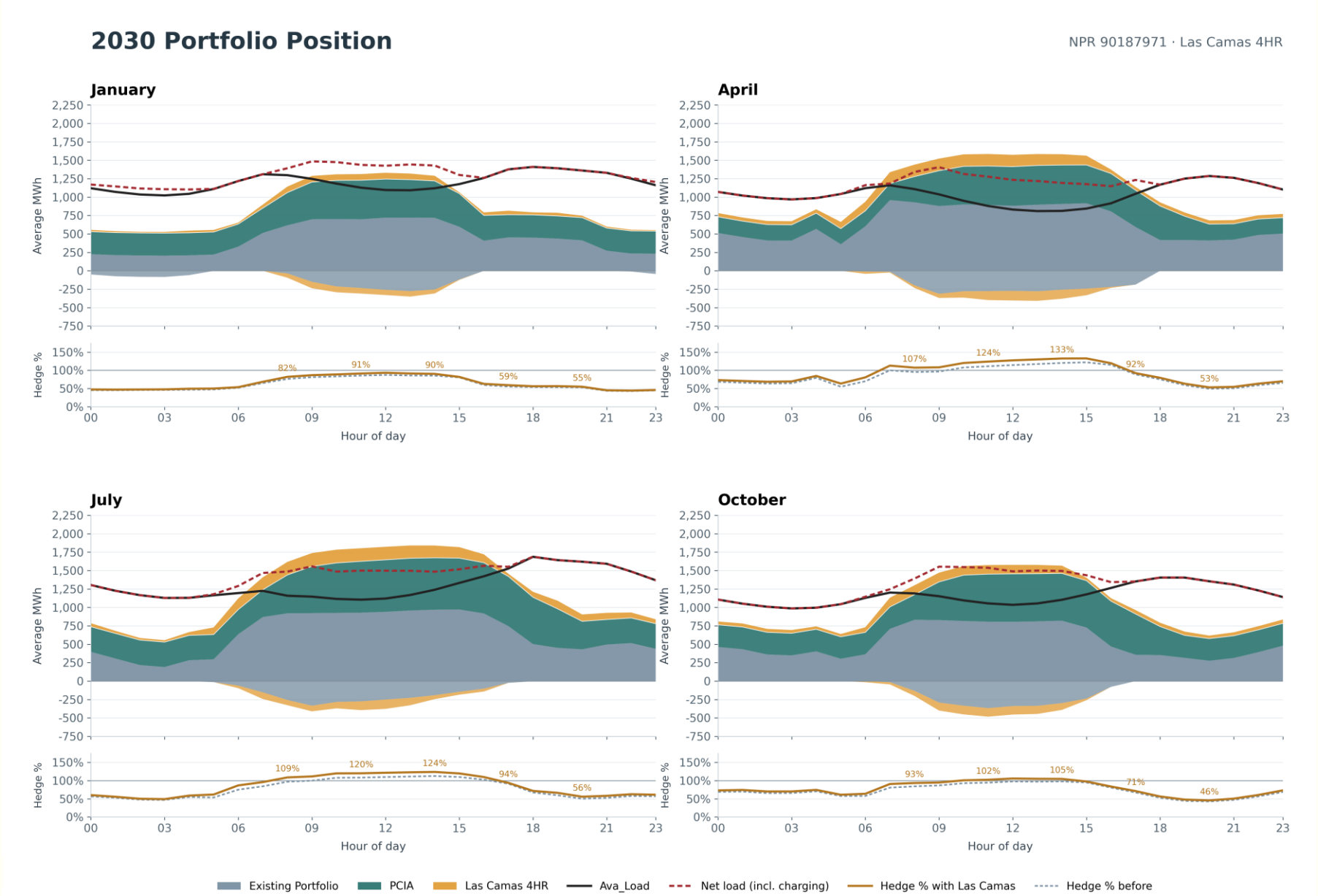
- Ava/SJCE issued in May 2026 seeking offers for long-term renewable/clean energy and storage resources with Resource Adequacy (RA) and environmental attributes (renewable energy certificates, or RECs)
- Resources should contribute to Renewable Portfolio Standard (RPS) & Integrated Resource Plan (IRP) obligations under SB 350 & SB 100, & CPUC's procurement mandates and Decision 26-02-057 Requiring 2029-2032 Electric Resource Procurement and Transmitting Portfolios for 2026-2027 Transmission Planning Process
- Evaluation process - Projects evaluated based on the following set of criteria:
  - Counterparty Execution Risk
  - Offer Competitiveness
  - Development Status Risk
  - Local Business Enterprise
  - Small Business Enterprise
- 47 companies 68 different projects with >300 offer variants
- Las Camas was offered bilaterally, but was evaluated with the other RFO offers and was found to be among the best offers

Proposed Project – Las Camas

- Two Agreements for one facility:
  1. 200 MW PV with EDPR CA Solar Park III LLC and an Expected COD 6/30/2029
  2. 200 MW / 4hr BESS with Las Camas Energy Storage LLC and an Expected COD 6/30/2030
- Delivery Term: 15 years with the possibility to extend the solar portion end date to match the end date of the storage portion
- Location: Merced County
- Delivery Point: PG&E 230 kV Los Banos Substation
- Structured similarly to Sonrisa (approved by the Board July 2025) with some improvements
- EDP Renewables (EDPR) has 12.3GW operational in US and 2 GW in near-term development
- EDPR has committed to using union labor for construction of the Las Camas Project

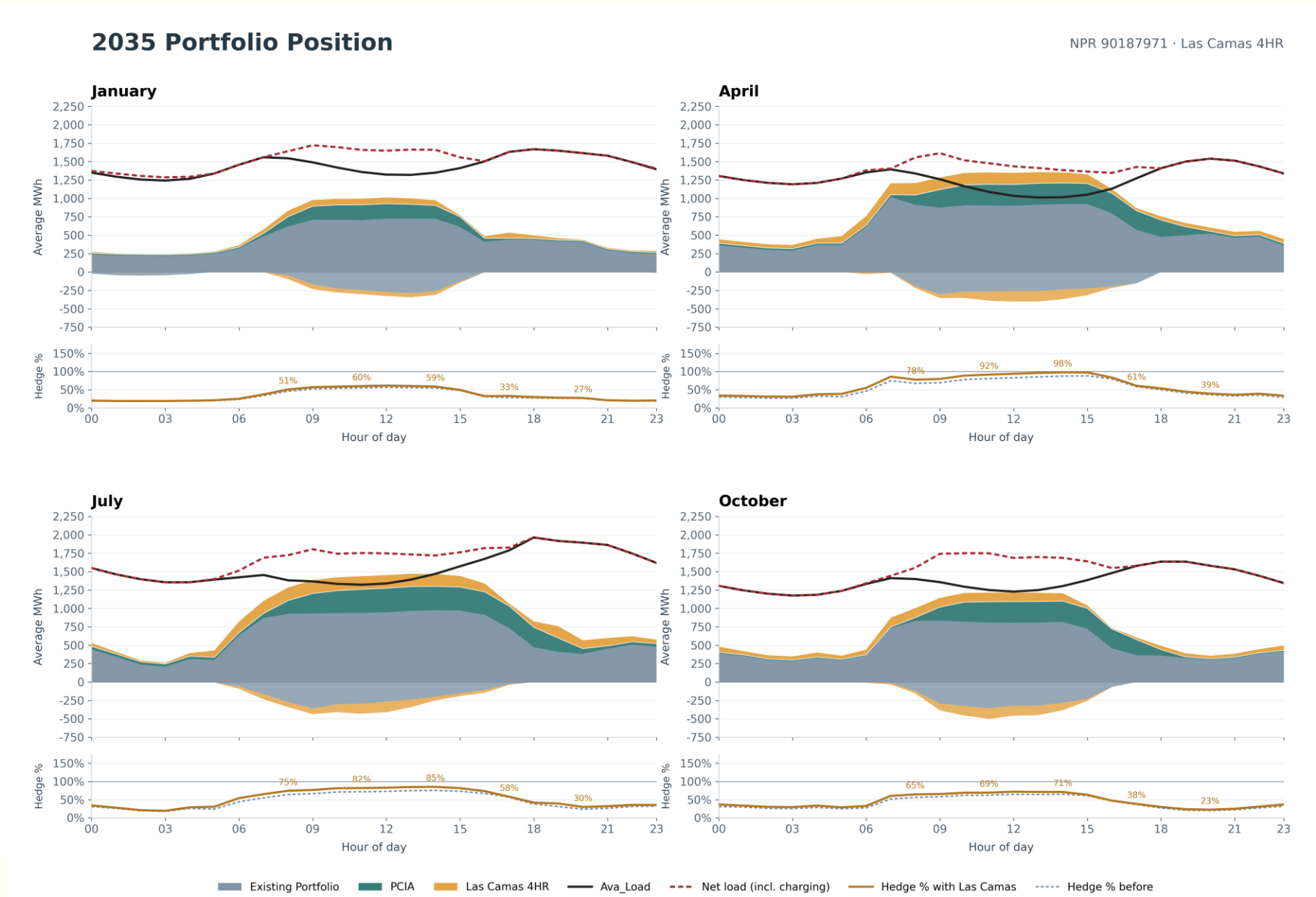
2030 Portfolio Position with Las Camas 200MW (4HR)

HE9–16 matched hedge %, before→with Las Camas: Jan 52→57% Apr 78→88% Jul 69→78% Oct 61→67%



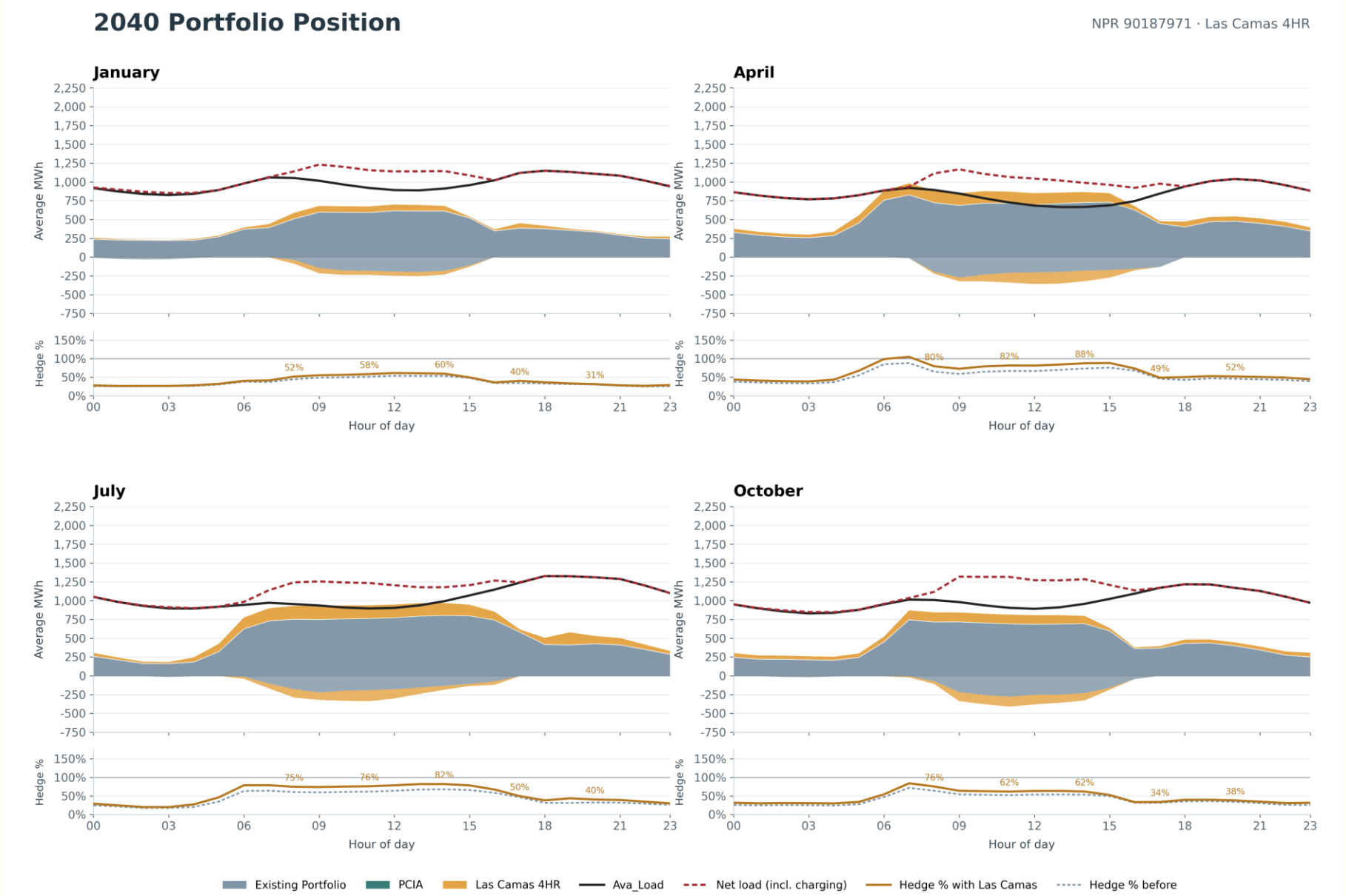
2035 Portfolio Position with Las Camas 200MW (4HR)

HE9–16 matched hedge %, before→with Las Camas: Jan 52→57% Apr 78→88% Jul 69→78% Oct 61→67%

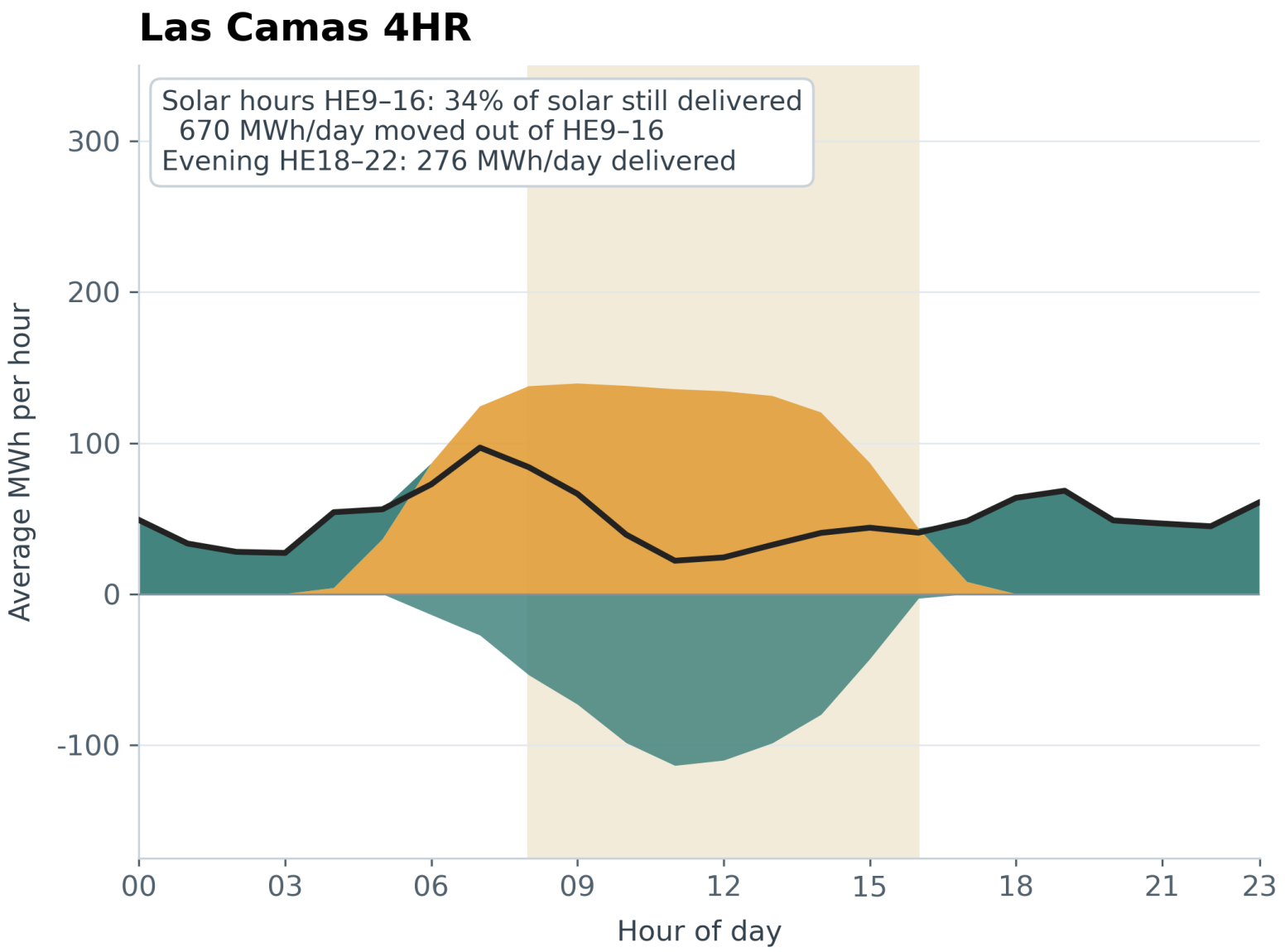


2040 Portfolio Position with Las Camas 200MW (4HR)

HE9–16 matched hedge %, before→with Las Camas: Jan 50→56% Apr 65→78% Jul 60→74% Oct 53→62%



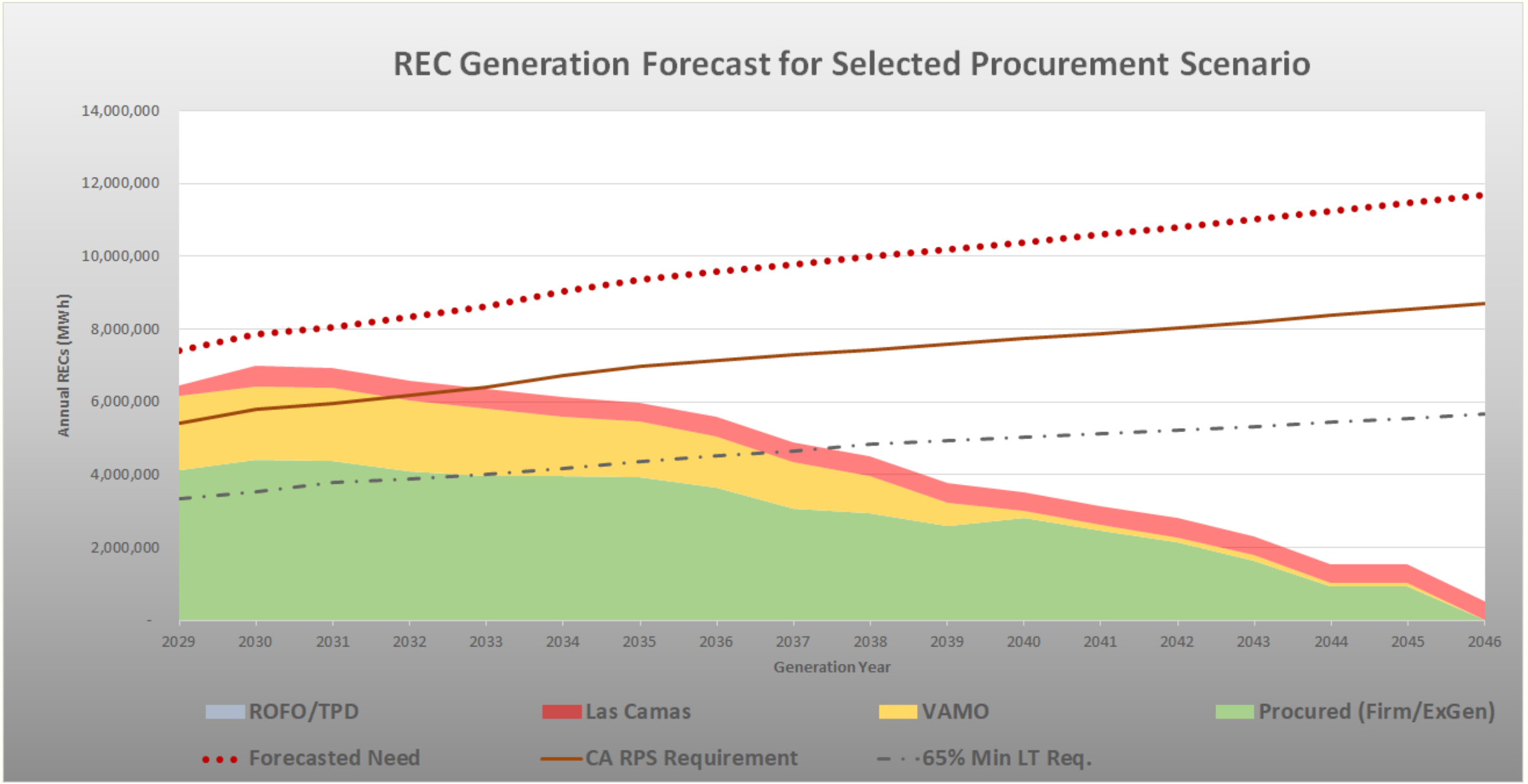
Las Camas Variants: Where the Energy Lands (2035 Avg Hrly)



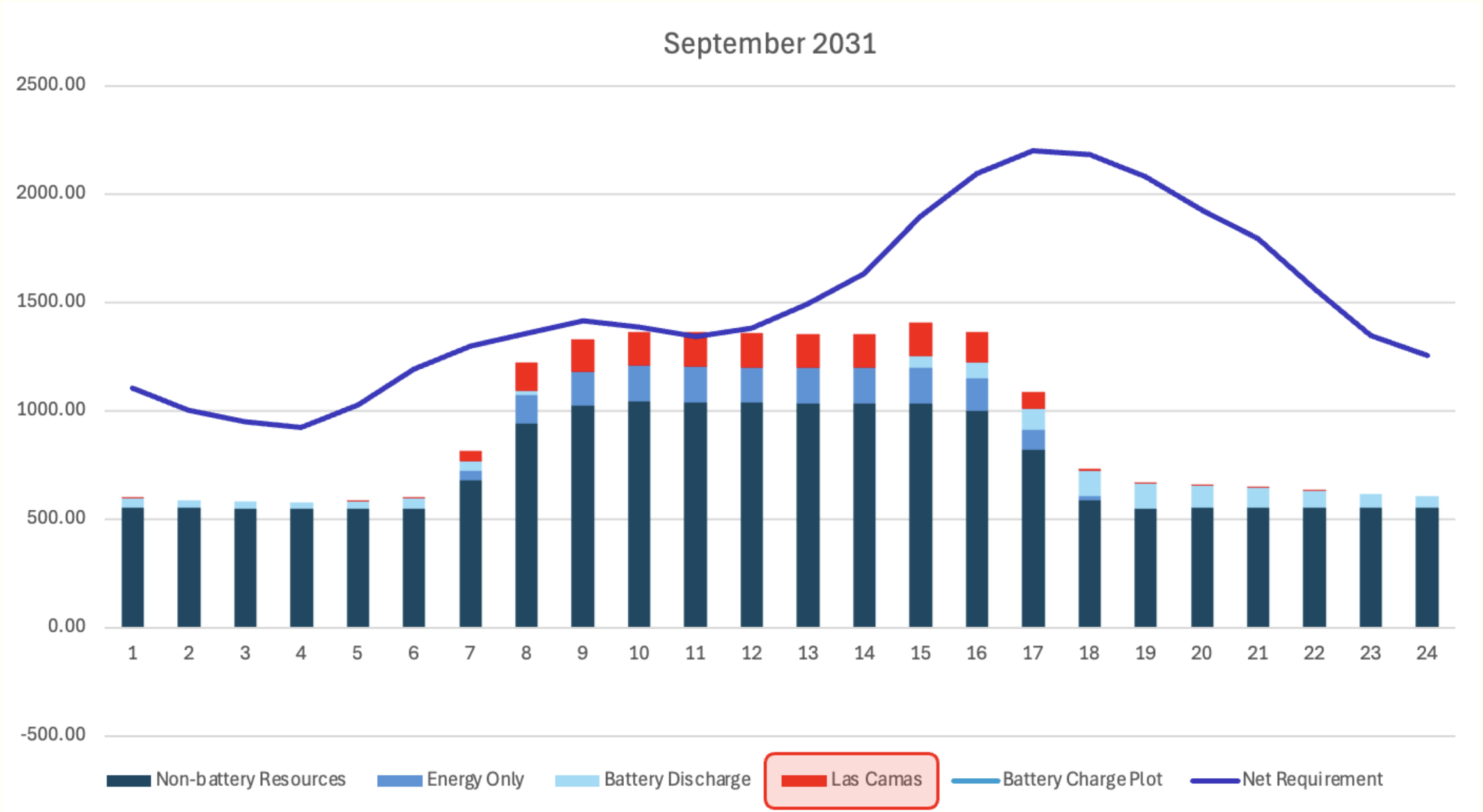
- Gold: Solar Gen
- Teal>0: Battery Discharge
- Teal<0: Battery Charge
- Black Line: Net Delivered

REC Procurement Plan and Las Camas

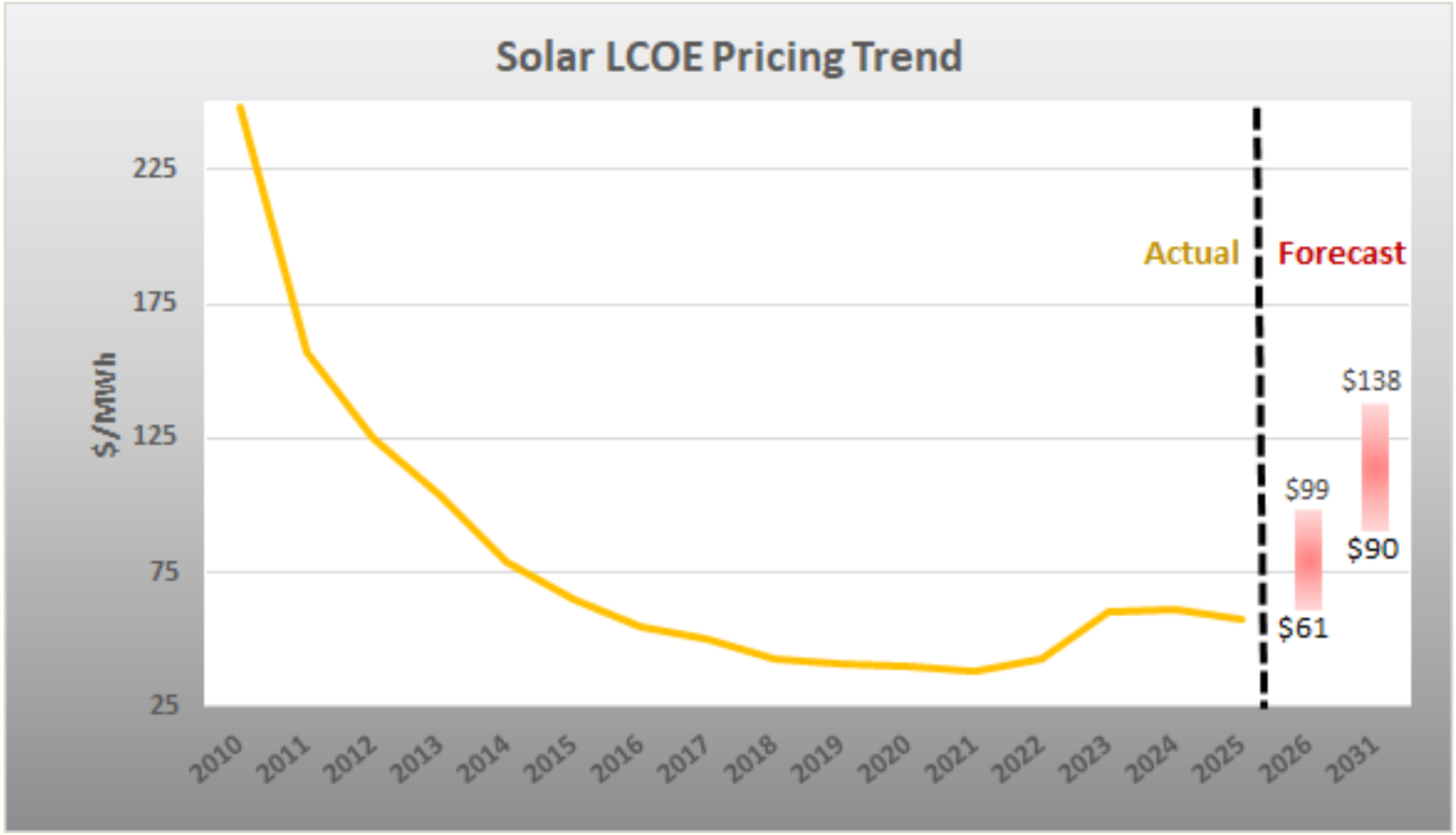
Attachment Staff Report Item 11B



RA Portfolio Impacts – Limited Space to Buy Solar

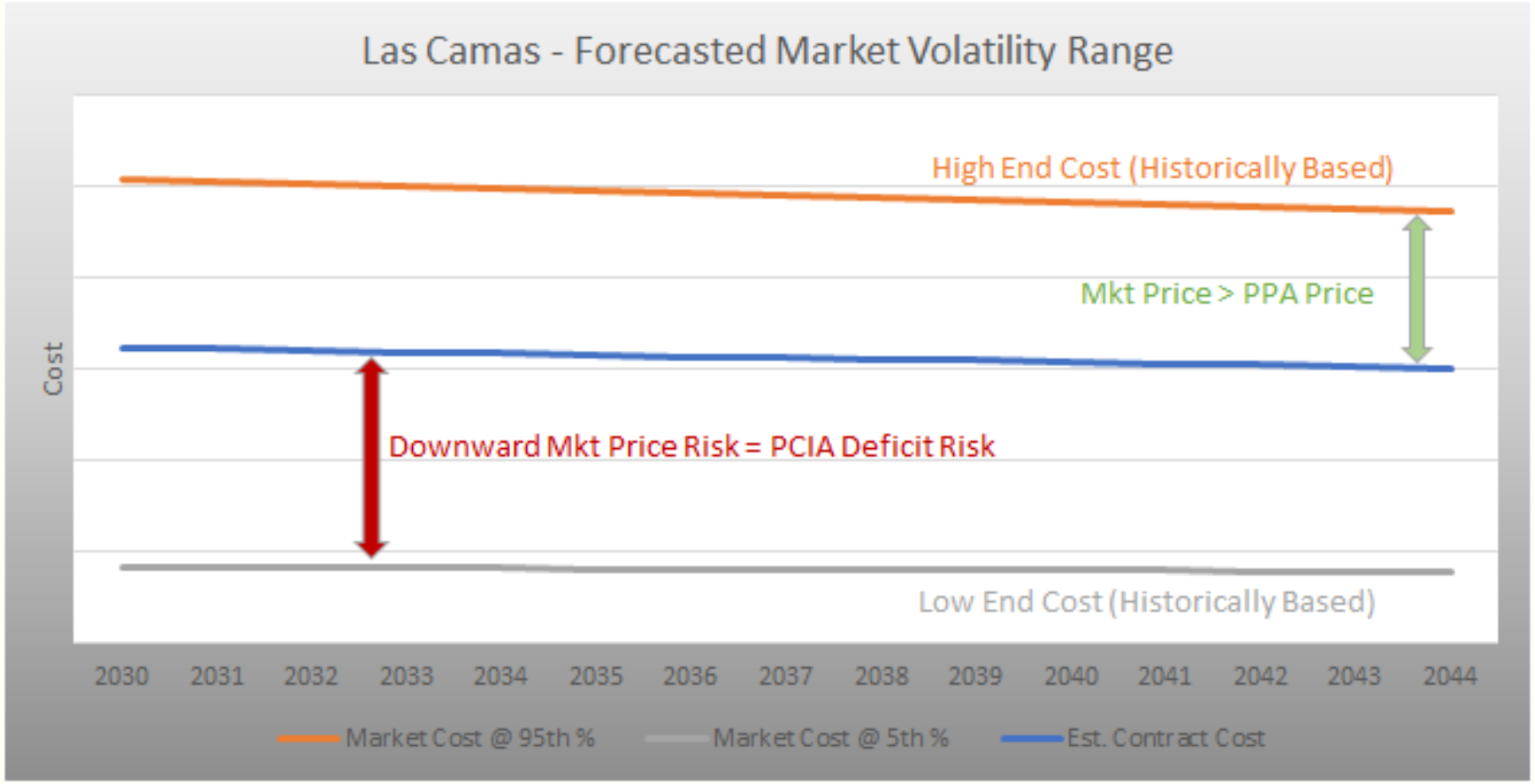


PPA Market Trends – Rising PPA Prices



- Las Camas = best project *available*
- Unlikely to contract new development projects for 2-3 years:
  - Prices are high - - 2019 prices were $21-30/MWh
  - Forward prices assumed for the economic evaluation are unreliable
- **A higher PPA price results in greater likelihood of a negative value outcome**

Risk Analysis: Higher PPA Pricing and Market Direction



- **Ava is "indexed" to PG&E**
  - This creates risk mitigation opportunities and it creates risk
  - This deal acts as a hedge against rising *costs*, but not against PCIA falling market risk
    - i.e. A falling price market can cause greater possibility of a PCIA deficit from this portion of contracted energy

QUESTIONS?

EDP DRAFT
28 OCTOBER 2026

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Las Camas Energy Storage LLC ("**Seller**")

Buyer: Ava Community Energy Authority, a California joint powers authority ("**Buyer**")

Description of Facility: A 200 MW_{AC} / 800 MWh-$_{AC}$ co-located battery energy storage facility as further described below, located in Merced County, in the State of California, as further described in Exhibit A (the "**Facility**").

Milestones:

Milestone	Date for Completion
Evidence of Site Control	[redacted]
Executed Interconnection Agreement	[redacted]
Obtain Federal and State Discretionary Permits	[redacted]
Network Upgrades Completed	[redacted]
Procure Major Equipment	[redacted]
Construction Start Date	[redacted]
Initial Synchronization	[redacted]
Expected Commercial Operation Date	[redacted]
Full Capacity Deliverability Status Obtained	12/31/2028

The Parties acknowledge that each Milestone identified as "Complete" in the table above has been satisfied as of the Effective Date.

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years.

Storage Contract Capacity: 200 MW for four (4) hours

Storage Contract Output: 800 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	
3	
4	
5	
6	
7	

8	[redacted]
9	
10	
11	
12	
13	
14	
15	

Contract Price

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	[redacted]

Metering Arrangement: CAISO Metered Entity

Facility Configuration: The Facility shall be operated as a co-located resource with the Generating Facility.

Delivery Point: The Delivery Point shall be the Facility PNode, each as further described in Exhibit R; provided that, for purposes of calculating Electrical Losses and for Facility design, the Facility PNode shall be deemed to be located at the Interconnection Point.

Product:

- ☑ Discharging Energy
- ☑ Storage Capacity
- ☑ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☑ Full Capacity Deliverability Status
- ☑ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security: [redacted]
Performance Security: [redacted]

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Exhibit O	Storage Capacity Tests
Exhibit P	Storage Facility Availability
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Additional Seller Commitments
Exhibit T	Reserved
Exhibit U	Reserved
Exhibit V	[redacted]
Exhibit W	[redacted]

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("**Agreement**") is entered into as of the last dated signature on the signature page hereto (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

WHEREAS, the Parties recognize that certain rights and obligations exist between and among the Parties to this Agreement and the Solar Agreement, as described herein.

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.

"**Administrative NQC Reduction**" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to a reduction that has been generally applied to resources materially similar to the Facility in terms of resource duration and/or operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee" and "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least [redacted] 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 [redacted] 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, products and other attributes, if any, associated with the Facility.

"**Availability Adjustment**" has the meaning set forth in Exhibit P.

"**Available Storage Capacity**" means the Storage Capacity that is mechanically available to charge and discharge Energy and to provide Ancillary Services in accordance with Exhibit P.

"**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. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Default**" means an Event of Default of Buyer. "**CAISO**" means the California Independent System Operator Corporation or any successor entity performing similar functions.

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

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

"**CAISO Operating Order**" means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of energy that the Facility can receive

from 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.

"**CEQA**" has the meaning set forth in Section 13.1(g).

"**Change in Compliance Law**" has the meaning set forth in Section 3.12.

"**Change of Control**" means, except in connection with transactions of equity interests or capital stock of Seller or Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than [redacted] 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; andownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to charge with Charging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice.

"**Claim**" has the meaning set forth in Section 17.2(a).

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

"**COD Delay Damages**" means an amount equal to [redacted].

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

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

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

"**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 19.1.

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

"**Construction Delay Damages**" means an amount equal to means an amount equal to [redacted]

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is the Storage Rate.

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

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

"**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, Fitch or Moody's.

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Charging Energy or Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or

warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

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

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

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

["**Cycle Equivalent(s)**" means a quantity of Discharging Energy (in MWh) equal to the Storage Contract Output. A combination of Partial Cycles with total MWh of Discharging Energy equal to the Storage Contract Output is also one (1) Cycle Equivalent.]

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

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

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

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

"**Deemed Delivered RA**" means for each hour of the Relevant Day in the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) a Force Majeure Event, (ii) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility, or (iii) Buyer Default.

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

"**Delivered RA**" means for each hour of the Relevant Day in the applicable Showing Month the sum of (a) the Net Qualifying Capacity of the Facility for each month able to be shown on Buyer's monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, and (b) Deemed Delivered RA and (c) Replacement RA.

"**Delivery Point**" has the meaning set forth on the Cover Sheet.

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

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

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

"**Discharging Energy**" means all energy delivered to the Delivery Point from the Facility, 1 as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy and Seller will not take title to or risk of loss with respect to Charging Energy at any time.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

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

"**Effective Date**" has the meaning set forth on the Preamble.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

"**Electrical Losses**" means all transmission or transformation losses between (i) the Facility Meter and the Delivery Point for Discharging Energy, and (ii) the Delivery Point and the Facility Meter for Charging Energy, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

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

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

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

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

[redacted]

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

"**Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy and the amount of Discharging Energy.

"**FCDS Delay**" has the meaning set forth in Section 3.7.

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

"**Fitch**" means Fitch Ratings Ltd., or its successor.

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

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility that prevents Seller from receiving Charging Energy or making Discharging Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Full Capacity Deliverability Status**" has the meaning as such term is defined 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.

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

"**Generating Facility**" means the "Facility," as such term is defined in the Solar Agreement.

"**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.

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

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

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

"**Guaranteed RA Amount**" means at all times after the Facility has received Interim Deliverability Status or Full Capacity Deliverability Status, the Qualifying Capacity of the Facility (as limited by the Facility's Interim Deliverability Status, as applicable) minus Administrative NQC Reductions for each hour of the Relevant Day in the applicable Showing Month.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.8.

"**Guarantor**" means, with respect to Seller, (a) an Affiliate of Seller with an Investment Grade Credit Rating, or (b) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [redacted], (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) 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.

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

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 17.1.

"**Initial Synchronization**" means the initial delivery of Discharging Energy to the Delivery Point.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test by the Parties' mutual agreement, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means that certain Large Generator Interconnection Agreement dated as of March 11, 2021 (Q1382) and March 28, 2022 (Q1456) associated with CAISO Queue positions Q1382 and Q1456 among Seller's Affiliate, the CAISO, and the

Participating Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

"**Interim Deliverability Period**" has the meaning set forth in Section 3.7.

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

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

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 and 48E of the United States Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to eligible property for which Seller, as the owner of the Facility is eligible.

"**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, 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), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person providing financing or refinancing for the Facility, 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 reasonably acceptable to Buyer with a U.S. branch, and with such bank (a) 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 and having assets of at least $10 Billion or (b) being reasonably acceptable to Buyer. The Letter of Credit(s) shall be 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.

"**Limited Assignee**" has the meaning set forth in Section 14.5.

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

"**Major Equipment**" means the primary equipment and components required for the design, construction, commission, and operation of the Facility, including transformers, switchgear, medium-voltage collection equipment, battery cells, battery racks, battery inverters/power conversion systems, energy management hardware systems, SCADA/communications systems, and all other equipment with materially similar cost, lead time, or criticality to Facility operations.

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

"**Master Resource Database**" refers to the CPUC's official database of resources eligible to sell RA that includes their key attributes and in which resources must be fully represented to be eligible for use in the CPUC's 24-hour slice RA showing. The Master Resource Database is further described in CPUC Decision D.23-04-010 as may be updated from time to time.

"**Maximum Charging Power**" has the meaning set forth in in Exhibit A.

"**Maximum Discharging Power**" has the meaning set forth in in Exhibit A.

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

"**Minimum Efficiency Rate**" means seventy-five percent (75%).

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

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

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

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

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility's PNode is less than Zero dollars ($0).

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

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

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

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

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

"**Notice of Claim**" has the meaning set forth in Section 17.2.

"**Notification Deadline**" has the meaning set forth in Section 3.8(c).

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

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

[**"Partial Cycle**" means a quantity of Discharging Energy (in MWh) that is less than [redacted] of the Storage Contract Output.]

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is

interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

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

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

"**Permitted Transferee**" means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [redacted] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) Either (i) has at least [redacted] experience in the ownership and operations of power generation facilities, (ii) has at least [redacted] experience in the ownership and operations of storage facilities similar to the Facility, or dedicated battery energy storage facilities similar to the Facility, or (iii) has retained a third-party with such operations 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.

"**Planned Outage Schedule**" has the meaning set forth in Section 4.6(a).

"**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 with integrated storage 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 with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable

reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month equal to the product of (i) the RA Shortfall Amount, and (ii) the Replacement Price; provided that the RA Deficiency Amount shall not exceed a [redacted]

"**RA Shortfall Amount**" shall be determined by first, calculating the difference of the Guaranteed RA Amount *minus* the Delivered RA for each hour of the Relevant Day in the applicable Showing Month and, second, selecting the highest hourly difference for any hour of the Relevant Day in the applicable Showing Month as determined pursuant to step one of this calculation, which such highest hourly value shall be the "RA Shortfall Amount" for purposes of calculating an RA Deficiency Amount for such Showing Month; provided, if the CPUC adopts another methodology for calculating a load serving entity's procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month commencing after the Commercial Operation Date during which there is an RA Shortfall Amount, subject to Section 3.7.

"**Real-Time Forecast**" means any Notice of any change to the Available Storage Capacity pursuant to Section 4.3(d).

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

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

"**Relevant Day**" means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements.

"**Remedial Action Plan**" has the meaning in Section 2.4.

"**Renewable Energy Incentives**" means: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including ITCs and other credits under Sections 38, 45, 45Y, 46, 48, and 48E 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.

"**Renewable Rate**" has the meaning set forth in the Solar Agreement.

"**Replacement Price**" means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Capacity Attributes not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Capacity Attributes, or at Buyer's option, (b) the market price for such replacement Capacity Attributes not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent or superior to those that would have been provided by the Facility with respect to the applicable Showing Month in all respects, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, unless Buyer consents to accept Replacement RA from another facility that does not provide equivalent or superior Resource Adequacy Benefits; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the Notification Deadline.

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

"**Resource Adequacy Rulings**" means CPUC Decisions ("D") D.04-10-035, D.05-10-042, D.06-02-007, D.06-04-040, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.11-06-022, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, D.17-06-027, D.18-06-030, D.18-06-031, D.19-06-026, D.20-06-002, D.20-06-028, D.20-06-031, D.20-12-006, D.21-06-029, D.21-07-014, D.22-03-034, D.22-06-050, D.23-04-010, D.23-06-029, D.24-06-004, D.24-12-003, D.25-06-048, Resolution Nos. E-4017, E-4195, and E-4907 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such rulings, decisions, or resource adequacy Laws may be amended or modified from time to time throughout the Contract Term.

"**Restricted Maintenance Period**" has the meaning set forth in Section 4.6(a).

"**ROFO Period**" has the meaning set forth in Section 15.1.

"**Round-Trip Efficiency Factor**" means (a) if the Efficiency Rate is greater than or equal to the Minimum Efficiency Rate, [redacted] or (b) if the Efficiency Rate is less than the Minimum Efficiency Rate, [redacted]

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

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a

corollary meaning.

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

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

"**Security Interest**" has the meaning set forth in Section 8.8.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Capacity Attributes, and Renewable Energy Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

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

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

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" means that Seller: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (c) is the holder of an easement or an option for an easement, right-

of-way grant, or similar instrument with respect to the Site; or (d) has rights through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

"**Solar Agreement**" means that certain Renewable Power Purchase Agreement, dated as of the Effective Date, between Solar Seller and Buyer.

"**Solar Seller**" means EDPR CA Solar Park III LLC, which is an Affiliate of Seller.

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

"**Station Use**" means energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Facility to discharge electric energy that can be sustained for four (4) consecutive hours, subject to the condition that energy delivered during CAISO directed Ramp Rates shall be considered Energy delivered at rated capacity, and (b) any other products that may be developed or evolve from time to time during the Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to charge and discharge electric energy.

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

"**Storage Contract Capacity**" means the total capacity (in MW) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be reduced pursuant to Section 5 of Exhibit B and subsequently adjusted from time to time pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test; provided that for all purposes under this Agreement the Storage Contract Capacity shall never exceed the amount of capacity initially set forth on the Cover Sheet, as may have been reduced pursuant to Section 5 of Exhibit B.

"**Storage Contract Output**" means the total output (in MWh) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be reduced pursuant to Section 5) of Exhibit B and subsequently adjusted from time to time pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test; provided that for all purposes under this Agreement the Storage Contract Output shall never exceed the amount of capacity initially set forth on the Cover Sheet, as may have been reduced pursuant to Section 5 of Exhibit B.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**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 ITCs and any other state, local or federal production or other tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Facility or any part thereof.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

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

"**Third-Party Independent Evaluator**" means a qualified professional experienced in the appraisal of facilities similar to the Facility, with selection mutually agreed by the Parties or absent such agreement, a qualified professional experienced in the appraisal of facilities similar to the Facility with selection mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Charging Energy and Discharging on behalf of Seller or Buyer to or from the Delivery Point.

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

"**Ultimate Parent**" means [redacted]

"**Uninstructed Imbalance Energy**" has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the 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 set forth herein ("**Contract Term**"); *provided*, *however*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**.

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 Battery Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller (or Seller's Affiliate) 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 (or Seller's Affiliate) 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) Intentionally Omitted;

(e) Intentionally Omitted;

(f) Intentionally Omitted;

(g) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

(h) Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of the following conditions:

(i) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(ii) Seller has complied with the Prevailing Wage Requirement set forth in Section 13.4, and provided reasonably requested documentation demonstrating such compliance;

(iii) Insurance requirements for the Facility pursuant to Article 18 have been met, with evidence provided in writing to Buyer;

(iv) Intentionally Omitted; and

(v) Seller has satisfied obligations set forth in Exhibit S that are reasonably capable of being completed prior to the Commercial Operation Date, and provided reasonably requested documentation demonstrating such compliance.

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

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

For the avoidance of doubt, the commencement of the delivery term under Section 2.2(a) of the Solar Agreement ("**Solar COD**") shall not be a condition precedent to the commencement of the Delivery Term under this Agreement; provided that for any portion of the Delivery Term that is prior to the Solar COD, (i) the applicable Storage Rate will be reduced by $3.00/kW-mo.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (b) each calendar month thereafter until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report; provided, that if Seller misses the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, Seller shall provide updated Progress Reports to Buyer on a weekly basis, or as otherwise agreed. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled telephonic or video-conferenced meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones and delivery of Specified Equipment within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed

Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the date ninety (90) days after the Guaranteed Commercial Operation Date (including any extension thereof); *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones 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. Buyer's sole remedy for Seller's failure to achieve any Milestone (other than the Guaranteed Construction Start Date, Expected Commercial Operation Date, and Guaranteed Commercial Operation Date) shall be Seller's timely delivery of a Remedial Action Plan pursuant to this Section 2.4.

ARTICLE 3
PURCHASE AND SALE

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

3.2 **Reserved**.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, except as set forth in Section 4.10, any payments or charges related to such Imbalance Energy shall be accounted for pursuant to Exhibit D.

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 **Reserved**.

3.6 **Reserved**.

3.7 **Capacity Attributes**. Seller or an Affiliate of Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process and the Facility shall obtain Full Capacity Deliverability Status by the Commercial Operation Date and maintain Full Capacity Deliverability Status during the Delivery Term; provided, that Seller's ability to obtain Full Capacity Deliverability Status for the Facility is contingent upon Network Upgrades being constructed and commissioned by the Participating Transmission Owner (any period during which such Network Upgrades are not complete, an "**FCDS Delay**"), and that Seller's obligation to obtain and maintain Full Capacity Deliverability Status for the Facility shall be delayed until the date upon which any required Network Upgrades are complete and the Facility is eligible to receive and maintain Full Capacity Deliverability Status for the remaining Delivery Term. During any FCDS Delay between the Commercial Operation Date and the date upon which Full Capacity Deliverability Status is obtained for the Facility (the "**Interim Deliverability Period**"), Seller shall make commercially reasonable efforts to obtain and maintain Interim Deliverability Status for the Facility. The requirements of Sections 3.7(a)-(c) shall apply to the Facility (i) during the Interim Deliverability Period if the Facility has obtained an Interim Deliverability Status and therefore is eligible to provide Resource Adequacy Benefits to Buyer, and (ii) beginning when the Facility has obtained Fully Capacity Deliverability Status through the Delivery Term. 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, except to the extent Buyer delivers Replacement RA pursuant to Section 3.8(c), Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes available from the Facility associated with the Storage Contract Capacity, subject to the Operating Restrictions.

(b) Except as otherwise stated in this Section 3.7, throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits associated with the Storage Contract Capacity to Buyer, except to the extent Buyer delivers Replacement RA pursuant to Section 3.8(c).

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

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, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount in accordance with Section 3.8(c).

(c) Replacement RA. During any month of the Delivery Term, including an RA Shortfall Month, Seller may request Buyer's consent, not to be unreasonably withheld, to provide Replacement RA in lieu of providing an equivalent amount of Resource Adequacy Benefits from the Facility. Seller shall communicate such request to Buyer, together with Replacement RA product information, in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month (the "**Notification Deadline**"), and Buyer shall indicate its consent within ten (10) days of such request.

(d) Deliverability Storage Rate Adjustment.[2] If Seller does not achieve Full Capacity Deliverability Status or Interim Deliverability Status for the Facility in the amount of the Storage Contract Capacity on or before December 31, 2034, then the Storage Rate shall be adjusted pursuant to the formula below until the earlier of (i) the date the Facility achieves such status or (ii) the end of the Delivery Term:

[redacted]

3.10 **CPUC Reliability Requirements**.

The Parties acknowledge that Buyer is entering into this Agreement, in part, to satisfy procurement obligations under orders arising out of both the R.20-05-003 and R.25-06-019 proceedings, and specified in CPUC Decisions D.21-06-035, D23-02-040, and D.26-02-057, which may be updated, supplemented or modified from time to time (collectively, the "**Reliability Decisions**"). Seller represents and warrants to Buyer that:

[redacted]

(a) The Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of the Reliability Decisions;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of the Reliability Decisions to any other person or entity during the Delivery Term; and

(c) Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Product meets the procurement mandates set forth in the Reliability Decisions.

3.11 **Reserved**.

3.12 **Compliance Expenditure Cap**.

(a) Subject to Sections 3.7 and 3.8, Seller shall use commercially reasonable efforts to ensure that the Facility maintains eligibility to deliver Resource Adequacy Benefits throughout the Delivery Term; provided that any failure of the Facility to obtain or maintain Full Capacity Deliverability Status or Interim Deliverability Status, to the extent addressed by Section 3.7 or Section 3.8, shall not constitute a breach of this Section 3.12. If any change in Law occurs after the Effective Date that affects the Facility's eligibility to qualify for or maintain Resource Adequacy Benefits, or that increases Seller's cost to obtain, maintain, convey or effectuate Buyer's use of Capacity Attributes, (each a "**Change in Compliance Law**"), then Seller shall use commercially reasonable efforts to comply with such Change in Compliance Law, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [redacted] of Storage Contract Capacity with respect to a Change in Compliance Law (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) Capacity Attributes are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which are permitted to be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

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

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs,

then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Compliance Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Compliance Law.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver 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 associated with the delivery of Discharging 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 Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D. Buyer will be solely responsible for supplying Charging Energy at the Delivery Point and for all costs and charges incurred to deliver such Charging Energy to the Delivery Point.

4.2 **Liens and Encumbrances**. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

(a) Reserved.

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

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer and the SC (if applicable) with a non-binding forecast of the Available Storage Capacity, 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 Available Storage Capacity. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer's SC and Buyer's File Transfer Protocol (FTP) site in accordance with Exhibit D. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

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

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

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

4.4 **Dispatch Down/Curtailment**. General. Seller agrees to reduce the amount of Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, provided that Seller is not required to reduce such amount to the extent it is

inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(a) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to [redacted]

(b) 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 as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(a) and Exhibit D for failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. 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.

(c) Demonstration of AGC Functionality. Within sixty (60) days of the Commercial Operation Date, Seller shall have demonstrated to Buyer's reasonable satisfaction the ability of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and the CAISO. If Seller has not satisfied this requirement within sixty (60) days of the Commercial Operation Date, then notwithstanding any other provision of this Agreement, the Availability Adjustment shall be deemed to be zero for all purposes under this Agreement until such time as Seller has fully satisfied its obligations under this provision.

4.5 **Charging Energy Management**.

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

(b) Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Product) associated with such discharge.

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

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders, and Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order, or Curtailment Order consistent with the Operational Procedures.

(f) The Facility will receive Charging Energy from the Generating Facility and is capable of receiving Charging Energy in the form of grid energy. Buyer will be responsible for all costs relating to the charging of the Facility from the grid.

(g) The Facility will be able to provide the full suite of ancillary services in CAISO markets for which it is eligible based on its design (to the extent any such services are available in the CAISO markets as of the Effective Date) and Seller will dispatch the Facility in response to signals from the Buyer or Buyer's Scheduling Coordinator, subject to the Operating Restrictions. These ancillary services include, to the extent available from the Facility, Frequency Regulation, Spinning Reserve, Ramp Support, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction. Upon Buyer's reasonable request, Seller shall use

commercially reasonable efforts to submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, physically capable of providing without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with the Facility being submitted for and receiving such additional CAISO Certification.

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

(a) Planned Outages. No later than thirty (30) days prior to the beginning of each calendar year during the Delivery Term, Seller shall provide Buyer with a written schedule of all scheduled maintenance of the Facility (each such scheduled maintenance event, a "**Planned Outage")** anticipated for such calendar year (the "**Planned Outage Schedule**"). The Planned Outage Schedule shall be prepared and implemented in accordance with, and subject to, the restrictions set forth in Section 4.6(b). Seller shall use commercially reasonable efforts to coordinate such Planned Outage Schedule with Solar Seller, including by using commercially reasonable efforts to ensure that Planned Outages do not conflict with Solar Seller's obligations under the Solar Agreement and are scheduled in a manner that minimizes total scheduled maintenance hours under this Agreement and the Solar Agreement, consistent with Prudent Operating Practices. For the avoidance of doubt, the occurrence and handling of Forced Facility Outages, System Emergencies, Curtailment Orders, and Force Majeure Events shall be governed by subsections (c) through (e) (as applicable). Following the third (3rd) Contract Year, Buyer, Seller and Solar Seller shall meet and discuss whether there are mutually acceptable improvements to the Section 4.6(a) and (b) Planned Outage provisions that would improve overall operations of the Facility and the Solar facility.

(b) Planned Outage Restrictions. Seller shall not schedule a Planned Outage during the period of June 1st through September 30th that reduces the storage capability of the Facility by more than [redacted], 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 Operating Practices, or (iv) the Parties agree otherwise in writing. Notwithstanding the foregoing, Seller shall have the right to schedule an outage(s) for the purposes of Facility augmentation if (a) Seller provides Buyer with 120 days of advance notice, (b) Seller completes the Facility augmentation as promptly as possible pursuant to Prudent Operating Practice, and (c) Seller either provides Buyer with Replacement RA or reimburses Buyer for the cost of procuring Replacement RA during such time period. Seller shall notify Buyer as soon as practicable of any extensions to a Planned Outage and the expected end dates.

(i) During the Delivery Term, Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Facility without the prior consent of Buyer; *provided*, *however*, that Seller may also add or replace batteries without Buyer's prior consent in order to maintain the original Storage Contract Capacity available to Buyer at the Interconnection Point.

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

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

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

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

4.7 **Reserved**.

4.8 **Storage Availability**.

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability of no less than [redacted] (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

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

4.9 **Storage Capacity Tests**.

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day of the completed test for all purposes under this Agreement, including compensation under Exhibit C; provided that the Storage Contract Capacity under this Agreement shall never exceed the amount of capacity initially set forth on the Cover Sheet, as may have been reduced pursuant to Section 5(b) of Exhibit B.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term

(a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility (which may be shared with the Generating Facility) that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity. For the avoidance of doubt, Seller shall have no obligation to have interconnection capacity in excess of the Storage Contract Capacity. Seller shall not be obligated to operate the Facility in a manner that conflicts with applicable Law, the Interconnection Agreement, or this Agreement, including any Operating Restrictions provided herein.

4.11 **Station Use**. Seller will be responsible for procuring and paying for, or reimbursing Buyer for (to the extent Buyer pays for any Station Use), all Station Use. Station Use power will not be provided by the Generating Facility or the Facility. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance**. Buyer shall at all times during the Delivery Term retain dispatch control of the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the Delivery Point; provided that Taxes imposed on Discharging Energy, shall be the responsibility of Solar Seller pursuant to the Solar 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 Delivery Point (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 sale of Product.

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

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Storage Contract Capacity and (ii) provide for separate metering and a separate CAISO resource ID for the Facility. Seller will provide and maintain at its sole expense separate metering and a separate CAISO resource ID for the Facility.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Discharging 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. All meters will be operated by Seller pursuant to applicable CAISO-approved calculation methodologies and installed and maintained at Seller's sole expense. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses

3in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain at its sole expense a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller 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 shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, or if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) days after, but not prior to, the end of each month of the Delivery Term. 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, the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the calculation of the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

[redacted]

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided*, *however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. [redacted]

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 an adjustment or correction by 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 Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and 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 in the amount of the Development Security and that otherwise 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 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 of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Within five (5) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet. If the Performance Security is a Letter of Credit and 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 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, to the extent provided in the form of cash, and 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 and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or a termination occurring pursuant to Section 11.8(a) or (c), 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.

Prior to the date upon which Buyer would be entitled to draw on any outstanding Letter of Credit issued for its benefit as Development Security or Performance Security, Seller shall have the right to pay such obligation in cash.

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 **Seller Financial Statements**. In the event a Guaranty is provided as Performance

Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor's ultimate parent (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, and as posted on the website of the Guarantor's ultimate parent or the Securities Exchange Commission.

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 without any bounce back or rejection; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event occurring after the Effective Date that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of the claiming Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party's fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of commercially 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, or such Party's employees, agents, contractors, or such contractor's subcontractors, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; 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 unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs (except as set forth in Exhibit V), 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; (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; (vii) reductions in the Storage Capacity in the Facility, resulting from ordinary wear and tear, deferred maintenance or operator error; (viii) any delay in providing, or cancellation of, interconnection service by a Transmission Provider, except to the extent such delay or cancellation is the result of an event claimed by the Transmission Provider that would otherwise constitute a Force Majeure Event, and (ix) any delay or circumstance caused by or attributable to Solar Seller, except to the extent meeting the requirements of a Force Majeure Event under the Solar Agreement (as such term is defined therein).

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 **Notice**. Within two (2) Business Days of obtaining knowledge of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force

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

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Prior to such termination, upon request of either Party, the Parties will negotiate in good faith for up to sixty (60) days regarding potential amendments to the Agreement to mitigate the impact of the Force Majeure Event; provided, that neither Party is obligated to enter into any such amendments except in its sole discretion. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

(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 [redacted] after Notice thereof (or such longer additional period, not to exceed an additional [redacted] if the Defaulting Party is unable to remedy such default within such initial [redacted] 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 such failure is not remedied within [redacted] s after Notice thereof (or such longer additional period, not to exceed an additional [redacted], if the Defaulting Party is unable to remedy such default within such initial [redacted] despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) Intentionally Omitted;

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

(iii) if, in any two consecutive Contract Years, the average Monthly Storage Availability over the two-year period is less than [redacted] provided, however, that solely for purposes of the first Contract Year, the hours in which the Facility could reasonably have delivered energy to Buyer but was prevented from delivering to Buyer due to a serial defect, casualty, or Major Equipment failure not otherwise excluded from the calculation of Monthly Storage Availability, shall be excluded from the calculation of Monthly Storage Availability solely with regard to this Event of Default;

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

(v) Intentionally Omitted;

(vi) if, Seller fails to maintain a Storage Contract Capacity (as determined pursuant to Exhibit O) equal to at least [redacted] of the Storage Contract Capacity set forth on the Cover Sheet for longer than [redacted]

(vii) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point under this Agreement that was not discharged by the Facility;

(viii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, with respect to the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment, or a Termination Payment, as applicable;

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least 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

(xii) 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), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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 the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Damage Payment or Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party (or, in the case of a termination under Section 11.8(a) or Section 11.8(c) where Solar Seller is the Defaulting Party, to the Solar Seller using notice information as provided in the Solar Agreement) of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment, as applicable, shall be made to the Non-Defaulting Party within five (5) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Seller Pre-COD Limitation of Liability**. Notwithstanding any other provision of

this Agreement, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for damages or payments arising under this Agreement, except to the extent due to the fraud, misrepresentation, or willful misconduct of Seller, shall not exceed fifty million dollars ($50,000,000). For the avoidance of doubt, this provision shall not be applicable once the Facility has achieved Commercial Operation.

11.8 **Joint Termination of Solar and Storage Agreements**. Due to the co-located nature of the Facility and Generating Facility, the Parties agree that if the Solar Agreement is terminated, this Agreement shall automatically terminate, as provided below.

(a) If the Solar Agreement is terminated due to an Event of Default (as such term is defined in the Solar Agreement) with respect to either Solar Seller or Buyer as the Defaulting Party, this Agreement shall terminate automatically, effective upon the Early Termination Date of the Solar Agreement (as such term is defined in the Solar Agreement). As of such Early Termination Date, this Agreement shall constitute a Terminated Transaction and Sections 11.2 through 11.7, inclusive, shall be applicable to such Terminated Transaction; provided that the Notice requirement of Section 11.2(a) shall not be applicable to an automatic termination under this Section 11.8(a). As a result of the termination of this Agreement under this Section 11.8(a), as applicable, (i) Seller shall be obligated to pay Buyer a Damage Payment (if Buyer is the Non-Defaulting Party and the Early Termination Date occurs before the Commercial Operation Date) or (ii) the Non-Defaulting Party shall receive a Termination Payment (if applicable) calculated under Section 11.3 hereof (which amounts shall be in addition to any amounts owing to the Non-Defaulting Party under the Solar Agreement). For purposes of this Section 11.8(a), Buyer shall be deemed to be the Non-Defaulting Party hereunder if Buyer was the Non-Defaulting Party under the Solar Agreement and Seller shall be deemed to be the Non-Defaulting Party hereunder if the Solar Seller was the Non-Defaulting Party under the Solar Agreement. Notwithstanding the foregoing, Buyer shall not be required to return any Development Security or Performance Security then held by Buyer unless and until Buyer has received the Damage Payment or Termination Payment, as applicable, in immediately available funds. Upon Buyer's receipt of the Damage Payment or Termination Payment, as applicable, Buyer shall promptly return any remaining Development Security or Performance Security, in each case subject to any reductions expressly permitted under this Agreement.

(b) If the Solar Agreement is terminated by either Solar Seller or Buyer pursuant to Section 10.4 of the Solar Agreement (Termination Following Force Majeure Event), this Agreement shall automatically terminate, effective upon the date of termination of the Solar Agreement pursuant to Section 10.4 thereof. Upon such termination, neither Party shall have any further liability to the other Party as a result of such termination, and Buyer shall promptly return any Development Security or Performance Security then held by Buyer to Seller, subject to any reductions permitted under the Agreement.

(c) If Solar Seller terminates the Solar Agreement pursuant to Section 3 or 4 of Exhibit V thereof, this Agreement shall automatically terminate, effective upon the date of termination of the Solar Agreement pursuant to Section 3 or 4 of Exhibit V thereof. Neither Party shall have any further liability to the other Party as a result of such termination; subject to Seller's payment to Buyer of a termination payment of [redacted] (which shall be in

addition to any amounts owing to Buyer by Solar Seller under the Solar Agreement, including pursuant to Exhibit V thereof). Notwithstanding the foregoing, Buyer shall not be required to return any Development Security or Performance Security then held by Buyer unless and until Buyer has received the termination payment described above in immediately available funds. Upon Buyer's receipt of such termination payment, Buyer shall promptly return any remaining Development Security or Performance Security, in each case subject to any reductions expressly permitted under this Agreement.

(d) Without limiting any of Buyer's rights or Seller's obligations under this Agreement, in the event that Buyer is owed a Damage Payment or Termination Payment, as applicable, pursuant to Sections 11.8(a) or (c), as an administrative courtesy to Seller, Buyer shall provide Notice to Solar Seller of such amount and a request for payment in accordance with Section 11.4. If Solar Seller has not paid the applicable amount to Buyer in immediately available funds within five (5) Business Days of receipt of Notice, Buyer shall deliver Notice to Seller of the applicable amount in accordance with Section 11.4, and, notwithstanding any provision herein to the contrary, Seller shall pay such amount to Buyer in immediately available funds within five (5) Business Days of receipt of Notice.

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 17 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.

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

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

ARTICLE 13
REPRESENTATIONS, WARRANTIES AND COVENANTS; AUTHORITY

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

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

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law

presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

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

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

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

13.2 **Buyer's Representations, Warranties and Covenants**. As of the Effective Date, Buyer represents, warrants and covenants 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 limited within a venue permitted in law and under this 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.).

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

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

13.4 **Prevailing Wage**. 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 **Additional Seller Commitments**. Seller shall perform the obligations related to workforce development set forth in Exhibit S.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that no consent of Buyer shall be required for (a) an assignment to an Affiliate of Seller or to a Permitted Transferee, (b) any Change of Control resulting in Seller being controlled by a Permitted Transferee, or (c) any transfer of direct or indirect equity interests in Seller to a tax equity investor or in connection with a financing, in each case upon Notice to Buyer. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

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

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that 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) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written Notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of Notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to

exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition;

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

(i) The status of efforts by Seller 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;

(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 this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the transfer date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements, or which are otherwise personal to Seller), or

(ii) Not assume this Agreement.

(g) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement arising after the date of such assumption as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee;

(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 or its designee shall have the right to elect within ninety (90) 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, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility 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), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld; and

(i) Buyer, Seller and Lender acknowledge that this Agreement and the Solar Agreement relate to co-located projects. Notwithstanding anything to the contrary in this Section 14.2, Buyer shall not be obligated to accept any cure, assumption, or transfer effected by Lender or its designee to the extent such cure, assumption, or transfer would reasonably be expected to materially and adversely impair Buyer's ability, in a material and non-temporary manner, to (i) exercise its material rights or receive the material benefits expressly provided under this Agreement, (ii) exercise any material right or perform any material obligation of Buyer under the Solar Agreement solely to the extent directly related to the coordinated charging, discharging, or scheduling of the Facility and the Solar Facility or shared interconnection facilities, or (iii) operate the Facility in coordination with the Solar Facility as expressly contemplated by this Agreement and the Solar Agreement. Seller will use reasonable efforts to cooperate with Solar Seller to minimize administrative burden on Buyer. Buyer shall have no obligation to administer duplicative cure processes or comply with inconsistent directions from multiple Lenders. Any cure periods available to any Lender(s) under this Agreement and any lender(s) under the Solar Agreement arising from the same or related underlying condition shall run concurrently and shall not be duplicated, extended, renewed or restarted by virtue of separate notices or actions taken under the other agreement, unless Buyer expressly agrees in writing.

ARTICLE 15
RIGHT OF FIRST OFFER

15.1 **Right of First Offer**. Between the date that is twelve (12) months prior to the end of the Delivery Term and the end of the Delivery Term, Buyer may offer to purchase the Facility from Seller, if Buyer concurrently offers to purchase the Generating Facility from Solar Seller pursuant to Section 15.1 of the Solar Agreement. Any transaction between Buyer and Seller to purchase and sell the Facility shall be negotiated concurrently with any transaction between Buyer

and Solar Seller to purchase and sell the Generating Facility. If Seller, in its sole discretion, rejects Buyer's offer to purchase the Facility, Seller may not enter into a definitive agreement with a third party for the sale of the Facility before the date that is two (2) years after the end of the Delivery Term (such period, the "**ROFO Period**") on terms and conditions in the aggregate more favorable to such third party than the terms and conditions set forth in the offer made by Buyer.

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Alameda County, California.

16.2 **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 17
INDEMNIFICATION

17.1 **Indemnification**. Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees collectively ("**Indemnifiable Event**") arising from gross negligence, willful misconduct, or breach of the Agreement (collectively, "**Indemnifiable Losses**").

17.2 **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 17, Buyer will promptly provide Notice to Seller in writing of any damage, claim, loss, liability or expense which Buyer has determined has given or could give rise to an Indemnifiable Loss under

Section 17.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

17.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 17.3will 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.

17.4 **Defense of Claims**. If, within thirty (30) Business Days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 17.2, Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim, Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within thirty (30) Business Days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within thirty (30) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to 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.

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

17.6 **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 17 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 18
INSURANCE

18.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, which Seller may provide via a separate insurance policy, products and completed operations and personal injury insurance, with an 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 but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in an amount of liability of [redacted] Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through any combination of primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] 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 [redacted]. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of this Agreement.

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

(f) Intentionally Omitted.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller or other reasonable insurance limits for the scope of service of the subcontractors. 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 18.1(g).

(h) Evidence of Insurance. Within five (5) Business Days of the Effective Date and within fifteen (15) days of annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer but only to the extent of the liabilities assumed hereunder by Seller. 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 19
CONFIDENTIAL INFORMATION

19.1 **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 pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information regarding the bidding strategies of Buyer (as SC), including any information that may become available to Seller through CAISO access granted by Buyer for Seller's outage monitoring or settlement verification, and (c) 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.

19.2 **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. The Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential

Information, that is subject to public disclosure under the California Public Records Act.

19.3 **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.

19.4 **Permitted Disclosure**. Notwithstanding anything to the contrary in this Article 18, each Party may disclose Confidential Information to such Party's (or, in the case of Seller, to Solar Seller's) Affiliates, the Solar Seller, actual or potential Lenders or investors or purchasers (including tax credit purchasers), actual or potential agents, consultants, contractors, trustees, members, employees or officers, and in the case of Buyer, to actual or potential Limited Assignees, so long as the Person (other than a Person that has an ethical duty to Buyer or Seller, as applicable) to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party. In addition, Buyer may disclose a redacted version (or an unredacted version if required by Law) of this Agreement, or any portion thereof, and any information, data, analyses, documents, and materials furnished or made available to Buyer in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, the CARB, and any other Governmental Authority having jurisdiction over Buyer or this Agreement; provided that Buyer shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority to further disclose such information that qualifies as Confidential Information and is eligible for confidential or protective treatment under the respective regulatory agency's rules, orders, or decisions on confidential or protected information.

19.5 **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. For the purposes of this Section 19.5 and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's s board; documentations submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

ARTICLE 20
MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The

Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **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.

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

20.4 **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.

20.5 **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.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

20.7 **Counterparts; Electronic Signatures**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and

each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

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

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

20.10 **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.

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

20.12 **Service Contract**. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract.

20.13 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

LAS CAMAS ENERGY STORAGE LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

AVA COMMUNITY ENERGY AUTHORITY, a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

LAS CAMAS ENERGY STORAGE LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Las Camas Energy Storage LLC

Site includes all or some of the following APNs: [redacted]

Site Location: [redacted]

Site Description: Private land used historically for grazing and dryland farming

County: Merced County, California

Permitting Authorities: Merced County

Type of Facility: Lithium-Ion Energy Storage

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

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

Interconnection Point: 230 kV Los Banos Substation

Facility PNode: [redacted]

Metering Arrangement: CAISO Metered Entity

Operating Characteristics of Facility: See Exhibit Q

Operating Restrictions of Facility: See Exhibit Q

Participating Transmission Owner: Pacific Gas & Electric

Station Use Configuration: [*e.g., Station Use will be provided as follows:*][Station Use configuration to be finalized at least sixty (60) days prior to the Commercial Operation Date.]

Storage Contract Capacity: See definition in Section 1.1

Storage Contract Output: See definition in Section 1.1.

Facility Meter Locations: See Exhibit R.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Facility Construction**.

   a. "**Construction Start**" will occur upon Seller's execution of a material engineering, procurement, and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction thereunder, mobilization to site by Seller and/or its designees, or physical movement of soil at the site; provided that a limited notice to proceed covering substantially all construction activities, together with an officer's certificate stating that Seller reasonably anticipates no impact to the Facility construction schedule and the Commercial Operation Date, shall be considered sufficient in establishing Construction Start. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date. The "**Guaranteed Construction Start Date**" means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

   b. If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start. Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date. Seller shall not be required to pay more than [redacted] of Construction Delay Damages.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.

   a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least [redacted] before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

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

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "**Development Cure Period**") due to (a) Force Majeure Event, or (b) Buyer Default. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (except with respect to clause 4(b)) shall not exceed [redacted] for any reason, including a Force Majeure Event. In addition, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, (ii) if Seller is asserting a claim of Force Majeure Event, and Seller does not satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3, or (iii) if Seller is asserting a claim for any delay provided for above and Seller fails to provide written notice to Buyer within thirty (30) days after Seller became aware of the impact of the actual delay affecting the Facility, except that in the case of a delay occurring within [redacted] of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of the impact of such delay. Upon request from Buyer, Seller shall promptly provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

5. **Failure to Reach Storage Contract Capacity**. If, at Commercial Operation, the Installed Battery Capacity is less than [redacted] of the Storage Contract Capacity,

Seller shall have [redacted] after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Battery Capacity is equal to or greater than [redacted] of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [redacted] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly. The Storage Contract Output at Commercial Operation, as determined by the results of the most recent Storage Capacity Test in accordance with Exhibit O, shall not exceed the Storage Contract Output set forth on the Cover Sheet by more than [redacted]

EXHIBIT C

COMPENSATION

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

(a) Storage Rate. All Product shall be paid on a monthly basis at the Storage Rate [redacted] Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. In addition to adjustments pursuant to the Storage Capacity Test, the Storage Contract Capacity shall be reduced for each MW that is unavailable due to a Force Majeure Event lasting for more than [redacted] until such time as the Force Majeure Event ends for such Storage Capacity. If the Storage Contract Capacity is adjusted pursuant to a Storage Capacity Test on any day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Contract Capacity is applicable.

(b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by [redacted]

(c) Tax Credits. Except as provided in Exhibit V, the Parties agree that the Storage Rate is not 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D[4]

SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

(c) CAISO Costs and Revenues.

Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs, charges, and penalties (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy or Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for the following CAISO costs and revenues:

(i) All CAISO costs and CAISO revenues prior to the Commercial Operation

[redacted]

Date;

(ii) All Uninstructed Imbalance Energy costs or revenue associated with the Facility; provided that the Facility was issued a valid Charging Notice or Discharging Notice during the applicable timeframe;5

(iii) All liability and, if applicable, reimbursement of Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff));

(iv) All Availability Incentive Payments (as defined in the CAISO Tariff) and any Non-Availability Charges (as defined in the CAISO Tariff); and

(d) All CAISO sanctions and penalties related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement.

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

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

(g) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the

5 EDP NTD: Under EDP review.

designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(h) Master File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master File. Seller shall provide the data to Buyer that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

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

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter or month as applicable.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. [redacted]

10. [redacted].

11. List of issues that are likely to potentially affect Seller's Milestones.

12. 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.

13. The utilization of union labor by Seller's principal EPC contractor.

14. 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.

15. 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.

16. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY FORECAST

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

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

EXHIBIT G

RESERVED

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [licensed professional engineer] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. The Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
6. Pacific Gas & Electric has provided documentation supporting full unrestricted release for Commercial Operation.
7. CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff, as applicable.
8. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____
Printed Name: _____
Title: _____

EXHIBIT I

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Battery Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

> The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of 200 MW AC (+/- 2%) to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**").

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____
Printed Name: _____
Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and attached hereto is either (a) a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start or (b) a copy of the limited notice to proceed covering substantially all construction activities, together with an officer's certificate of Seller stating that Seller reasonably anticipates no impact to the Facility construction schedule and Commercial Operation Date;

2. the Construction Start Date occurred on [Date] (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: _____
Printed Name: _____
Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US$_____
Expiration Date: _____

Beneficiary:

Ava Community Energy Authority
1999 Harrison Street, Suite 2300
Oakland, CA 94612

Ladies and Gentlemen:

By the order of [*Entity name, state of formation, type of entity*] ("Applicant"), we, [*Bank name and address*] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") in favor of Ava Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[*XXXXXX*] (United States Dollars [*XXXXXX*] and 00/100), pursuant to that certain Energy Storage Service Agreement dated as of [*Date*] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*Date*] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's 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. [*XXXXXX*] ("Drawing Certificate").

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

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the

Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate. Please note that our banking hours are [ ] and any documents received after [ ] will be considered to be received the following business day.

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

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

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of [California][New York].

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately preceding paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder. Except for an increase to the available amount, any amendment to this Letter of Credit must be in writing and signed by Beneficiary.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Bank name and address*], referring specifically to Issuer's Letter of Credit No. [*XXXXXX*]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*Bank phone number*] 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: Ava Community Energy Authority, 1999 Harrison Street, Suite 2300, Oakland, CA 94612. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

_____

[*Officer name*]
[*Officer title*]

Exhibit A:

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[*Bank name and address*]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Ava Community Energy Authority, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") issued by [*Bank name*] (the "Bank") by order of [*Entity name, state of formation, type of entity*] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Service Agreement dated as of [*Date*] (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*] because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*], 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 Ava Community Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Ava Community Energy Authority by wire transfer in immediately available funds to the following account: [*Specify account information*].

Ava 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 [Entity name, state of formation, type of entity] ("Guarantor"), and Ava Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

A. Buyer and [Entity name, state of formation, type of entity] ("Seller"), entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the "ESSA") dated as of [____], 20__.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the ESSA, as required by Section 8.8 of the ESSA.

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 ESSA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

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 ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA (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 ESSA, 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 ESSA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty**. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. 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 ESSA, 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 ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue 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 ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the ESSA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESSA, 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, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding 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 ESSA, 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 ESSA, 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 ESSA;

(iii) subject to Section 9, 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 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 ESSA. 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:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [*Date*] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Specific Information *(to be repeated for each unit if more than one)*	
Delivery Period	
Start Date	
End Date	
Resource Name	
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month (e.g., Jan=50, Feb=65)	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Unit SOD NQC by month (e.g., Jan=50, Feb=65)	
Unit SOD NQC by hour	
Resource Type (e.g., gas, hydro, solar, battery etc.)	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	
TAC Area (e.g., PG&E, SCE)	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	
Resource Category as defined by the CPUC (DR) (yes/no)	
Nameplate Capacity for Unit/Pmax	
Percentage of Nameplate Capacity/Pmax	
Hours Available for Production	
Availability Restrictions of Unit, if any (e.g., start and end hour, run time, etc.)	
Additional information for battery and other storage resources:	
Paired resource (yes/no)	
If a paired resource, does it charge exclusively from the paired resource or is grid charging allowed?	

Efficiency Rate	
Co-located or hybrid resource	
Interconnection limit (if part of co-located or hybrid resource)	
Number of Cycle Equivalents per day	
Additional information for solar and wind resources:	
Part of co-located or hybrid resource (yes/no)	
For calculation of correct SOD hourly QC based on exceedance values:	
Region	
Solar type (tracking, fixed)	
Interconnection limit (if part of co-located or hybrid resource)	

[SELLER ENTITY]

By:_____
Its:_____
Date:_____

EXHIBIT N

NOTICES

Las Camas Energy Storage LLC	**Ava Community Energy Authority**
All Notices: [redacted]	**All Notices:** 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Attn: Power Resources Email: powernotices@avaenergy.org; legal@avaenergy.org
Reference Numbers: [redacted]	**Reference Numbers:** [redacted]
Invoices: [redacted]	**Invoices:** Attn: Amy Vallandigham, Director of Accounting and Controller Email: ap@avaenergy.org; prcontracts@avaenergy.org; powersettlements@avaenergy.org; settlements@ncpa.com
Scheduling: [redacted]	**Scheduling:** Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration Phone: (916) 899-7107 Email: powerscheduling@avaenergy.org
Confirmations: [redacted]	**Confirmations:** Attn: Power Resources Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; confirmations@ncpa.com
Payments: [redacted]	**Payments:** Attn: Amy Vallandigham, Director of Accounting and Controller Email: ap@avaenergy.org

Las Camas Energy Storage LLC	**Ava Community Energy Authority**
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]
Credit and Collections: [redacted]	**Credit and Collections:** Attn: Russell Mills, Sr. Vice President and Chief Financial Officer Email: rmills@avaenergy.org; ap@avaenergy.org; powernotices@avaenergy.org
With additional Notices of an Event of Default to: [redacted]	**With additional Notices of an Event of Default to:** Attn: Power Resources 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Phone: 510-361-6247 Email: powernotices@avaenergy.org; legal@avaenergy.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

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

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

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than fifteen (15) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II below, the actual efficiency rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall, subject to completion of the review and acceptance process set forth in Part II (H) below, become the new Storage Contract Capacity and Efficiency Rate effective as of the beginning of the day of the completed test, and such Storage Contract Capacity and Efficiency Rate shall be used for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the provisions of this Exhibit O, and the manufacturer operating parameters and warranty conditions. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT".

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Facility;

(3) Determine the Facility charge ramp rate;

(4) Determine the Facility discharge ramp rate;

(5) Determine an updated Efficiency Rate.

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

- The measurement of charging energy exclusive of Electrical Losses, as measured at the Delivery Point[6] or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level (MWh) ("Energy In");
- The measurement of discharging energy exclusive of Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("Energy Out");
- Electrical output at Maximum Discharging Power (as defined in Exhibit Q) at the Facility Meter (MW);
- Electrical input at Maximum Charging Power (as defined in Exhibit Q) at the Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 MW to Maximum Discharging Power;
- Amount of time between the Facility's electrical input going from 0 MW to Maximum Charging Power;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Power.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at one (1) minute intervals:

[6] [redacted]

(1) discharge time (minutes);
(2) charging energy (MWh);
(3) discharging energy (MWh);
(4) Stored Energy Level (MWh).

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

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

E. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;
(2) operated for at least four (4) consecutive hours at Maximum Discharging Power. Energy delivered during CAISO-required ramp rates shall be considered as energy delivered at rated discharge;
(3) operated for at least four and one half (4.5) consecutive hours at Maximum Charging Power, +/- 2%;
(4) has a Discharging Energy of an amount that is, at least, equal to the Storage Contract Output (as set forth in Cover Sheet)[7];
(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at the Storage Contract Capacity; and
(6) is able to achieve 100% Availability per the Monthly Availability framework (as set forth in Exhibit P).

F. Test Conditions.

(i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Power and Maximum Charging Power (as each is defined in Exhibit Q).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The

[redacted]

instrumentation, metering and data collection equipment shall be calibrated in accordance with CAISO requirements and Prudent Operating Practice.

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

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

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

Within fifteen (15) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

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

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

J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point as measured by the Facility Meter (expressed in MWh AC) [8](up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been reduced pursuant to Section 5(b) of Exhibit B, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

K. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), measured at the Facility Meter location, , and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- Communications: Remote Terminal Unit (RTU) testing shall be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system shall be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.

- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.

- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

[8] [redacted]

- Failure to meet these conditions precedent to SCT invalidates any test results.
- The following Commercial Operation tests will be repeated annually:
    - PMAX Capacity Test
    - Efficiency Rate and Energy Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the Facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes ("Qualified Power Capacity").

2. Procedure:

    (i) System starting state: The Facility will be in the on-line state with each battery subsystem at >20% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

    (ii) Record the Facility active power level at the Facility Meter.

    (iii) Command the Facility to follow a signal equal to the Facility's maximum operating level for five (5) minutes after ramping time.

    (iv) Record and store the Facility active power response. Measurements will be made using the Facility Meter and by the control system with a recording in the Facility historian.

    (v) System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The Facility active power response and the commanded level shall be within ±2% as measured by the sum of values at the Facility Meter. The time to full output shall be less than 500 ms, subject to CAISO-approved maximum ramp rate. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

_____

_____

C. Efficiency Rate and Energy Test

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

2. The Facility will be operated in both the charge and discharge directions in the following order:

   i. [Set each Battery Subsystem to [3%] SOC.
   ii. If needed, allow each Battery Subsystem to enter background cell balancing mode by maintaining a SOC of [3% for 20 minutes]. After the background cell balancing mode begins the system can be operated as normal. Allow the cell balancing function to operate in the background for at least 24 hours to allow the automatic cell balancing procedure to reach completion. This time may be reduced based on equipment suppliers' recommendations.
   iii. Discharge each Battery Subsystem to 0% SOC.
   iv. Immediately perform the Efficiency Rate and Capacity Test set forth below.]

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

4. Procedure:

   i. System Starting State: The Facility will be in the on-line state with each Battery Subsystem at 0% SOC.
   ii. Verify that in the previous twenty-four (24) hour period, each Battery Subsystem completed the cell balancing procedure allowing full cell balancing to occur, as described in steps i-iv.
   iii. Verify that ambient temperature measurements at all Battery Subsystems are between 18°C and 28 °C throughout this test. Seller

to determine whether to proceed with test if the ambient temperature measurement is outside this range.

iv. Record initial values of each Battery Subsystem SOC.

v. Command a real power charge that results in an AC power of Facility's full charging power and continue the charge until the Facility reaches the Maximum Stored Energy Level.

vi. Record and store the AC energy charged to the system as measured at the Facility Meter. Measurements will be made by the Facility Meter with recording in the Facility historian.

vii. Within 5 minutes, or per BESS OEM recommendation, command a real power discharge that results in an AC power output of the Facility's maximum discharge power.

viii. Maintain the discharging until the Stored Energy Level reaches 0 MWh.

ix. Record and store the AC energy discharged as measured at the Facility Meter. Measurements will be made by the Facility Meter with recording in the Facility historian.

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

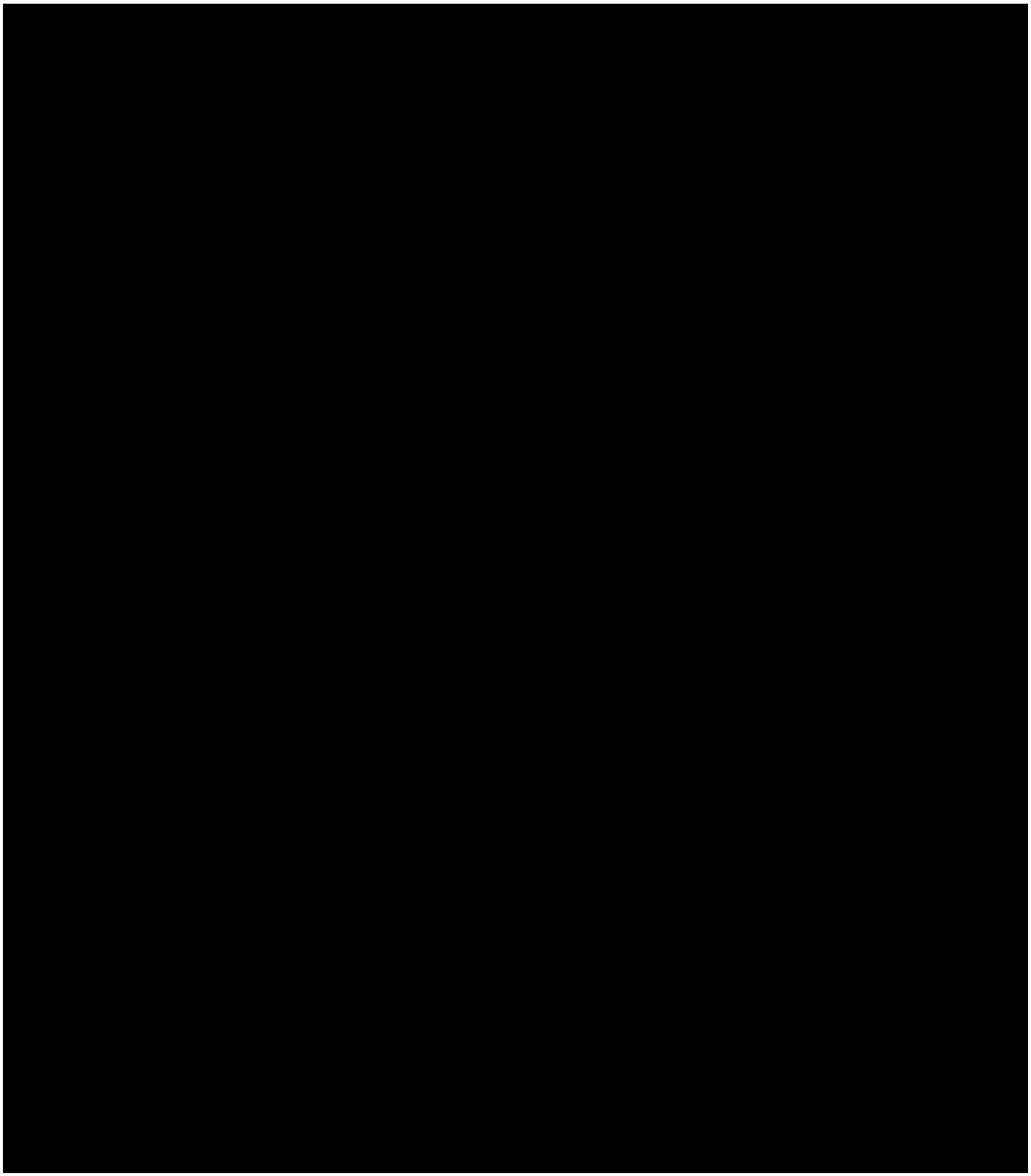
Notes/Test Conditions:

_____

_____

EXHIBIT P

STORAGE FACILITY AVAILABILITY



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

Availability Adjustment

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

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

[redacted]

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [redacted] then:

[redacted]

(iii) If the Monthly Storage Availability is less than [redacted] then:

[redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

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

Interconnection Capacity Limit:	200 MW
Maximum Stored Energy Level:	>800 MWh
Minimum Stored Energy Level:	[redacted]
Maximum Charging Power:	200 MW
Minimum Charging Power:	0.01 MW
Maximum Discharging Power:	[redacted]
Minimum Discharging Power:	[redacted]
Maximum State of Charge (SOC) during Charging:	[redacted]
Minimum State of Charge (SOC) during Discharging:	[redacted]
Ramp Rate:	[redacted]
Dispatch Limits:	[redacted]
Maximum Continuous Time at Minimum Stored Energy Level:	[redacted]
Grid Charging of Facility:	Yes
Other Operating Limits:	[redacted]
Ancillary Services Capability:	Yes

EXHIBIT R[9]

METERING DIAGRAM

[redacted]

EXHIBIT S

ADDITIONAL SELLER COMMITMENTS

Community Investment

Seller shall donate [redacted] to Ava's Community Investment Fund ("**Community Investment Funds**"), with [redacted] due within [redacted] after the Effective Date of the Agreement, and [redacted]%) due on or before the Guaranteed Construction Start Date. The Community Investment Funds will be utilized by Buyer for community investment activities.

Workforce Development[10]

Seller shall use commercially reasonable efforts to achieve the following workforce objectives related to the construction and operation of the Facility:

(a) Cause the EPC Contractor to enter into a longstanding multi-trade Project Labor Agreement (PLA) with unions representing the following relevant building trades: [*To be completed by Seller.*]

(b) Cause the EPC Contractor to enter into such PLA with the local halls or chapters of each union to recruit and hire labor from the local workforce to the extent possible.

(c) Cause the EPC Contractor to utilize apprenticeship requirements at the same ratio of apprentice hours to journeyperson hours as required for public works projects.

(d) Track and report labor hours, including for all in-state residents.

(e) Track and report all project-related spend in the labor community and with local businesses.

[redacted]

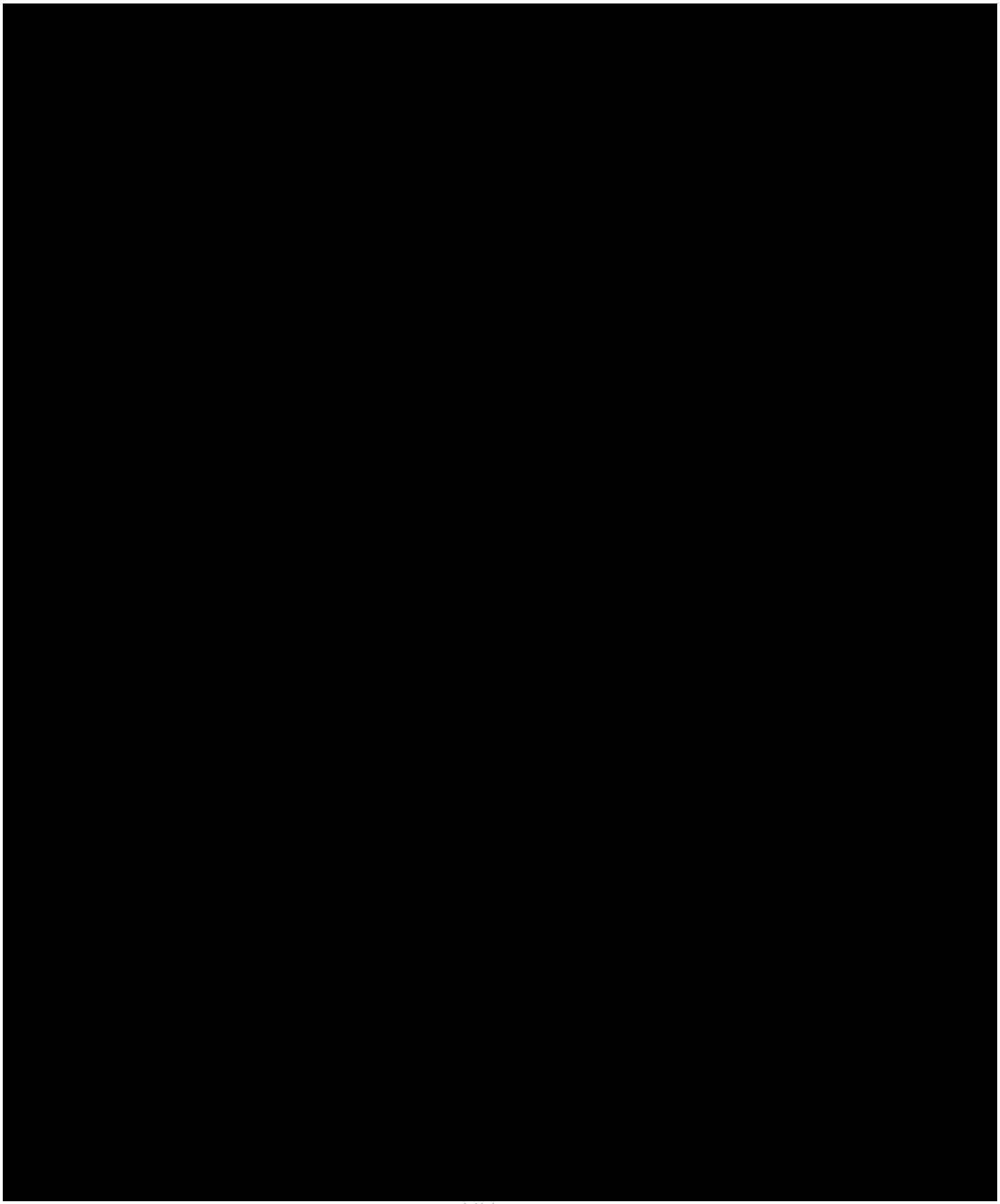
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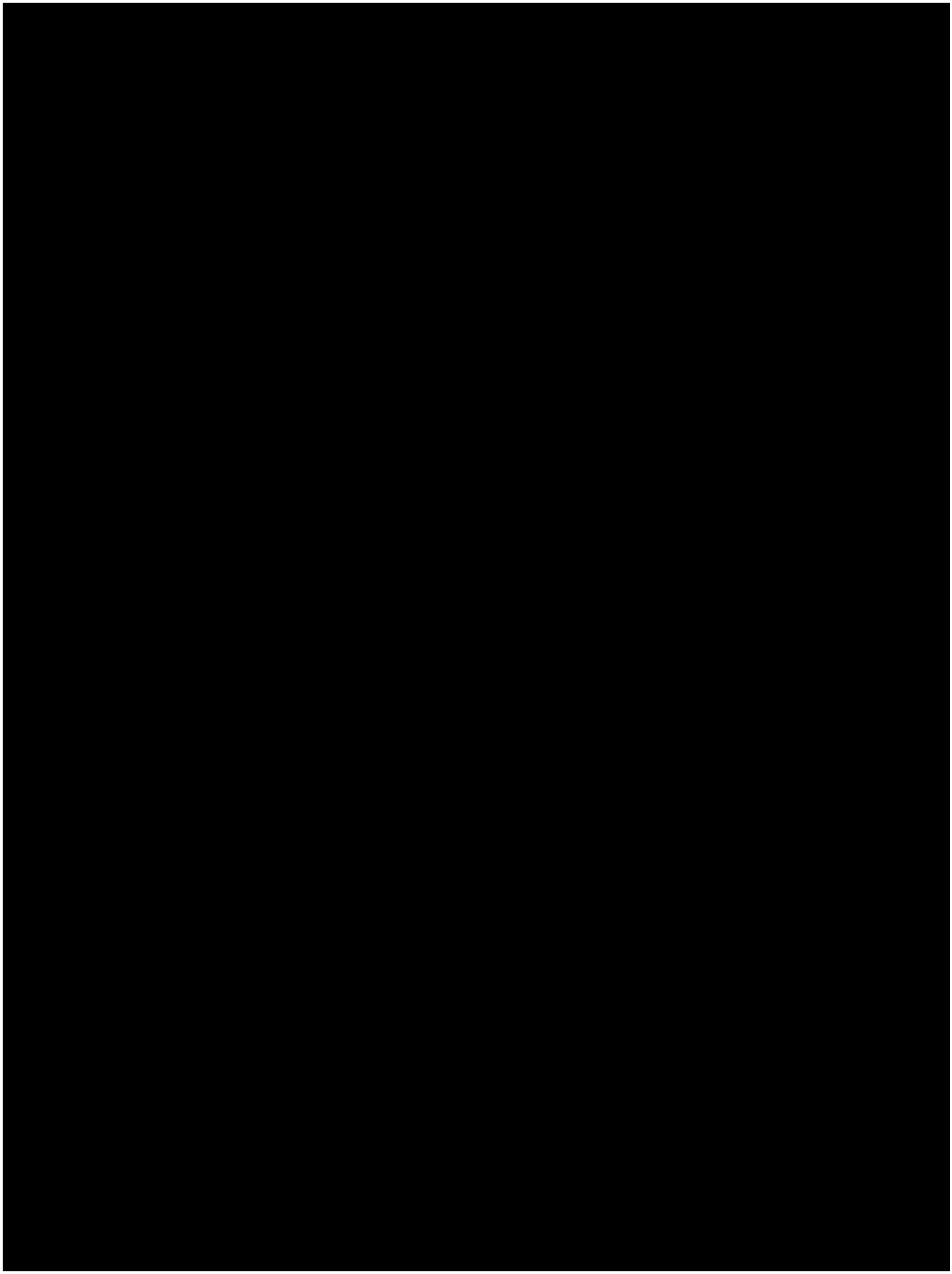
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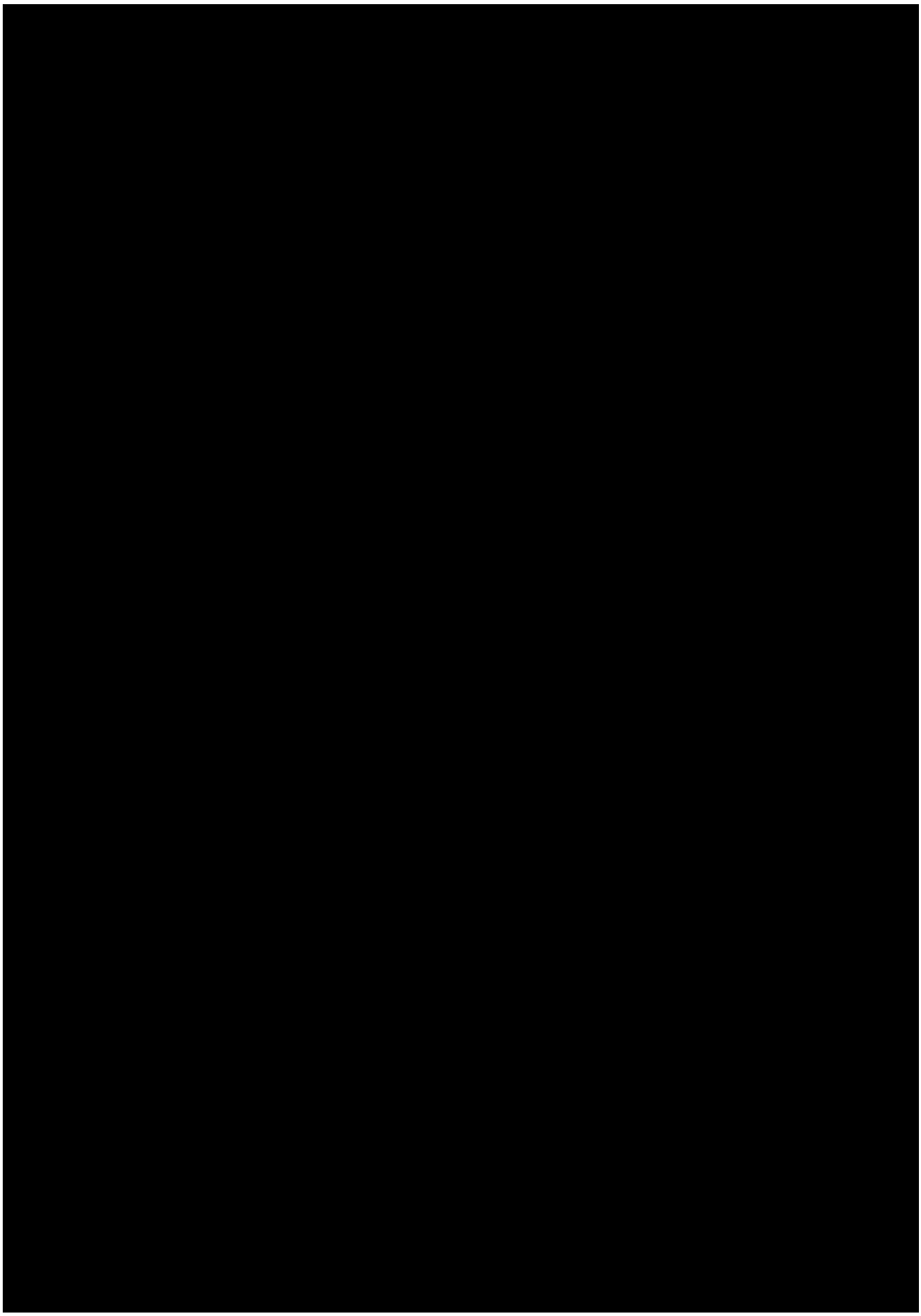
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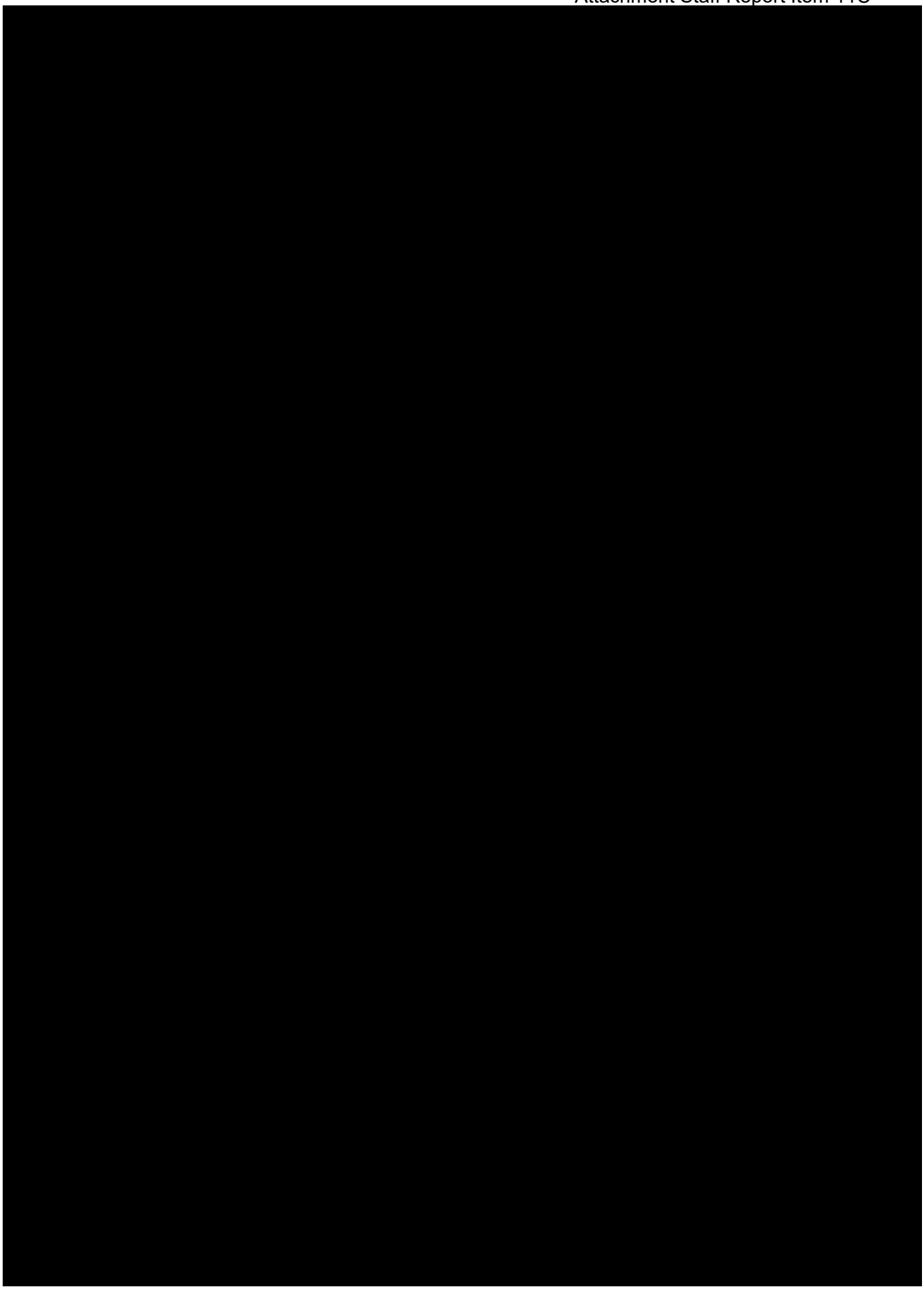
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EXHIBIT V









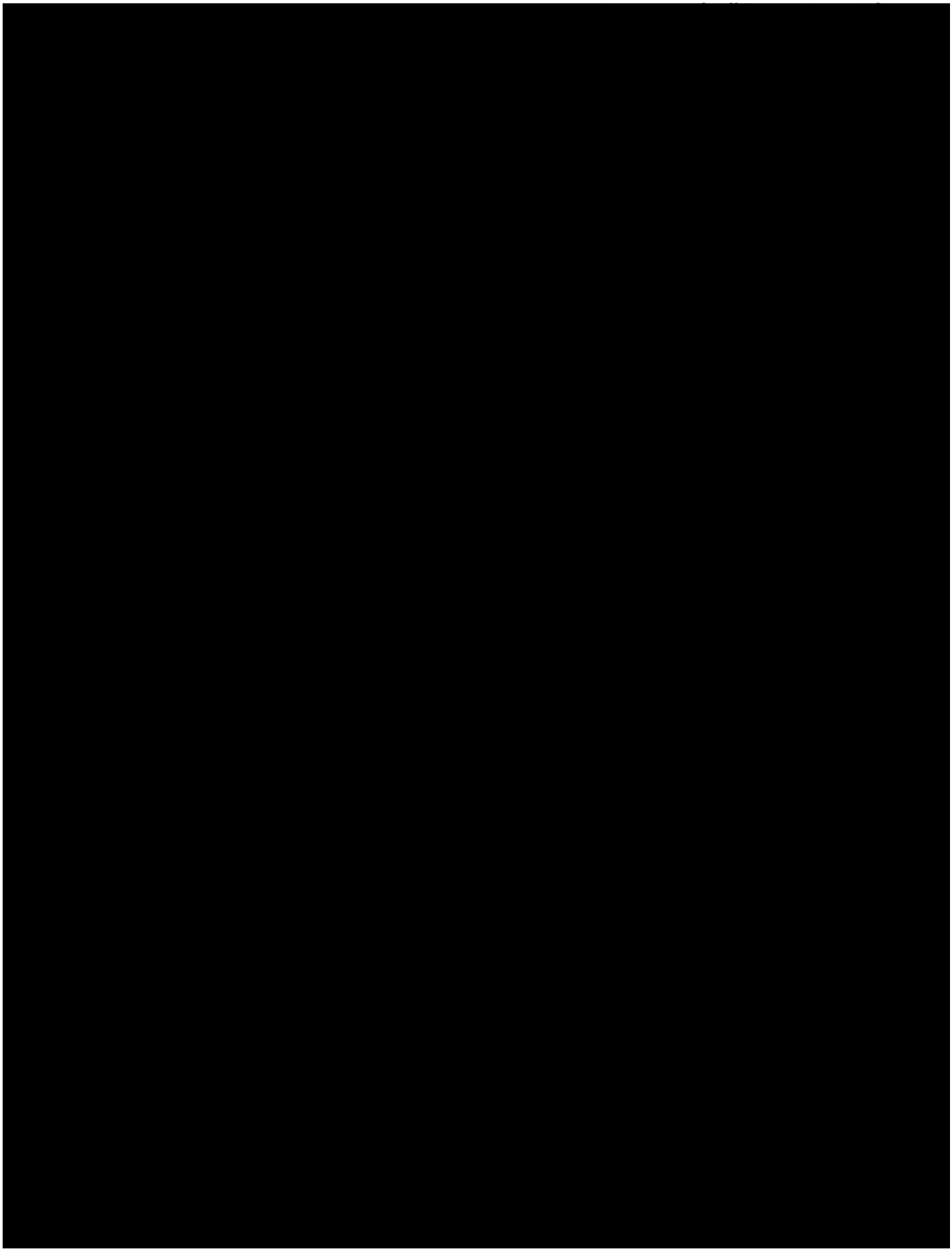


EXHIBIT W



EDP DRAFT
28 OCTOBER 2026

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: EDPR CA Solar Park III LLC ("**Seller**")

Buyer: Ava Community Energy Authority, a California joint powers authority ("**Buyer**")

Description of Facility: A 200 MW_{AC} solar photovoltaic renewable energy generating facility located in Merced County, in the State of California, as further described in Exhibit A (the "**Facility**.")

Milestones:

Milestone	Date for Completion
Evidence of Site Control	[redacted]
Executed Interconnection Agreement	[redacted]
CEC Pre-Certification Obtained	[redacted]
Obtain Federal and State Discretionary Permits	[redacted]
Network Upgrades Completed	[redacted]
Procure Major Equipment	[redacted]
Construction Start Date	[redacted]
Initial Synchronization	[redacted]
Expected Commercial Operation Date	06/30/2029

The Parties acknowledge that each Milestone identified as "Complete" in the table above has been satisfied as of the Effective Date.

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years.

Expected Energy:

Contract Years	Expected Energy (MWh)
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	

11	[redacted]
12	
13	
14	
15	

Guaranteed Capacity: 200 MW_{AC}

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	[redacted]

Metering Arrangement: [redacted]

Facility Configuration: [redacted]

Delivery Point: [redacted]

Product:

- ☑ Facility Energy
- ☑ Green Attributes (Portfolio Content Category 1)
- ☑ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☐ Full Capacity Deliverability Status
- ☑ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security: [redacted]

Performance Security: [redacted]

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of the last dated signature on the signature page hereto (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

WHEREAS, the Parties recognize that certain rights and obligations exist between and among the Parties to this Agreement and the Storage Agreement, as described herein.

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" and "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least [redacted] 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 [redacted] 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, products, functionalities, and grid-support attributes recognized by CAISO from time to time, including without limitation, Regulation Up, Regulation Down, Spinning Reserve, Non-Spinning Reserve, voltage support, frequency response, and any successor or similar services, that the Facility is capable of providing when operated in accordance with the terms and conditions of this Agreement, the Interconnection Agreement, applicable Law, the Operating Restrictions, and Prudent Operating Practice, whether or not such services are actively procured or compensated by CAISO at the relevant time.

"**Approved Forecast Vendor**" means (a) the EIRP Forecast, or (b) any other 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 MW, 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. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Bid Curtailment**" means the occurrence of both of the following:

(a) the CAISO provides notice or instruction to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3, including forecasts from an Approved Forecast Vendor, to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice or instruction referenced in (a) results from Buyer or the SC for the Facility, as applicable, as the result of a Buyer instruction or lack of instruction to such SC:

(i) not having submitted a Self-Schedule or Energy Supply Bid for the MW subject to the reduction;

(ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid;

(iii) having submitted a Self-Schedule for less than the full amount of energy

forecasted to be generated by or delivered from the Facility; or

(iv) having submitted a Self-Schedule, Energy Supply Bid, or bid for Ancillary Services for the Storage Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**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 affecting the Facility and/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 Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Event of Default hereunder which directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; *provided*, 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 an Event of Default of Buyer.

https://avaenergy.org/wp-content/uploads/2024/07/Code-Final-2024.pdf"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.13(a).

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

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

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

"**CAISO Operating Order**" means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

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

"**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, 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**" has the meaning set forth in Section 13.1(g).

"**Change of Control**" means, except in connection with transactions of equity interests or capital stock of Seller or Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than [redacted] 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 [redacted] of the outstanding equity interests in each such intermediate entity; and

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

"**Claim**" has the meaning set forth in Section 17.2(a).

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

"**COD Delay Damages**" means an amount equal [redacted]

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

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

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

"**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 19.1.

"**Construction Delay Damages**" means an amount equal to [redacted]

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is the Renewable Rate.

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

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

"**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, Fitch or Moody's.

"**Curtailment Order**" means any of the following:

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

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

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

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

For clarification, any notice, order, or instruction from the CAISO to curtail or reduce Facility Energy that results from Buyer or the SC for the Storage Facility, as the result of a Buyer instruction or lack of instruction to the SC, having submitted a Self-Schedule, Energy Supply Bid, or bid for Ancillary Services for the Storage Facility, is a Buyer Bid Curtailment not a Curtailment Order.

"**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.

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

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

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

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

"**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, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes

meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments. For all purposes under this Agreement, including compensation under Exhibit C, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Facility Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Storage Facility Outage.

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

"**Deficient Month**" has the meaning set forth in Section 4.13(e).

"**Delivery Point**" has the meaning set forth on the Cover Sheet.

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

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

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

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

"**Effective Date**" has the meaning set forth on the Preamble.

"**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.

"**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 Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**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 (or Seller's Affiliate) and the PTO as set forth on the Cover Sheet.

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

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

"**Expected Energy**" means the total quantity of energy that Seller expects to be able to deliver to Buyer as Facility Energy delivered to the Delivery Point during each Contract Year in the quantity specified on the Cover Sheet; provided, that Seller shall have a one-time right to update the Expected Energy values by not more than [redacted] to reflect updated Facility designs by Notice to Buyer any time before the date that is six (6) months prior to the Expected Commercial Operation Date, subject to Buyer's written approval, which shall not be unreasonably withheld.

"**Facility**" means the 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 Facility Energy to the Delivery Point; provided, that the "Facility" does not include the Storage Facility or the Shared Facilities.

"**Facility Energy**" means the energy, net of Station Use, as measured by the Generating Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices.

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

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**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 Facility Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forced Storage Facility Outage**" means a "Forced Facility Outage," as such term is defined in the Storage Agreement.

"**Full Capacity Deliverability Status**" has the meaning as such term is defined in the CAISO Tariff.

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

"**Generating Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Facility Energy including for the purpose of invoicing in accordance with Section 8.1.

"**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.

"**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 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 total generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5 of Exhibit B; provided that the Guaranteed Capacity shall never be greater than 200 MW.

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

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

"**Guaranteed Energy Production**" means an amount of Adjusted Energy Production 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, (a) an Affiliate of Seller with an Investment Grade Credit Rating, or (b) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [redacted], (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) 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.

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

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 17.1.

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

"**Installed Generating Capacity**" means the actual generating capacity of the Facility, not to exceed the Guaranteed Capacity, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, and may be adjusted for ambient conditions on the date of the performance test by the Parties' mutual agreement, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means that certain Large Generator Interconnection Agreement dated as of March 11, 2021 (Q1382) and March 28, 2022 (Q1456) associated with CAISO Queue positions [Q1382 and Q1456 among Seller, the CAISO, and the Participating

Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Delay**" means (i) if any of the interconnection facilities, distribution upgrades, transmission upgrades, and new transmission facilities required to interconnect the Facility to the CAISO Grid (such facilities and upgrades, the "**Interconnection Services**") have not been complete and placed into operation by the CAISO or the Transmission Provider on or before December 15, 2028, (the "**Interconnection Deadline**") or (ii) Seller has received notice or otherwise reasonably determined that the Interconnection Services are not reasonably expected to be completed and placed into operation by the CAISO or the Transmission Provider on or before the Interconnection Deadline and (iii) Seller has filed a formal complaint with the CPUC Ombudsman, or other Governmental Authority having jurisdiction over such delay, setting forth the reasons for the Interconnection Delay and providing a written copy of the filed complaint to Buyer. No extension shall be given if the Interconnection Delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines.

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

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

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

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

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 and 48E of the United States Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to eligible property for which Seller, as the owner of the Facility is eligible.

"**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, 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), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person providing financing or refinancing for the Facility, 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 reasonably acceptable to Buyer with a U.S. branch, and with such bank (a) 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 and having assets of at [redacted] or (b) being reasonably acceptable to Buyer. The Letter of Credit(s) shall be 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.

"**Limited Assignee**" has the meaning set forth in Section 14.5.

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

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

"**Lost Output**" has the meaning set forth in Section 4.7.

"**Major Equipment**" means the primary equipment and components required for the design, construction, commission, and operation of the Facility, including (as applicable) solar modules, inverters, tracker systems, transformers, switchgear, medium-voltage collection equipment, protection and control systems, SCADA/communications systems, and all other equipment with materially similar cost, lead time, or criticality to Facility operations.

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

"**Master Resource Database**" refers to the CPUC's official database of resources eligible to sell RA that includes their key attributes and in which resources must be fully represented to be

eligible for use in the CPUC's 24-hour slice RA showing. The Master Resource Database is further described in CPUC Decision D.23-04-010 as may be updated from time to time.

"**Maximum Facility Capacity**" has the meaning set forth in Exhibit A.

"**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 successors.

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

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility's PNode is less than Zero Dollars ($0).

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

"**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 this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (email).

"**Notice of Claim**" has the meaning set forth in Section 17.2.

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

"**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 rolling two (2) Contract Year period (i.e., Contract Years 1 and 2 shall comprise the first such period, Contract Years 2 and 3 shall

comprise the second such period, etc.) during the Delivery Term. means each non-overlapping two (2) Contract Year period (i.e., Contract Years 1 and 2 shall comprise the first such period, Contract Years 3 and 4 shall comprise the second such period, etc.) during the Delivery Term.

"**Performance Security**" means (i) cash [redacted]

"**Permitted Transferee**" means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [redacted] or a Credit Rating of at least [redacted] from S&P, [redacted] from Fitch, or [redacted] from Moody's; and

(b) Either (i) has at least [redacted] experience in the ownership and operations of power generation facilities, (ii) has at [redacted] experience in the ownership and operations of renewable energy generating facilities similar to the Facility, or (iii) has retained a third-party with such operations experience to operate the Facility.

"**Permitting Delay**" means any action or omission of a Governmental Authority that delays or prevents Seller from obtaining any permit required by the Project on a timely basis, except to the extent that such action or omission of a Governmental Authority is caused by Seller's failure to apply for such permits or diligently pursue obtaining such permits in accordance with Prudent Operating Practice.

"**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).

"**Planned Outage Schedule**" has the meaning set forth in Section 4.6(a).

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**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.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Production Tax Credits**" or "**PTCs**" means production tax credit under Section 45 or 45Y of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to

renewable electric energy produced from energy resources for which Seller, as the owner of the Facility is eligible.

"**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 with integrated storage 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 with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PTC Amount**" means the amount on a dollar per MWh basis, for each Contract Year, determined according to the formula below. For clarity, the rightmost three columns of the table in Exhibit X provide illustrative calculations of theoretical PTC Amounts based on federal and corporate tax rates applicable as of the Effective Date.



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

"**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.

"**Recurring Certificate Transfers**" has the meaning set forth in Section 4.13(a).

"**Relevant Day**" means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Rulings.

"**Reliability Decisions**" has the meaning set forth in Section 3.10.

"**Remedial Action Plan**" has the meaning 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 Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 45Y, 46, 48, and 48E 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.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet.

"**Reliability Decisions**" has the meaning set forth in Section 3.10.

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

"**Resource Adequacy Rulings**" means CPUC Decisions ("D") D.04-10-035, D.05-10-042, D.06-02-007, D.06-04-040, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.11-06-022, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, D.17-06-027, D.18-06-030, D.18-06-031, D.19-06-026, D.20-06-002, D.20-06-028, D.20-06-031, D.20-12-006, D.21-06-029, D.21-07-014, D.22-03-034, D.22-06-050, D.23-04-010, D.23-06-029, D.24-06-004, D.24-12-003, D.25-06-048, Resolution Nos. E-4017, E-4195, and E-4907 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such rulings, decisions, or resource adequacy Laws may be amended or modified from time to time throughout the Contract Term.

"**ROFO Period**" has the meaning set forth in Section 15.1.

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

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

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

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

"**Security Interest**" has the meaning set forth in Section 8.8.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.13(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 [redacted] The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

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

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

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

"**Site Control**" means that Seller: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site; or (d) has rights through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

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

"**Station Use**" means energy (including produced by the Facility) that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility.

"**STC**" means those certain standard contract terms and conditions that "may not be modified" per CPUC Decision ("D") 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.

"**Storage Agreement**" means that certain Energy Storage Service Agreement, dated as of the Effective Date, between Storage Seller and Buyer.

"**Storage Capacity Test**" means any test or retest of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in the Storage Agreement.

"**Storage Facility**" means the "Facility," as such term is defined in the Storage Agreement.

"**Storage Seller**" means Las Camas Energy Storage LLC, which is an Affiliate of Seller.

"**Subject Event**" has the meaning set forth in Exhibit B.

"**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 Production Tax Credits, ITCs, and any other state, local or federal production or other tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Facility or any part thereof.

"**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.

"**Third-Party Independent Evaluator**" means a qualified professional experienced in the appraisal of facilities similar to the Facility, with selection mutually agreed by the Parties or absent such agreement, a qualified professional experienced in the appraisal of facilities similar to the Facility with selection mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties.

"**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 within the CAISO grid from the Delivery Point.

"**Ultimate Parent**" means [redacted]

"**Uninstructed Imbalance Energy**" has the meaning set forth in the CAISO Tariff.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**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 4.13(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 October 2022, 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 Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

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

2.2 **Conditions Precedent**

(c) The Delivery Term shall not commence until Seller completes each of the following conditions:

(d) 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 Generating Capacity on the Commercial Operation Date;

(e) A Participating Generator Agreement and a Meter Service Agreement between Seller (or Seller's Affiliate) 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;

(f) An Interconnection Agreement between Seller (or Seller's Affiliate) 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;

(g) Seller has completed CAISO certification of the Facility, and has provided a copy of the CAISO certification to Buyer;

(h) Seller has established a functional web-based communication system in accordance with Exhibit D to allow Buyer sufficient access to Facility to perform Scheduling Coordinator Responsibilities as defined in Exhibit D and to forecast generation from, bid, and schedule the Facility in the CAISO markets;

(i) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

(j) Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of the following conditions:

(i) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, including the satisfaction of all required inspections by the Office of the State Fire Marshal, or applicable fire authority;

(ii) 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);

(iii) Seller has completed all necessary documentation and approvals to authorize Buyer as Scheduling Coordinator with the CAISO;

(iv) Seller (with the reasonable participation of Buyer) has completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to 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;

(v) Seller has complied with the Prevailing Wage Requirement set forth in Section 13.4, and provided reasonably requested documentation demonstrating such compliance;

(vi) Insurance requirements for the Facility pursuant to Article 18 have been met, with evidence provided in writing to Buyer;

(vii) Seller has reviewed Exhibit A and to the best knowledge of Seller such Exhibit is true and correct and Seller has provided all known updates; and

(viii) Seller has satisfied obligations set forth in Exhibit S that are reasonably capable of being completed prior to the Commercial Operation Date, and provided reasonably requested documentation demonstrating such compliance.

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

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

(m) Notwithstanding anything to the contrary in this Agreement, the Delivery Term under this Agreement shall not commence unless and until all conditions precedent to the commencement of the delivery term under Section 2.2(a) of the Storage Agreement have been

satisfied or waived in accordance with the terms of the Storage Agreement, as determined thereunder.

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 Generating Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller (or Seller's Affiliate) 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 (or Seller's Affiliate) 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) Intentionally Omitted;

(e) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

(f) Insurance requirements for the Facility pursuant to Article 18 have been met, with evidence provided in writing to Buyer;

(g) 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);

(h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to 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;

(i) All applicable regulatory authorizations, approvals and permits required for operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(j) Seller has certified in writing to Buyer that Seller has complied with the Prevailing Wage Requirement set forth in Section 13.4, and provided reasonably requested documentation demonstrating such compliance;

(k) Seller has certified in writing to Buyer that Seller has satisfied the obligations related to workforce development set forth in Exhibit S, and provided reasonably requested documentation demonstrating such compliance;

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

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

(n) Notwithstanding anything to the contrary in this Agreement, the Delivery Term under this Agreement shall not commence unless and until all conditions precedent to the commencement of the delivery term under Section 2.2(a) of the Storage Agreement have been satisfied or waived in accordance with the terms of the Storage Agreement, as determined thereunder.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (b) each calendar month thereafter until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report; provided, that if Seller misses the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, Seller shall provide updated Progress Reports to Buyer on a weekly basis, or as otherwise agreed. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled telephonic or video-conferenced meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones and delivery of [redacted] within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

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

Milestones 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. Buyer's sole remedy for Seller's failure to achieve any Milestone (other than the Guaranteed Construction Start Date, Expected Commercial Operation Date, and Guaranteed Commercial Operation Date) shall be Seller's timely delivery of a Remedial Action Plan pursuant to this Section 2.4.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility; *provided*, *however*, that prior to the occurrence of the Commercial Operation Date, Buyer shall pay Seller for Facility Energy at the Test Energy Rate. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Facility Energy that is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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**. [Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, except as set forth in Section 4.10, any payments or charges related to such Imbalance Energy shall be accounted for pursuant to Exhibit D.]1

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(a), and Section 3.5(b), 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 bear any costs, losses or liabilities, or alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree 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 Buyer notifies Seller within such fourteen (14) day period that Buyer wants to purchase such Test Energy, then (a) 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 Product of the Facility on an as-available basis and (b) as full compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to fifty percent (50%) of the Renewable Rate (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**.

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

(b) Intentionally Omitted.

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

3.8 **Reserved**.

3.9 **CEC Certification and Verification**. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term applicable to the Facility, 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 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 **CPUC Reliability Requirements**.

The Parties acknowledge that Buyer is entering into this Agreement, in part, to satisfy procurement obligations under orders arising out of both the R.20-05-003 and R.25-06-019 proceedings, and specified in CPUC Decisions D.21-06-035, D23-02-040, and D.26-02-057, which may be updated, supplemented or modified from time to time (collectively, the "**Reliability Decisions**"). Seller represents and warrants to Buyer that:

(a) The Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of the Reliability Decisions;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of the Reliability Decisions to any other person or entity during the Delivery Term; and

(c) Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Product meets the procurement mandates set forth in the Reliability Decisions.

3.11 **Non-Modifiable Standard Terms and Conditions**.

(a) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2, Non-Modifiable. CPUC Decision D.11-01-025].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially

reasonable efforts to comply with such change in law. [STC REC-1, Non-Modifiable. CPUC Decision D.11-01-025].

(c) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6 Non-Modifiable. (Source: CPUC Decision ("D") D.07-11-025, Attachment A.) D.08-04-009].

(d) With respect to the immediately preceding paragraphs, (i) the reference in Section 3.11(a) to "first delivery under the contract" has the same meaning as "first delivery of Facility Energy under this Agreement", (ii) the references in Section 3.11(c) to "Project" have the same meaning as "Facility", (iii) the reference in Section 3.11(c)(ii) to "the Project's output" has the same meaning as "Facility Energy", and (iv) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.12 below.

3.12 **Compliance Expenditure Cap**.

(a) Seller shall ensure that the Facility Energy and associated RECs qualify as Portfolio Content Category 1 throughout the Delivery Term. If a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to (i) Seller's obligations under this Section 3.12, or (ii) obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to provisions of this Agreement relating to Future Environmental Attributes, Capacity Attributes, CEC Certification and Verification, RPS, or WREGIS, including costs, fees, taxes, or charges imposed **in** connection with the foregoing, then Seller shall use commercially reasonable efforts to comply with such Change in Law, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [redacted] (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

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

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver 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, 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 charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility 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) 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 transferred to Buyer shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**2. 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. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) 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. No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of (i) the hourly expected energy, Facility Energy and (ii) 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 and the SC (if applicable) with a non-binding forecast of (i) Facility Energy and (ii) Available Generating Capacity, 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 hourly expected Facility Energy and Available Generating Capacity. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer's SC and Buyer's File Transfer Protocol (FTP) site accordance with Exhibit D and as set forth in Exhibit N. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of (i) (one (1) MWh or more in hourly expected Facility Energy or (ii) one (1) MW or more in Available Generating Capacity, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting

[redacted]

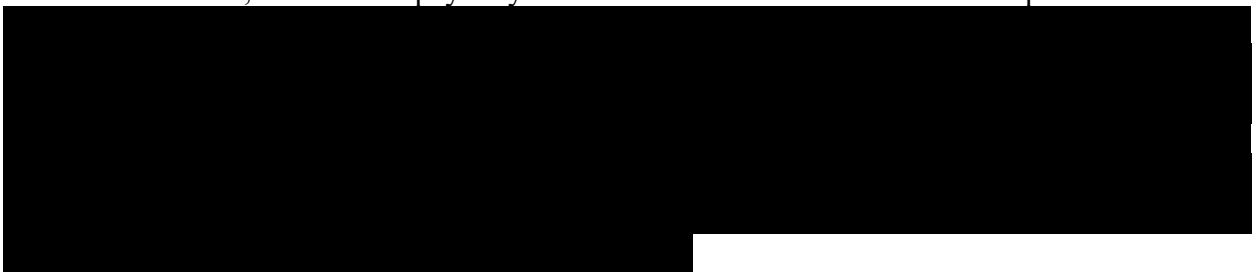
Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Facility Energy changes by at least one (1) MW or one (1) MWh, as applicable, as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in hourly expected Facility Energy, or Available Generating Capacity, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and the SC (if applicable); *provided* that Buyer or its SC specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer and the SC (if applicable). Unless excused by a Force Majeure Event, if Seller fails to provide the forecast required in this Section 4.3(d), Seller may be subject to additional costs, charges, and/or penalties pursuant to Exhibit D.

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

(f) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy generated by the Facility. In addition, 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, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**. 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, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

(a) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Facility Energy delivered to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of



(b) 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 as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment, or 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. Seller shall be liable pursuant to Section 4.4(a) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

(c) AGC Functionality. Within sixty (60) days of the Commercial Operation Date, Seller shall have installed a Facility communication system and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions. Seller shall use commercially reasonable efforts to ensure that the AGC interface complies with all future CAISO Tariff requirements so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, physically capable of providing without modification of the Facility.

4.5 **Ancillary Services**. The Facility will be able to provide the full suite of ancillary services in CAISO markets for which it is eligible based on its design (to the extent any such services are available in the CAISO markets as of the Effective Date) and Seller will dispatch the Facility in response to signals from the Buyer or Buyer's Scheduling Coordinator. These ancillary services include, to the extent available from the Facility, Frequency Regulation, Spinning Reserve, Ramp Support, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction. Upon Buyer's reasonable request, Seller shall use commercially reasonable efforts to submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, physically capable of providing without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with the Facility being submitted for and receiving such additional CAISO Certification.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Planned Outages. No later than thirty (30) days prior to the beginning of each calendar year during the Delivery Term, Seller shall provide Buyer with a written schedule of all scheduled maintenance of the Facility (each such scheduled maintenance event, a "**Planned Outage**") anticipated for such calendar year (the "**Planned Outage Schedule**"). The Planned Outage Schedule shall be prepared and implemented in accordance with, and subject to, the

restrictions set forth in Section 4.6(b). Seller shall use commercially reasonable efforts to coordinate such Planned Outage Schedule with Storage Seller, including by using commercially reasonable efforts to ensure that Planned Outages do not conflict with Storage Seller's obligations under the Storage Agreement and are scheduled in a manner that minimizes total scheduled maintenance hours under this Agreement and the Storage Agreement, consistent with Prudent Operating Practices. For the avoidance of doubt, the occurrence and handling of Forced Facility Outages, System Emergencies, Curtailment Orders, and Force Majeure Events shall be governed by subsections (c) through (e) (as applicable). Following the third (3rd) Contract Year, Buyer, Seller and Storage Seller shall meet and discuss whether there are mutually acceptable improvements to the Section 4.6(a) and (b) Planned Outage provision that would improve overall operations of the Facility and the Storage Facility.

(b) Planned Outage Restrictions. Seller shall not schedule a Planned Outage during the period of June 1st through September 30th that reduces the energy generation of the Facility by more than [redacted], 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 Operating Practices, or (iv) the Parties agree otherwise in writing. Seller shall notify Buyer as soon as practicable of any extensions to a Planned Outage and the expected end dates.

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

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

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

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

4.7 **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, Storage Capacity Tests, Buyer Default, and Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy for the applicable Performance Measurement Period, Seller shall be deemed to have delivered to Buyer (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, curtailment periods (including all reliability curtailment and Buyer Bid Curtailment), Planned Outages not to exceed ten (10) hours per Contract Year, System Emergency, Storage Capacity

Tests, Buyer Default or other failure to perform, and Curtailment Periods ("**Lost Output**"). 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.

4.8 **Reserved**.

4.9 **Reserved**.

4.10 **Interconnection Capacity**

. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility (which may be shared with the Storage Facility) that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to resource adequacy, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity. For the avoidance of doubt, Seller shall have no obligation to have interconnection capacity in excess of the Guaranteed Capacity, the interconnection capacity allocable to the Facility shall not exceed 200 MW, and the 200 MW interconnection limit applies to the Facility and the Storage Facility combined under this Agreement and the Storage Agreement, and not to the Facility alone. Seller shall not be obligated to operate the Facility in a manner that conflicts with applicable Law, the Interconnection Agreement, or this Agreement.

4.11 **Station Use**. Seller will be responsible for procuring and paying for, or reimbursing Buyer for (to the extent Buyer pays for any Station Use), all Station Use. Station Use power will not be provided by the Facility. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance**. Seller shall at all times during the Delivery Term retain operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **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. In addition:

(a) Prior to the Commercial Operation Date, Seller shall 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 "**Recurring 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 Recurring 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 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, notwithstanding that the WREGIS Certificates for such month may not have yet been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.13. 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 ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, 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 resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.13, 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 (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.13 after the Effective Date, the Parties promptly shall modify this Section 4.13 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.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), 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, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity and (ii) provide for separate metering and a separate CAISO resource ID for the Facility. Seller will provide and maintain at its sole expense separate metering and a separate CAISO resource ID for the Facility.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Generating Facility Meter; which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller 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 shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, or if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) days after, but not prior to, the end of each month of the Delivery Term. 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 Facility Energy produced by the Facility as read by the Generating Facility Meter, the amount of Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount, including any Seller records reasonably necessary to verify the PTC Amounts; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided*, *however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. [redacted]

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 or with respect to any differences between the invoiced PTC Amounts and realized tax rates; *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 Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security, including for payment of Construction Delay Damages or COD Delay Damages, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (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 in the amount of the Development Security and that otherwise 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 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 of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Within five (5) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) 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 (C) 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, to the extent provided in the form of cash, and 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 and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or a termination occurring pursuant to Section 11.8(a) or (c), 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.

Prior to the date upon which Buyer would be entitled to draw on any outstanding Letter of Credit issued for its benefit as Development Security or Performance Security, Seller shall have the right to pay such obligation in cash.

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

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 without any bounce back or rejection; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event occurring after the Effective Date that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement, or from complying with all or a portion of the conditions under this Agreement, if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of the claiming Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party's fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; inverter or transformer failure attributed to a manufacturer defect, hail, or fire; 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 unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs (except as set forth in Exhibit V), 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) any delay or circumstance caused by or attributable to Storage Seller, except to the extent meeting the requirements of a Force Majeure Event under the Storage Agreement (as such term is defined therein).

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default

of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Prior to such termination, upon request of either Party, the Parties will negotiate in good faith for up to sixty (60) days regarding potential amendments to the Agreement to mitigate the impact of the Force Majeure Event; provided, that neither Party is obligated to enter into any such amendments except in its sole discretion. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

(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 [redacted] after Notice thereof (or such longer additional period, not to exceed an additional [redacted], if the Defaulting Party is unable to remedy such default within such initial [redacted] 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 such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) Intentionally Omitted;

(ii) The failure of Seller to achieve Commercial Operation within [redacted] after the Guaranteed Commercial Operation Date;

(iii) Intentionally Omitted;

(iv) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in such Contract Year; provided, however, that solely for purposes of the first Contract Year, the energy in the amount the Facility could reasonably have delivered to Buyer but was prevented from delivering to Buyer due to a serial defect not otherwise included in the definition of Lost Output, shall be included in Lost Output solely with regard to this Event of Default;

(v) if, in any two consecutive Contract Years, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in each Contract Year; provided, however, that solely for purposes of the first Contract Year, the energy in the amount the Facility could reasonably have delivered to Buyer but was prevented from delivering to Buyer due to a serial defect not otherwise included in the definition of Lost Output, shall be included in Lost Output solely with regard to this Event of Default;

(vi) Omitted;

(vii) Intentionally Omitted;

(viii) 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;

(ix) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(x) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, with respect to the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment, or a Termination Payment, as applicable;

(xi) 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

(xii) 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

(xiii) 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),

or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. 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 the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Damage Payment or Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party (or, in the case of a termination under Section 11.8(a) or Section 11.8(c) where Storage Seller is the Defaulting Party, to the Storage Seller using notice information as provided in the Storage Agreement) of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or

Termination Payment, as applicable, shall be made to the Non-Defaulting Party within five (5) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Seller Pre-COD Limitation of Liability**. Notwithstanding any other provision of this Agreement, if this Agreement is terminated pursuant to Section 11.2 prior to the Commercial Operation Date and Seller is the Defaulting Party, Seller's aggregate liability for damages or payments arising under this Agreement, except to the extent due to the fraud, misrepresentation, or willful misconduct of Seller, shall not exceed [redacted] For the avoidance of doubt, this provision shall not be applicable once the Facility has achieved Commercial Operation.

11.8 **Joint Termination of Solar and Storage Agreements**. Due to the co-located nature of the Facility and Storage Facility, the Parties agree that if the Storage Agreement is terminated, this Agreement shall automatically terminate, as provided below.

(a) If the Storage Agreement is terminated due to an Event of Default (as such term is defined in the Storage Agreement) with respect to either Storage Seller or Buyer as the Defaulting Party, this Agreement shall terminate automatically, effective upon the Early Termination Date of the Storage Agreement (as such term is defined in the Storage Agreement). As of such Early Termination Date, this Agreement shall constitute a Terminated Transaction and Sections 11.2 through 11.7, inclusive, shall be applicable to such Terminated Transaction; provided that the Notice requirement of Section 11.2(a) shall not be applicable to an automatic termination under this Section 11.8(a). As a result of the termination of this Agreement under this Section 11.8(a), as applicable, (i) Seller shall be obligated to pay Buyer a Damage Payment (if Buyer is the Non-Defaulting Party and the Early Termination Date occurs before the Commercial Operation Date) or (ii) the Non-Defaulting Party shall receive a Termination Payment (if applicable) calculated under Section 11.3 hereof (which amounts shall be in addition to any amounts owing to the Non-Defaulting Party under the Storage Agreement). For purposes of this Section 11.8(a), Buyer shall be deemed to be the Non-Defaulting Party hereunder if Buyer was the Non-Defaulting Party under the Storage Agreement and Seller shall be deemed to be the Non-Defaulting Party hereunder if the Storage Seller was the Non-Defaulting Party under the Storage Agreement. Notwithstanding the foregoing, Buyer shall not be required to return any Development Security or Performance Security then held by Buyer unless and until Buyer has received the Damage Payment or Termination Payment, as applicable, in immediately available funds. Upon Buyer's receipt of the Damage Payment or Termination Payment, as applicable,

Buyer shall promptly return any remaining Development Security or Performance Security, in each case subject to any reductions expressly permitted under this Agreement.

(b) If the Storage Agreement is terminated by either Storage Seller or Buyer pursuant to Section 10.4 of the Storage Agreement (Termination Following Force Majeure Event), this Agreement shall automatically terminate, effective upon the date of termination of the Storage Agreement pursuant to Section 10.4 thereof. Upon such termination, neither Party shall have any further liability to the other Party as a result of such termination, and Buyer shall promptly return any Development Security or Performance Security then held by Buyer to Seller, subject to any reductions permitted under the Agreement.

(c) If Storage Seller terminates the Storage Agreement pursuant to Section 3 or 4 of Exhibit V thereof, this Agreement shall automatically terminate, effective upon the date of termination of the Storage Agreement pursuant to Section 3 or 4 of Exhibit V thereof. Neither Party shall have any further liability to the other Party as a result of such termination; subject to Seller's payment to Buyer of a termination payment of [redacted] (which shall be in addition to any amounts owing to Buyer by Storage Seller under the Storage Agreement, including pursuant to Exhibit V thereof). Notwithstanding the foregoing, Buyer shall not be required to return any Development Security or Performance Security then held by Buyer unless and until Buyer has received the termination payment described above in immediately available funds. Upon Buyer's receipt of such termination payment, Buyer shall promptly return any remaining Development Security or Performance Security, in each case subject to any reductions expressly permitted under this Agreement.

(d) Without limiting any of Buyer's rights or Seller's obligations under this Agreement, in the event that Buyer is owed a Damage Payment or Termination Payment, as applicable, pursuant to Sections 11.8(a) or (c), as an administrative courtesy to Seller, Buyer shall provide Notice to Storage Seller of such amount and a request for payment in accordance with Section 11.4. If Storage Seller has not paid the applicable amount to Buyer in immediately available funds within five (5) Business Days of receipt of Notice, Buyer shall deliver Notice to Seller of the applicable amount in accordance with Section 11.4, and, notwithstanding any provision herein to the contrary, Seller shall pay such amount to Buyer in immediately available funds within five (5) Business Days of receipt of Notice.

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 17 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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2, 11.3 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, 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 13REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(e) 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.

(f) 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.

(g) 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.

(h) 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.

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

(j) Seller has Site Control and shall maintain Site Control continuously throughout the Delivery Term. Seller acknowledges that this Agreement is specific to the Site and Seller may change the location of the Site only upon Buyer's prior written consent, which consent is in Buyer's sole discretion.

(k) Seller shall not install additional generating capacity to the Facility in excess of the Maximum Facility Capacity without the prior written consent of Buyer.

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

13.2 **Buyer's Representations, Warranties and Covenants**

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

(m) 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.

(n) 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.

(o) 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.

(p) 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.

(q) 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 limited within a venue permitted in law and under this 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.).

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

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

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

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

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

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

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

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

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all

covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under this 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.).

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

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

13.5 **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.

13.6 **Additional Seller Commitments**. Seller shall perform the obligations set forth in Exhibit S.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that no consent of Buyer shall be required for (a) an assignment to an Affiliate of Seller or to a Permitted Transferee, (b) any Change of Control resulting in Seller being controlled by a Permitted Transferee, or (c) any transfer of direct or indirect equity interests in Seller to a tax equity investor or in connection with a financing, in each case upon Notice to Buyer. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. 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 requiring Buyer's consent, including without limitation reasonable attorneys' fees.

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

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that 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) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written Notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of Notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition;

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

(i) The status of efforts by Seller 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;

(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 this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the transfer date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements, or which are otherwise personal to Seller), or

(ii) Not assume this Agreement.

(g) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement arising after the date of such assumption as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee;

(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 or its designee shall have the right to elect within ninety (90) 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, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility 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), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld; and

(i) Buyer, Seller and Lender acknowledge that this Agreement and the Storage Agreement relate to co-located projects. Notwithstanding anything to the contrary in this Section 14.2, Buyer shall not be obligated to accept any cure, assumption, or transfer effected by Lender or its designee to the extent such cure, assumption, or transfer would reasonably be expected to materially and adversely impair Buyer's ability, in a material and non-temporary manner, to (i) exercise its material rights or receive the material benefits expressly provided under this Agreement, (ii) exercise any material right or perform any material obligation of Buyer under the Storage Agreement solely to the extent directly related to the coordinated charging, discharging, or scheduling of the Facility and the Storage Facility or shared interconnection facilities, or (iii) operate the Facility in coordination with the Storage Facility as expressly contemplated by this Agreement and the Storage Agreement. Seller will use reasonable efforts to cooperate with Storage Seller to minimize any administrative burden on Buyer. Buyer shall have no obligation to administer duplicative cure processes or comply with inconsistent directions from multiple Lenders. Any cure periods available to any Lender(s) under this Agreement and any lender(s) under the Storage Agreement arising from the same or related underlying condition shall run concurrently and shall not be duplicated, extended, renewed or restarted by virtue of separate notices or actions taken under the other agreement, unless Buyer expressly agrees in writing.

14.3 **Buyer Limited Assignment Right**. Notwithstanding anything to the contrary,

Buyer may make limited assignments to entities ("**Limited Assignee(s)**") that have, or provide a parent guaranty, in form and substance reasonably acceptable to Seller from an entity with an Investment Grade Credit Rating of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit T, with the blanks in such form completed in Buyer's sole discretion. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein. Limited Assignee and Buyer shall comply with all reasonable requests received by any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

ARTICLE 15
RIGHT OF FIRST OFFER

15.1 **Right of First Offer**. Between the date that is twelve (12) months prior to the end of the Delivery Term and the end of the Delivery Term, Buyer may offer to purchase the Facility from Seller, if Buyer concurrently offers to purchase the Storage Facility from Storage Seller pursuant to Section 15.1 of the Storage Agreement. Any transaction between Buyer and Seller to purchase and sell the Facility shall be negotiated concurrently with any transaction between Buyer and Storage Seller to purchase and sell the Storage Facility. If Seller, in its sole discretion, rejects Buyer's offer to purchase the Facility, Seller may not enter into a definitive agreement with a third party for the sale of the Facility before the date that is two (2) years after the end of the Delivery Term (such period, the "**ROFO Period**") on terms and conditions in the aggregate more favorable to such third party than the terms and conditions set forth in the offer made by Buyer.

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Alameda County, California.

16.2 **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 17
INDEMNIFICATION

17.1 **Indemnification**. Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees collectively ("**Indemnifiable Event**") arising from gross negligence, willful misconduct, or breach of the Agreement (collectively, "**Indemnifiable Losses**").

17.2 **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 17, Buyer will promptly provide Notice to Seller in writing of any damage, claim, loss, liability or expense which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 17.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

17.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 17.3 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.

17.4 **Defense of Claims**. If, within thirty (30) Business Days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 17.2, Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim, Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within thirty (30) Business Days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be

liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within thirty (30) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to 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.

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

17.6 **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 17 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 18
INSURANCE

18.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, which Seller may provide via a separate insurance policy, products and completed operations and personal injury insurance, with an 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 but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in an amount of liability of [redacted] Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through any combination of primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be [redacted] for injury or death occurring as a result of each accident.

With regard to bodily injury by disease, the [redacted] 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 [redacted] One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of this Agreement.

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

(f) Intentionally Omitted.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller or other reasonable insurance limits for the scope of service of the subcontractors. 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 18.1(g).

(h) Evidence of Insurance. Within five (5) Business Days of the Effective Date and within fifteen (15) days of annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer but only to the extent of the liabilities assumed hereunder by Seller. 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 19
CONFIDENTIAL INFORMATION

19.1 **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 pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information regarding the bidding strategies of Buyer (as SC), including any information that may become available to Seller through CAISO access granted by Buyer for Seller's outage monitoring or settlement verification, and (c) 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.

19.2 **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. The Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure under the California Public Records Act.

19.3 **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.

19.4 **Permitted Disclosure**. Notwithstanding anything to the contrary in this Article 18, each Party may disclose Confidential Information to such Party's (or, in the case of Seller, to Storage Seller's) Affiliates, the Storage Seller, actual or potential Lenders or investors or purchasers (including tax credit purchasers), actual or potential agents, consultants, contractors, trustees, members, employees or officers, and in the case of Buyer, to actual or potential Limited Assignees, so long as the Person (other than a Person that has an ethical duty to Buyer or Seller, as applicable) to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to

be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party. In addition, Buyer may disclose a redacted version (or an unredacted version if required by Law) of this Agreement, or any portion thereof, and any information, data, analyses, documents, and materials furnished or made available to Buyer in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, the CARB, and any other Governmental Authority having jurisdiction over Buyer or this Agreement; provided that Buyer shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority to further disclose such information that qualifies as Confidential Information and is eligible for confidential or protective treatment under the respective regulatory agency's rules, orders, or decisions on confidential or protected information.

19.5 **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. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board; documentations submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

ARTICLE 20
MISCELLANEOUS

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

20.2 **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.

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

20.4 **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.

20.5 **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.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

20.7 **Counterparts; Electronic Signatures**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

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

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

20.10 **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.

20.11 **Forward Contract**. The Parties intend that this Agreement constitutes a "forward

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

20.12 **Service Contract**. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract.

20.13 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

EDPR CA SOLAR PARK III LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

AVA COMMUNITY ENERGY AUTHORITY, a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

EDPR CA SOLAR PARK III LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: EDPR CA Solar Park III LLC

Site includes all or some of the following APNs: [redacted]

[redacted]

Site Location: [redacted]

Site Description: Private land used historically for grazing and dryland farming

County: Merced County, California

Permitting Authorities: Merced County

Type of Facility: Solar photovoltaic

Ancillary Services: See definition in Section 1.1.

Delivery Point: See Cover Sheet.

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

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

Interconnection Point: [redacted]

Facility PNode: [redacted]

Facility Meter Locations: See Exhibit R.

Guaranteed Capacity: See definition in Section 1.1.

Maximum Output: 200 MWac

Metering Arrangement: CAISO Metered Entity

Participating Transmission Owner: Pacific Gas and Electric Company

Station Use Configuration: Station Use configuration to be finalized at least sixty (60) days prior to COD.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Facility Construction**.

   a. The "**Construction Start**" will occur upon Seller's execution of a material engineering, procurement, and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction thereunder, mobilization to site by Seller and/or its designees, or physical movement of soil at the site; *provided* that a limited notice to proceed covering substantially all construction activities, together with an officer's certificate stating that Seller reasonably anticipates no impact to the Facility construction schedule and the Commercial Operation Date, shall be considered sufficient in establishing Construction Start. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date. The "**Guaranteed Construction Start Date**" means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

   b. If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start. Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of Construction Delay Damages set forth in such invoice. Seller shall not be required to pay more than one hundred twenty (120) days of Construction Delay Damages. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date, and shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.

   a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development

Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least ninety (90) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

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

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "**Development Cure Period**") due to (a) Force Majeure Event, (b) Permitting Delay, (c) Interconnection Delay, or (d) Buyer Default. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (except with respect to clause 4(d)) shall not exceed [redacted] for any reason, including a Force Majeure Event. In addition, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, (ii) if Seller is asserting a claim of Force Majeure Event, and Seller does not satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3, or (iii) if Seller is asserting a claim for any delay provided for above and Seller fails to provide written notice to Buyer within thirty (30) days after Seller became aware of the impact of the actual delay affecting the Facility, except that in the case of a delay occurring within [redacted] of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of the impact of such delay. Upon request from Buyer, Seller shall promptly provide documentation

demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Generating Capacity is less than [redacted] of the Guaranteed Capacity, Seller shall have [redacted] days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Generating Capacity is equal to the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Generating Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Generating Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Renewable Rate. For each MWh of Facility Energy in each Settlement Period, Buyer shall pay Seller the Renewable Rate, plus Deemed Delivered Energy, if any, up to one hundred five percent (105%) of the Expected Energy for each Contract Year.

(b) Excess Contract Year Deliveries Over [redacted] 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, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to [redacted] of the Renewable Rate.

(c) Excess Contract Year Deliveries Over [redacted]. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Facility Energy or Deemed Delivered Energy.

(d) Excess Settlement Interval Deliveries. If during any Settlement Interval, the Facility Energy is greater than the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be [redacted], and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the product of absolute value of the Negative LMP times such Excess MWh ("**Negative LMP Costs**").

(e) PTC Amount. During the period (not to exceed a total of [redacted]) in which Seller is receiving PTCs for the Facility, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Facility Energy plus the amount of Deemed Delivered Energy exceeds [redacted] of the Expected Energy for such Contract Year.

(f) Curtailment Payments. Seller shall receive no compensation from Buyer for Facility Energy reduced pursuant to a Curtailment Order during any Curtailment Period.

(g) Reserved.

(h) Reserved.

(i) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(j) Tax Credits. Except as provided in Exhibit V, the Parties agree that the neither the Renewable Rate 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES[3]

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

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs, charges, and penalties (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible the following CAISO costs and revenues:

(i) All CAISO costs and CAISO revenues prior to the Commercial Operation Date;

[redacted]

(ii) Intentionally Omitted;

(iii) Intentionally Omitted;

(iv) All Availability Incentive Payments (as defined in the CAISO Tariff) and any Non-Availability Charges (as defined in the CAISO Tariff); and

(v) All CAISO sanctions and penalties related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement.

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

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

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

(g) Master File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master File. Seller shall provide the data to Buyer that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO.

Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

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

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter or month as applicable.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. [redacted].

10. [redacted].

11. List of issues that are likely to potentially affect Seller's Milestones.

12. 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.

13. The utilization of union labor by Seller's principal EPC contractor.

14. 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.

15. 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.

16. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF AVERAGE EXPECTED FACILITY ENERGY REPORT

Average Expected Facility Energy (in MWh)

	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
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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.

EXHIBIT F-2

FORM OF MONTHLY DELIVERY FORECAST

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Hourly Expected Facility Energy

	Day																													
HE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
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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																								

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:

[redacted]

where:

[redacted]

Such liquidated damages payment shall not exceed the greater of fifty dollars per [redacted] or the current average of [redacted] for the applicable shortfall year, up to a cap of [redacted]

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

"**Lost Output**" has the meaning given in Section 4.7 of this Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

"**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.

No payment shall be due if the calculation of [redacted]

After each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of Seller's receipt of such Notice.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [licensed professional engineer] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. Seller has installed equipment necessary for the functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and the CAISO.

5. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing by the Parties' mutual agreement.

6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

7. Pacific Gas & Electric has provided documentation supporting full unrestricted release for Commercial Operation.

8. CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff, as applicable.

9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____
Printed Name: _____
Title: _____

EXHIBIT I

FORM OF INSTALLED GENERATING CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Generating Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] by and between [Entity name, state of formation, type of entity] ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) 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 by the Parties' mutual agreement (the "Installed Generating Capacity");

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Entity name, state of formation, type of entity] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and attached hereto is either (a) a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start or (b) a copy of the limited notice to proceed covering substantially all construction activities, together with an officer's certificate of Seller stating that Seller reasonably anticipates no impact to the Facility construction schedule and Commercial Operation Date;

2. the Construction Start Date occurred on [Date] (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: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US$_____
Expiration Date: _____

Beneficiary:

Ava Community Energy Authority
1999 Harrison Street, Suite 2300
Oakland, CA 94612

Ladies and Gentlemen:

By the order of [*Entity name, state of formation, type of entity*] ("Applicant"), we, [*Bank name and address*] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") in favor of Ava Community Energy Authority, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[*XXXXXX*] (United States Dollars [*XXXXXX*] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [*Date*] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*Date*] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's 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. [*XXXXXX*] ("Drawing Certificate").

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

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the

Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate. Please note that our banking hours are [ ] and any documents received after [ ] will be considered to be received the following business day.

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

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

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of [California][New York].

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately preceding paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Bank name and address*], referring specifically to Issuer's Letter of Credit No. [*XXXXXX*]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*Bank phone number*] 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: Ava Community Energy Authority, 1999 Harrison Street, Suite 2300, Oakland, CA 94612. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

_____

[*Officer name*]
[*Officer title*]

Exhibit A:

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[*Bank name and address*]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Ava Community Energy Authority, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") issued by [*Bank name*] (the "Bank") by order of [*Entity name, state of formation, type of entity*] (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 [*Date*] (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*] because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*], 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 Ava Community Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Ava Community Energy Authority by wire transfer in immediately available funds to the following account: [*Specify account information*].

Ava 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 [Entity name, state of formation, type of entity] ("Guarantor"), and Ava Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

A. Buyer and [Entity name, state of formation, type of entity] ("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), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. 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, statue 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, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding 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 9, 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 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:_____

EXHIBIT M

RESERVED

EXHIBIT N

NOTICES

EDPR CA Solar Park III LLC	**Ava Community Energy Authority**
All Notices: [redacted]	**All Notices:** 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Attn: Power Resources Email: powernotices@avaenergy.org; legal@avaenergy.org
Reference Numbers: [redacted]	**Reference Numbers:** [redacted]
Invoices: [redacted]	**Invoices:** Attn: Amy Vallandigham, Director of Accounting and Controller Email: ap@avaenergy.org; prcontracts@avaenergy.org; powersettlements@avaenergy.org; settlements@ncpa.com
Scheduling: [redacted]	**Scheduling:** Attn: NCPA c/o Mojtaba Khanabadi, Manager, Portfolio and Pool Administration Phone: (916) 899-7107 Email: powerscheduling@avaenergy.org
Confirmations: [redacted]	**Confirmations:** Attn: Power Resources Email: powernotices@avaenergy.org; powersettlements@avaenergy.org; confirmations@ncpa.com
Payments: [redacted]	**Payments:** Attn: Amy Vallandigham, Director of Accounting and Controller Email: ap@avaenergy.org

EDPR CA Solar Park III LLC	**Ava Community Energy Authority**
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]
Credit and Collections: [redacted]	**Credit and Collections:** Attn: Russell Mills, Sr. Vice President and Chief Financial Officer Email: rmills@avaenergy.org; ap@avaenergy.org; powernotices@avaenergy.org
With additional Notices of an Event of Default to: [redacted]	**With additional Notices of an Event of Default to:** Attn: Power Resources 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Phone: 510-361-6247 Email: powernotices@avaenergy.org; legal@avaenergy.org

EXHIBIT O

RESERVED

EXHIBIT P

RESERVED

EXHIBIT Q

RESERVED

EXHIBIT R

METERING DIAGRAM

EXHIBIT S

ADDITIONAL SELLER COMMITMENTS

Community Investment

Seller shall donate [redacted] to Ava's Community Investment Fund ("Community Investment Funds"), with [redacted] due within [redacted] days after the Effective Date of the Agreement, and [redacted] due on or before the Guaranteed Construction Start Date. The Community Investment Funds will be utilized by Buyer for community investment activities.

Workforce Development4

Seller shall use commercially reasonable efforts to achieve the following workforce objectives related to the construction and operation of the Facility:

(a) Cause the EPC Contractor to enter into a longstanding multi-trade Project Labor Agreement (PLA) with unions representing the following relevant building trades: [*To be completed by Seller.*]

(b) Cause the EPC Contractor to enter into such PLA with the local halls or chapters of each union to recruit and hire labor from the local workforce to the extent possible.

(c) Cause the EPC Contractor to utilize apprenticeship requirements at the same ratio of apprentice hours to journeyperson hours as required for public works projects.

(d) Track and report labor hours, including for all in-state residents.

(e) Track and report all project-related spend in the labor community and with local businesses.

[redacted]

EXHIBIT T

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Agreement**") is entered into as of [_____] by and among [_____], a [_____] ("**PPA Seller**"), Ava Community Energy Authority, a joint powers authority and a community choice aggregator organized under the laws of the State of California ("**PPA Buyer**"), and [_____] ("[_____]").

RECITALS

WHEREAS, PPA Buyer and PPA Seller are parties to that certain Renewable Power Purchase Agreement, dated as of [_____] (the "**PPA**");

WHEREAS, in connection with one or more prepaid electricity transactions between an Issuer (as defined below) and a Prepay Seller (as defined below), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to [_____], and [_____] wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) with respect to any and all Assignment Appendices in effect during the Assignment Period (as defined below); and

WHEREAS, pursuant to this Agreement, during the Assignment Period, [_____] will receive the Assigned Product specified in any and all Assignment Appendices in effect from time to time and [_____] will deliver such Assigned Product to Prepay Seller(s), which will redeliver such Assigned Product to Issuer(s) for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, [_____] will assume responsibility for the Delivered Product Payment Obligation with respect to any and all Assignment Appendices then in effect.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and [_____] (the "**Parties**" hereto; each is a "**Party**") agree as follows:

AGREEMENT

1. Definitions.

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"**Agreement**" has the meaning specified in the first paragraph above.

"**Assigned Products**" includes all (i) [Facility Energy] and (ii) [Green Attributes] (each as defined in the PPA) produced by the Facility.

"**Assigned Rights and Obligations**" means (i) the rights of PPA Buyer under the PPA to receive the Assigned Products in each Month as specified in any and all Assignment Appendices

then in effect during the Assignment Period, as such rights may be limited or further described in the Appendix 1, and (ii) the Delivered Product Payment Obligation, which rights and obligation are transferred and conveyed to [_____] hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

"**Assignment Appendix**" means each Assignment Appendix in the form of Appendix 2 hereto delivered by [_____] hereunder pursuant to Section 11(c).

"**Assignment Appendix End Date**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Assignment Appendix Period**" means, with respect to each Assignment Appendix, the period from the Assignment Appendix Start Date to the Assignment Appendix End Date, provided that no Assignment Appendix Period may commence prior to the Assignment Period Start Date and no Assignment Appendix Period may extend beyond the Assignment Period End Date.

"**Assignment Appendix Start Date**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Assignment Early Termination Date**" has the meaning specified in Section 5(b).

"**Assignment Period**" means has the meaning specified in Section 5(a).

"**Assignment Period End Date**" means 11:59:59 p.m. pacific prevailing time on the last [Delivery Date] under the PPA.

"**Assignment Period Start Date**" means [-------].

"**Custodian**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Custody Agreement**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Delivered Product Payment Obligation**" has the meaning specified in Section 3(a).

"**Delivery Point**" has the meaning specified in Appendix 1.

"**Issuer**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Month**" means a calendar month.

"**Monthly Gross Amount**" has the meaning specified in Section 3(c).

"**[_____]**" has the meaning specified in the first paragraph of this Agreement.

"**PPA Buyer**" has the meaning specified in the first paragraph of this Agreement.

"**PPA Seller**" has the meaning specified in the first paragraph of this Agreement.

"**Prepaid Agreement**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Prepay Power Supply Contract**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Prepay Seller**" has, with respect to each Assignment Appendix, the meaning specified therein.

"**Receivables**" has the meaning given to such term in Section 3(f).

"**Retained Rights and Obligations**" has the meaning specified in Section 3.

2. Transfer and Undertakings.

(a) PPA Buyer hereby assigns, transfers and conveys to [_____] all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Products specified in any and all Assignment Appendices then in effect during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to [_____] the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer's assignment, transfer and conveyance of all right, title and interest in and to the Assigned Products specified in any and all Assignment Appendices then in effect and, subject to Section 3(a), the delegation of the Assigned Rights and Obligations to [_____] and the exercise and performance by [_____] of the Assigned Rights and Obligations during the Assignment Period.

(c) [_____] hereby accepts such assignment, transfer and conveyance of PPA Buyer's right, title and interest in and to the Assigned Products specified in any and all Assignment Appendices then in effect during the Assignment Period, PPA Buyer's delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

3. Limited Assignment.

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer's rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be "**Retained Rights and Obligations**" that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation**. [_____]'s sole payment obligations hereunder will be to make the payments into the Custodial Account as described on Appendix 1 (the "**Delivered Product Payment Obligation**"). [_____] and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the

Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [8.2] of the PPA for a quantity up to, but not exceeding, the Assigned Products delivered pursuant to each Assignment Appendix during each Month, based upon the [Contract Price] as set forth in the PPA [and as adjusted by Exhibit [C] thereof]. PPA Buyer shall remain responsible for payment and performance of all of its obligations under the PPA during the Assignment Period, including in the event that either (i) [_____] does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above. Any payment adjustments or subsequent reconciliations occurring or to occur after payment by [_____] as described in this Section 3(a) will be resolved exclusively between PPA Buyer and PPA Seller consistent with the applicable provisions of the PPA.

(b) **Retained Rights and Obligations**. Any claims arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or [_____], and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation (provided, however, PPA Buyer still remains liable that all amounts due and owing under the PPA are timely paid), will be included in the Retained Rights and Obligations, and any such claim will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Invoicing**. During the Assignment Period, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the net amount due to PPA Seller under the PPA for such Month (the "**Monthly Gross Amount**"). PPA Buyer and [_____] covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA, *provided,* that (x) the liability of [_____] hereunder to PPA Seller is limited as described on Appendix 1 [and (y) the Monthly Gross Amount payable to PPA Seller shall be reduced to the extent that PPA Buyer disputes any of the invoiced amounts pursuant to Section [_] of the PPA][5]. PPA Buyer and [_____] may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and [_____] of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA.

(d) **Scheduling**. All scheduling of Electricity associated with Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product specified in any and all Assignment Appendices then in effect will pass to [_____] upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to one or more Prepay Sellers (as set forth in the Assignment Appendices), one or more Issuers (as set forth in the Assignment Appendices) and then to PPA Buyer upon delivery by [_____] at the same point where title is passed to [_____] pursuant to clause (i) above; and (iii) PPA Buyer will provide copies to [_____] of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an

[redacted]

Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under the PPA, (D) invoices delivered by PPA Seller under Section [8.1] of the PPA (with a copy to the Custodian if and to the extent retained by PPA Buyer and [_____]), and (E) any other information reasonably requested by [_____] relating to Assigned Product. For the avoidance of doubt, in accordance with Section [5.1] of the PPA, PPA Buyer shall continue to pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by PPA Buyer or [_____], as applicable, of Product that are imposed on Product at and after its delivery to PPA Buyer or [_____], as applicable, at the time and place contemplated under the PPA or hereunder (other than withholding or other Taxes imposed on PPA Seller's income, revenue, receipts or employees), if any.

(e) **Amendments**. PPA Buyer will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to [_____] relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an amendment, waiver, supplement, modification or other change will not have any effect on [_____]'s rights or obligations under this Agreement until and unless [_____] receives written notice thereof.

(f) **Setoff of Receivables**. Pursuant to the Prepaid Agreement(s), Prepay Seller(s) may purchase the rights to payment of the net amounts owed by PPA Buyer under the applicable Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by [_____] pursuant to the Assigned Rights and Obligations, the applicable Prepay Seller may sell such Receivables to [_____] and [_____] may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that at no time shall PPA Seller be required to pay [_____] for any amounts by which such Receivables exceed any Delivered Product Payment Obligations then due and owed to PPA Seller.

4. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and that the Parties shall constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

5. Assignment Period; Assignment Early Termination.

(a) **Assignment Period**. The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date; and further provided that the Assignment Period will automatically terminate upon the expiration or early termination of either the Delivery Term or the PPA.

(b) **Early Termination**. An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. delivery of a written notice of termination by either [_____] or PPA Buyer to each of the other Parties hereto;

ii. delivery of a written notice of termination by PPA Seller to each of [_____] and PPA Buyer following [_____]'s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for three (3) Business Days following receipt by [_____] of written notice thereof;

iii. delivery of a written notice by PPA Seller if any of the events described in Section [1.1] of the PPA [(definition of "Bankrupt")], occurs with respect to [_____]; or

iv. delivery of a written notice by [_____] if any of the events described in Section [1.1] of the PPA [(definition of "Bankrupt")], occurs with respect to PPA Seller.

(c) **Reversion of Assigned Rights and Obligations**. The Assignment Period will end at the end of the last delivery hour on the date specified in any termination notice provided pursuant to Section 5(b), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to Section 5(b)(i) or Section 5(b)(ii) above. The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date and at the expiration of the Assignment Period, the Assigned Rights and Obligations will revert from [_____] to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date shall immediately and automatically revert from [_____] to PPA Buyer, provided that (i) [_____] shall remain jointly responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to [_____] prior to the Assignment Early Termination Date or prior to the expiration of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or the expiration of the Assignment Period.

(d) **Notice of Assignment Early Termination Date**. Within three (3) Business Days of the occurrence of an Assignment Early Termination Date, PPA Buyer shall provide written notice thereof to PPA Seller.

6. Representations and Warranties.

(a) **Copy of PPA**. PPA Seller and PPA Buyer represent and warrant to [_____] that a true, complete, and correct copy of the PPA is attached hereto as Appendix 4.

(b) **No Default**. PPA Seller and PPA Buyer represent and warrant to [_____] that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other**. Each of PPA Buyer and PPA Seller represents and warrants to each other and to [_____] that:

i. it has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations**. Each Party represents to each of the other Parties:

i. **Status**. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers**. It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict**. Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents**. All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding**. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance**. It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding**. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties**. None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

7. Counterparts.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by email), each of which will be deemed an original.

8. Costs and Expenses.

The Parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

9. Amendments.

Except as provided in Section 11(c), no amendment, modification, or waiver in respect of this Agreement will be effective unless in writing and executed by each of the Parties.

10. Notices.

Any notice, demand, statement or request required or authorized by this Agreement to be given by one Party to another shall be in writing, except as otherwise expressly provided herein. It shall be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses for each of the other Parties designated in Appendix 3 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Parties, to change its address at any time, and to designate that copies of all such notices

be directed to another person at another address. The Parties may mutually agree in writing at any time to deliver notices, demands or requests through alternate or additional methods. Notwithstanding the foregoing, any Party may at any time notify the other Parties that any notice, demand, statement or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during such time shall be ineffective.

11. Miscellaneous.

(a) **Governing Law**. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) **U.S. Resolution Stay.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("**ISDA U.S. Stay Protocol**"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, [_____] shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistences between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

(c) **Assignment Appendix Prepaid Transaction Details**. From time to time, [_____] may deliver one or more completed Assignment Appendices to the other Parties hereto completing the terms that are currently bracketed therein, and each such Assignment Appendix shall be binding upon each of the Parties hereto, provided that the aggregate sum of the Assigned Products under all Assignment Appendices then in effect will not exceed the nameplate capacity of the Facility. As set forth in Appendix 1 hereto, [_____]'s payment obligations are limited to the Assigned Product delivered pursuant to the Assignment Appendices then in effect. Each Assignment Appendix sets forth certain details relating to the commodity prepayment transaction pursuant to which all or a portion of the Assigned Products shall be redelivered, provided that [_____] may, by written notice to PPA Seller and PPA Buyer, at any time and without the consent of PPA Seller or PPA Buyer, (i) rescind any Assignment Appendix or (ii) update or amend any Assignment Appendix to change any or all of the terms specified therein, including: an increase or decrease of the volume of Assigned Products to be redelivered into the applicable commodity prepayment transaction (including without limitation a change thereto to reflect that all MWh of Assigned Product delivered in accordance with the PPA by PPA Seller shall be redelivered into one commodity prepayment transaction, subject only the aggregate quantity limit specified above); a change in the relevant commodity prepayment transaction (i.e., the "**Prepaid Agreement**") pursuant to which the Assigned Products shall be redelivered; a change in the identity of the Prepay Seller; or a change to the Assignment Period Start Date and / or the Assignment Period End Date. For the avoidance of doubt, (i) more than one Assignment Appendix may be in effect at any time, and (ii) at any given time, less than one hundred percent (100%) of

the nameplate capacity of the Facility may be assigned pursuant to the Assignment Appendices then in effect.

(d) **Arbitration**. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of [_____] and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall select one person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, [_____], PPA Buyer and PPA Seller are the "**Arbitration Parties**"), provided that if the arbitration pertains to matters and disputes solely as between PPA Buyer and [_____], and PPA Seller is neither asserting nor defending a claim in relation thereto, then each of [_____] and PPA Buyer shall select one person to act as arbitrator, and JAMS shall appoint one (1) person to act as an arbitrator (for such an arbitration, only [_____] and PPA Buyer are the "**Arbitration Parties**"). The JAMS appointed arbitrator shall serve as the chairperson (the "**chairperson**"). If any of the Arbitration Parties are unable or fail to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Arbitration Party or have any direct pecuniary interest in any Arbitration Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Arbitration Parties. The Arbitration Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Arbitration Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be shared equally between or among the Arbitration Parties, as the case may be. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Arbitration Party or Arbitration Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 11(b) by the prevailing party in connection with the arbitration, and the non-prevailing Arbitration Party or Arbitration Parties shall also be liable to the prevailing Arbitration Party or Arbitration Parties for the compensation and expenses of the three arbitrators and all costs charged by JAMS. Notwithstanding the foregoing provisions of this Section 11(b), any costs incurred by an Arbitration Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Arbitration Party against whom such court order is obtained. The award shall be final and binding on the Arbitration Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(e) **Judicial Reference.** Without limiting the provisions in Section 11(b), if Section 11(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a "**Dispute**") shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure ("**CCP**"), or their successor sections (a "**Reference Proceeding**"), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 11(c)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the "**Disputing Party**") shall provide the other Parties (the "**Responding Parties**"; and together with the Disputing Party, the "**Dispute Parties**") with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the "**Notice of Dispute**"). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the "**Dispute Response**"). If the Notice of Dispute makes no claim or assertion against one of the Responding Parties, and such Responding Party, in making its Dispute Response does not make or assert a claim against either the Disputing Party or the other Responding Party and states that it has no interest in the Dispute, then such Responding Party shall not participate in the resolution of the Dispute and shall not be a "**Dispute Party**" for purposes of this Section 11(c). Thereafter, the Dispute Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Dispute Parties do not resolve the dispute by unanimous agreement within sixty 60 days after receipt of the Dispute Response, (the "**Negotiation Period**"), then any Dispute Party may provide to the other Dispute Party(ies) written notice of intent for judicial reference (the "**Impasse Notice**") in accordance with the further provisions of this Section 11.

ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of [_____] and PPA Buyer, on the one hand, and PPA Seller, on the other hand, shall nominate one (1) referee, provided that if PPA Seller is not a Dispute Party, then each of [_____] and PPA Buyer shall nominate (1) referee, and PPA Seller will not nominate a referee. The two (2) referees (the "**Party-Appointed Referees**") shall unanimously appoint one additional referee (the "**Additional Referee**", together with the Party-Appointed Referees, the "**Referees**"). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Additional Referee shall be an active or retired California state or federal judge (the "**Head Referee**"). Each of the Party-Appointed Referees and the Additional Referee shall be impartial and independent of each of the Dispute Parties and of the other referees and not employed by any of the Dispute Parties in any prior matter.

(A) If the Party-Appointed Referees are unable to agree on the Additional Referee within 45 days from delivery of the Impasse Notice, then the

Additional Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the "**Court**"), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Dispute Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and [_____], on the one hand, and PPA Seller, on the other hand, shall have one (1) peremptory challenge to the referee selected by the Court, provided that if PPA Seller is not a Dispute Party, then each of [_____] and PPA Buyer shall have one (1) peremptory challenge to the referee selected by the Court.

iii. Discovery; Proceedings.

(A) The Dispute Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Head Referee, (ii) if practicable, try all issues of law or fact within 180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Dispute Parties, or if they cannot agree, as determined by the Head Referee after discussion with the Dispute Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Head Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Dispute Parties, or if not agreed by the Dispute Parties, by the Head Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Dispute Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Dispute Party making such a request shall have the obligation to arrange for and pay the court reporter.

iv. Decision. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Dispute Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

v. Expenses. The Dispute Parties shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be shared equally between or among the Dispute Parties, as the case may be.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first set forth above.

[_____]

By: _____
Name:_____
Title:_____

AVA COMMUNITY ENERGY AUTHORITY

By: _____
Name:_____
Title:_____

[_____]

By: _____
Name:_____
Title:_____

Appendix 1
Assigned Rights and Obligations

PPA: Renewable Power Purchase Agreement dated as of [_____], by and between PPA Buyer and PPA Seller

Delivery Point:

Limitation of [_____] Liability. [_____] has separately agreed with the PPA Buyer and the Custodian pursuant to the Custody Agreement to pay into the custodial account specified in the Custody Agreement (the "**Custodial Account**") for Assigned Product delivered during each Month of the Assignment Period pursuant to all Assignment Appendices then in effect at the "Day-Ahead Average Price" as defined below ("**Floating Price Payments**"). [_____] agrees for the benefit of the PPA Seller to pay the Floating Price Payments into the Custodial Account, and [_____]'s payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement. PPA Buyer and PPA Seller each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by [_____] shall not entitle (i) PPA Seller to payments in excess of the Contract Price for Assigned Product delivered hereunder or (ii) PPA Buyer to pay less than the Contract Price for Assigned Product delivered hereunder. PPA Buyer and [_____] each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by [_____] shall not entitle (i) [_____] to any payments from PPA Seller or (ii) affect the Custodian's obligation to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA. At all times the PPA Buyer shall remain obligated for the payment of all amounts owing under the terms of the PPA including the Monthly Gross Amount under each invoice. For the avoidance of doubt, [_____]'s obligations hereunder are limited to only the Assignment Appendices then in effect.

"Day-Ahead Average Price" means the result of (i) (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month plus (ii) $[___]/MWh. As used in this definition, "Pricing Interval" means the unit of time for which CAISO establishes a separate price. As used in this definition "Day-Ahead Market Price" means the Day Ahead Market or Locational Marginal Price for [NP15 EZ GEN HUB] for each applicable hour as published by CAISO, or as such price may be corrected or revised from time to time by CAISO in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

Further Information: PPA Seller shall transfer or, to the extent applicable, continue to transfer, the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both [_____] and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

Appendix 2

Assignment Appendix – [A][B][C][6]

to that certain Limited Assignment Agreement, dated [____], by and among Ava Community Energy Authority, [____] and [PPA Seller] (the "Agreement")

Date: [--]

Capitalized terms used but not otherwise defined herein shall have the meaning specified in the Agreement.

Assigned Products subject to this Assignment Appendix: [•] percent/[•] MWhs of Assigned Products delivered to the Delivery Point.

Assigned Prepay Quantity: As set forth in the schedule attached hereto, provided that the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and [___] and shall have no impact on the obligations of the Parties under the Agreement.

"**Assignment Appendix End Date**" means 11:59:59 p.m. pacific prevailing time on [_____].

"**Assignment Appendix Start Date**" means [_____].

"**Custodian**" means [The Bank of New York Mellon Trust Company, N.A.].

"**Custody Agreement**" means the [Consolidated, Amended and Restated Custodial Agreement dated as of [-----], 2024, among the Issuer, the PPA Buyer, [_____], the Prepay Seller and the Custodian].

"**Issuer**" means [California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended)].

"**Prepaid Agreement**" means that certain [Prepaid Energy Sales Agreement/Master Power Supply Agreement], dated as of [_____], by and between Prepay Seller and Issuer.

"**Prepay Power Supply Contract**" means that certain [Power Supply Contract/Clean Energy Purchase Contract], dated as of [_____], by and between PPA Buyer and Issuer.

"**Prepay Seller**" means [_____], or any other Person that is the prepay seller under the terms of the Prepaid Agreement from time to time.

[redacted]

Appendix 3
Notice Information

IF TO PPA SELLER: **As set forth in the PPA**

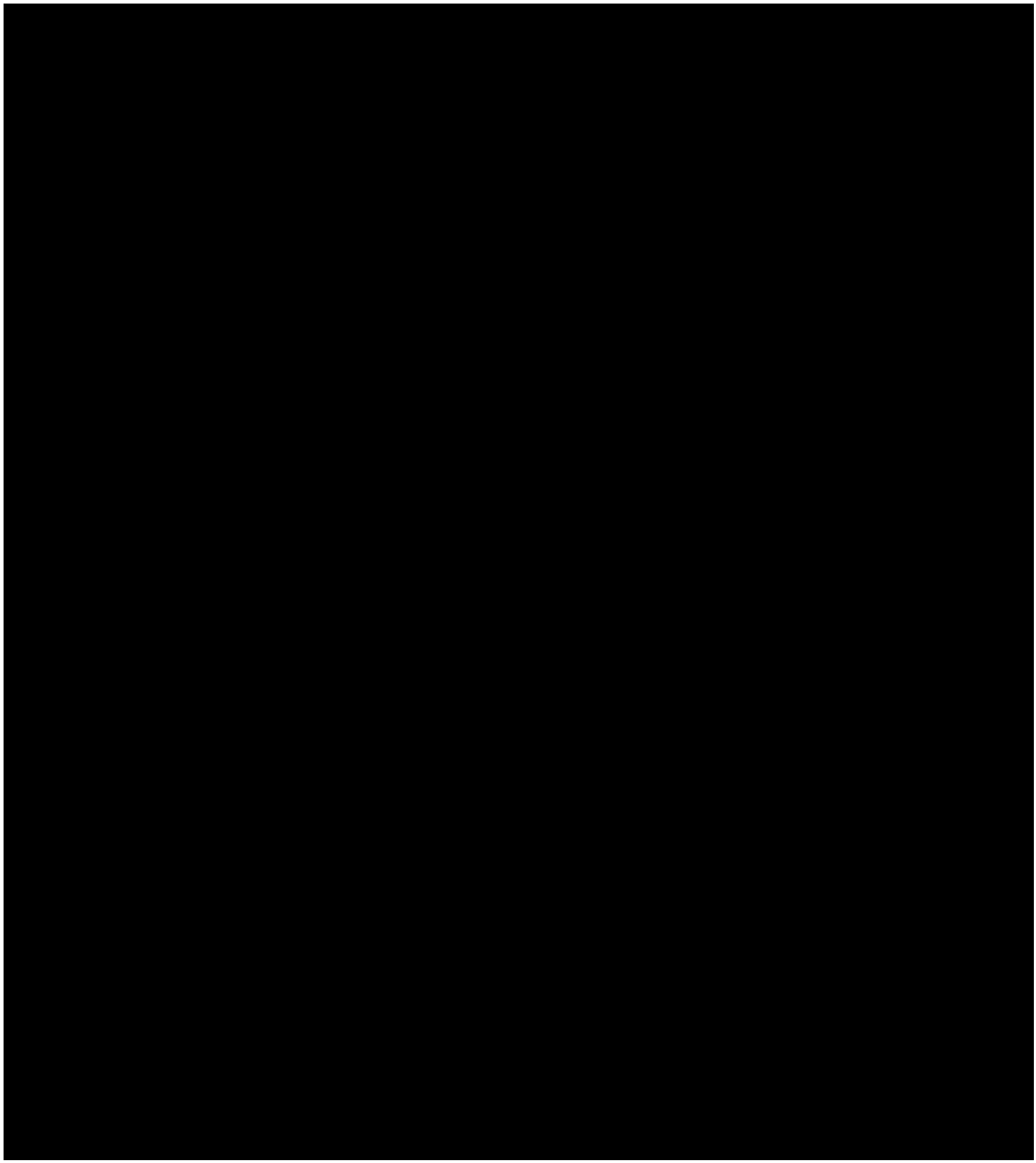
IF TO [_____]: **[_____]**

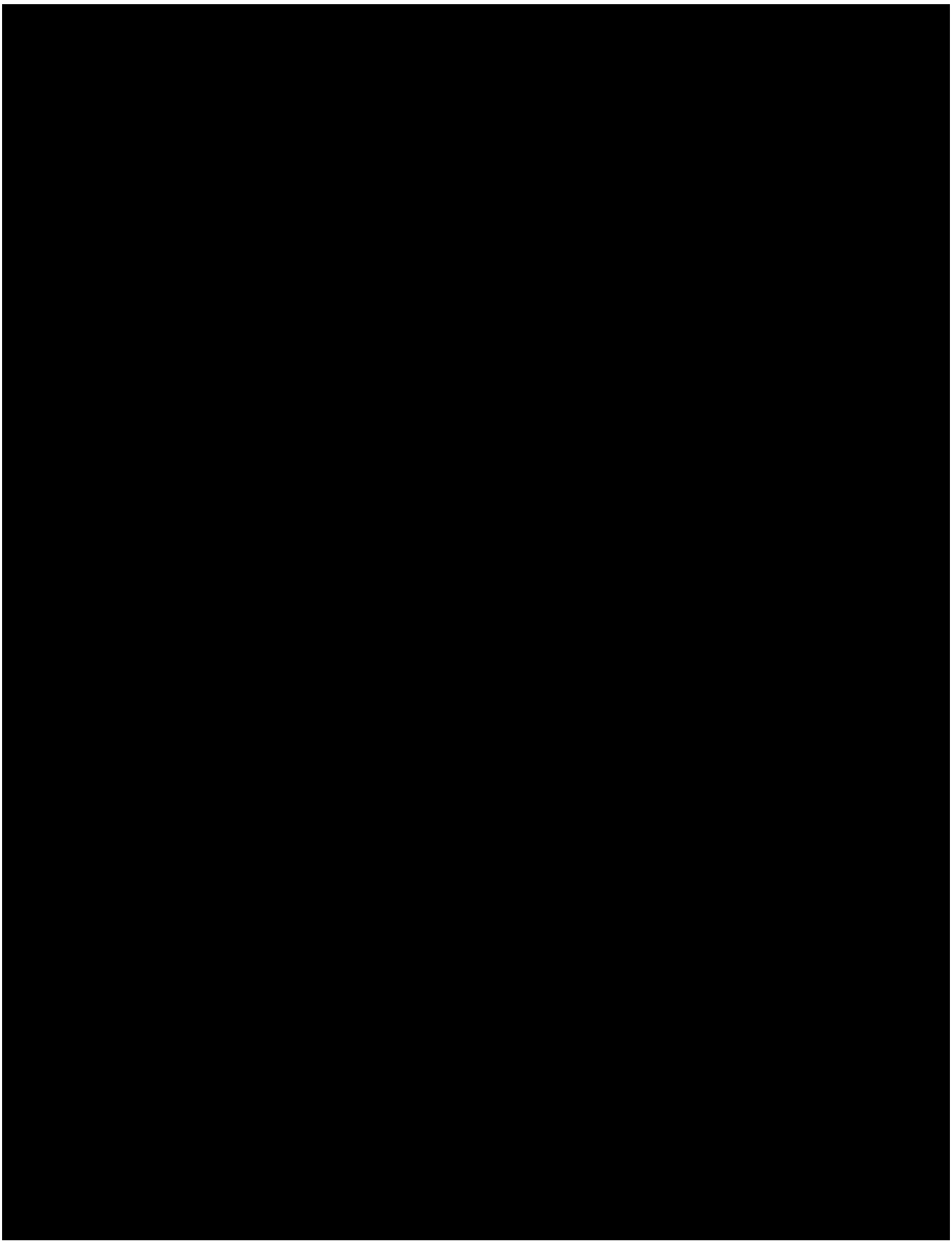
IF TO PPA BUYER: **As set forth in the PPA**

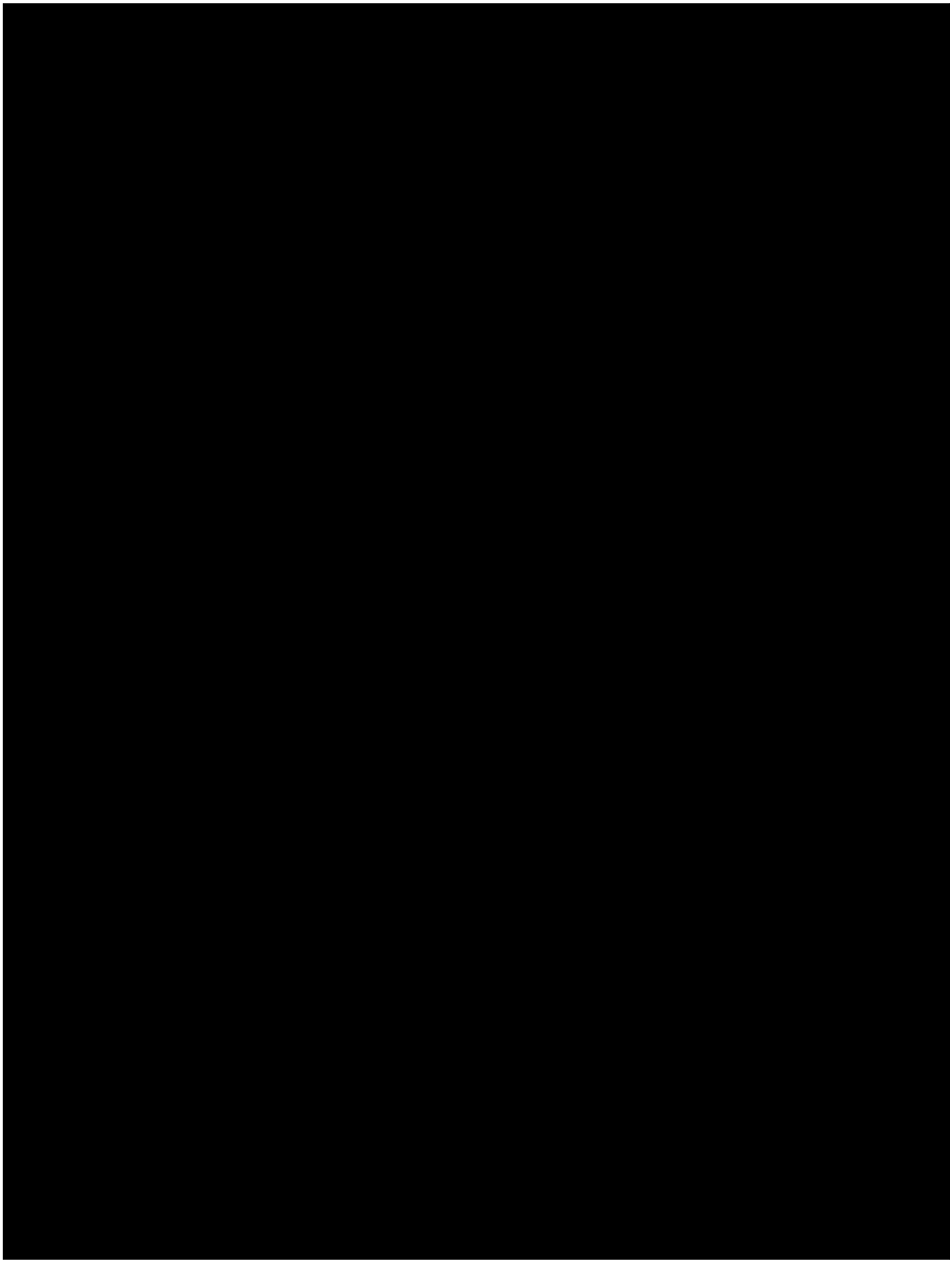
Appendix 4
Copy of Power Purchase Agreement
[To be attached.]

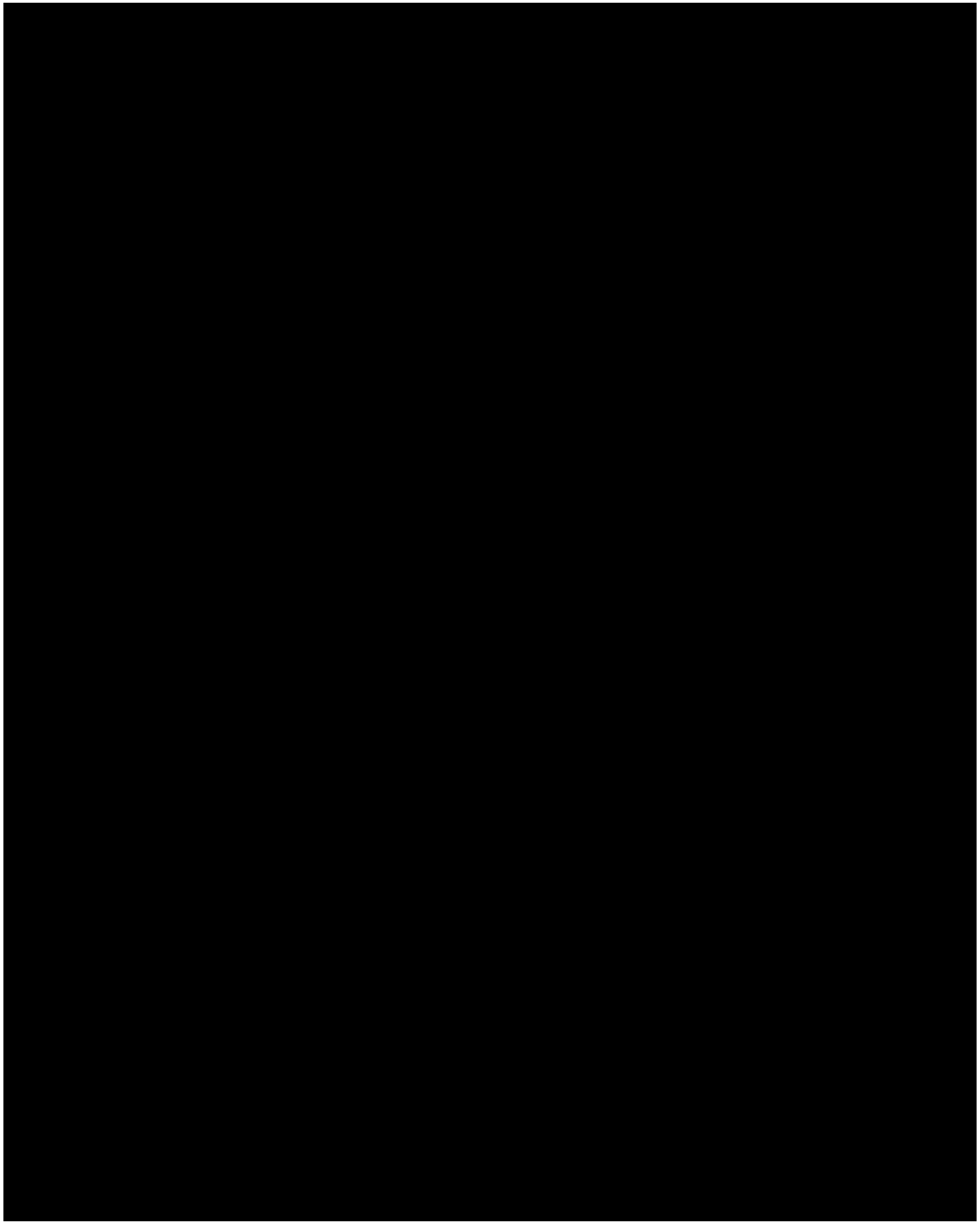
[redacted]

EXHIBIT V









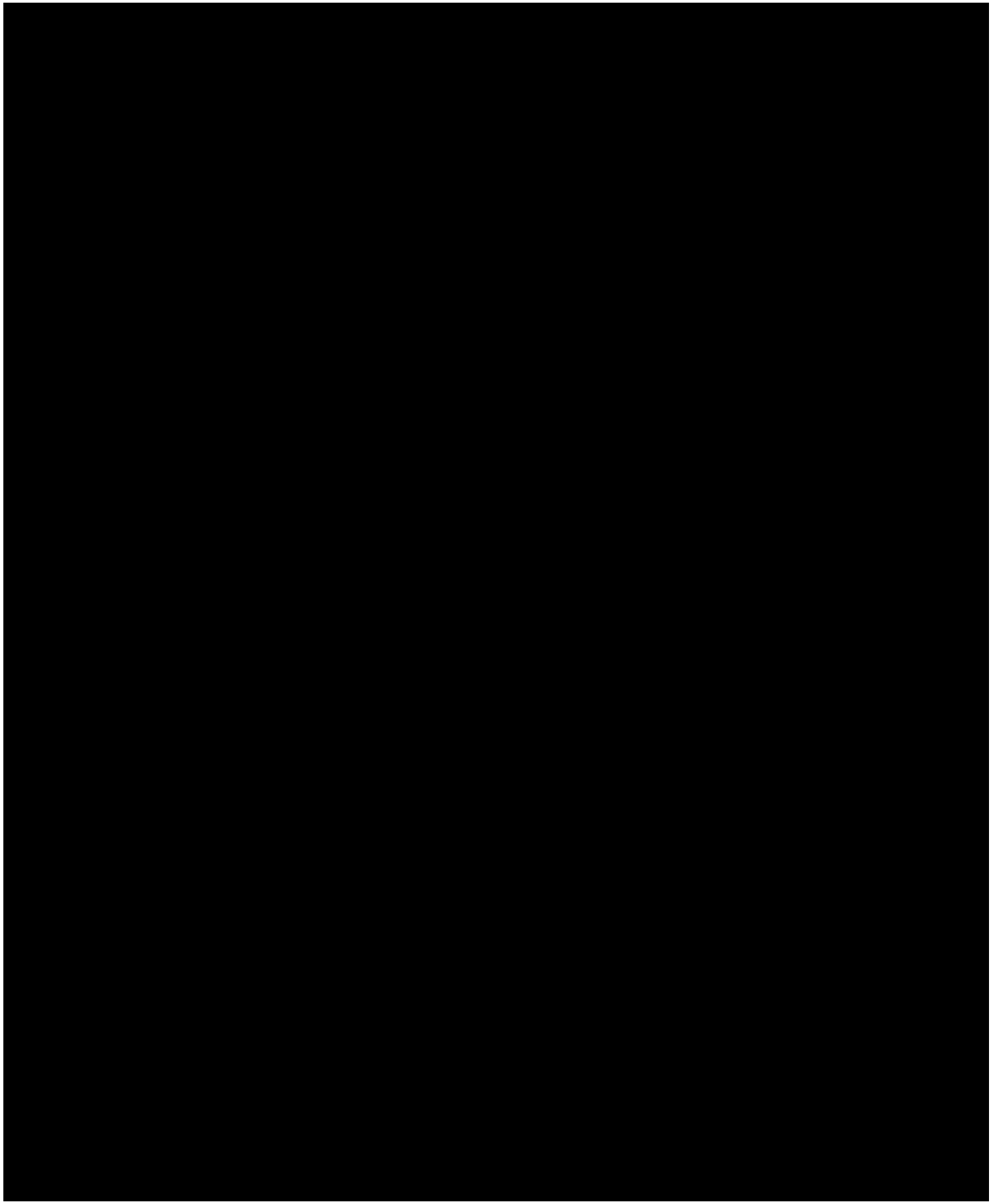


EXHIBIT W[9]

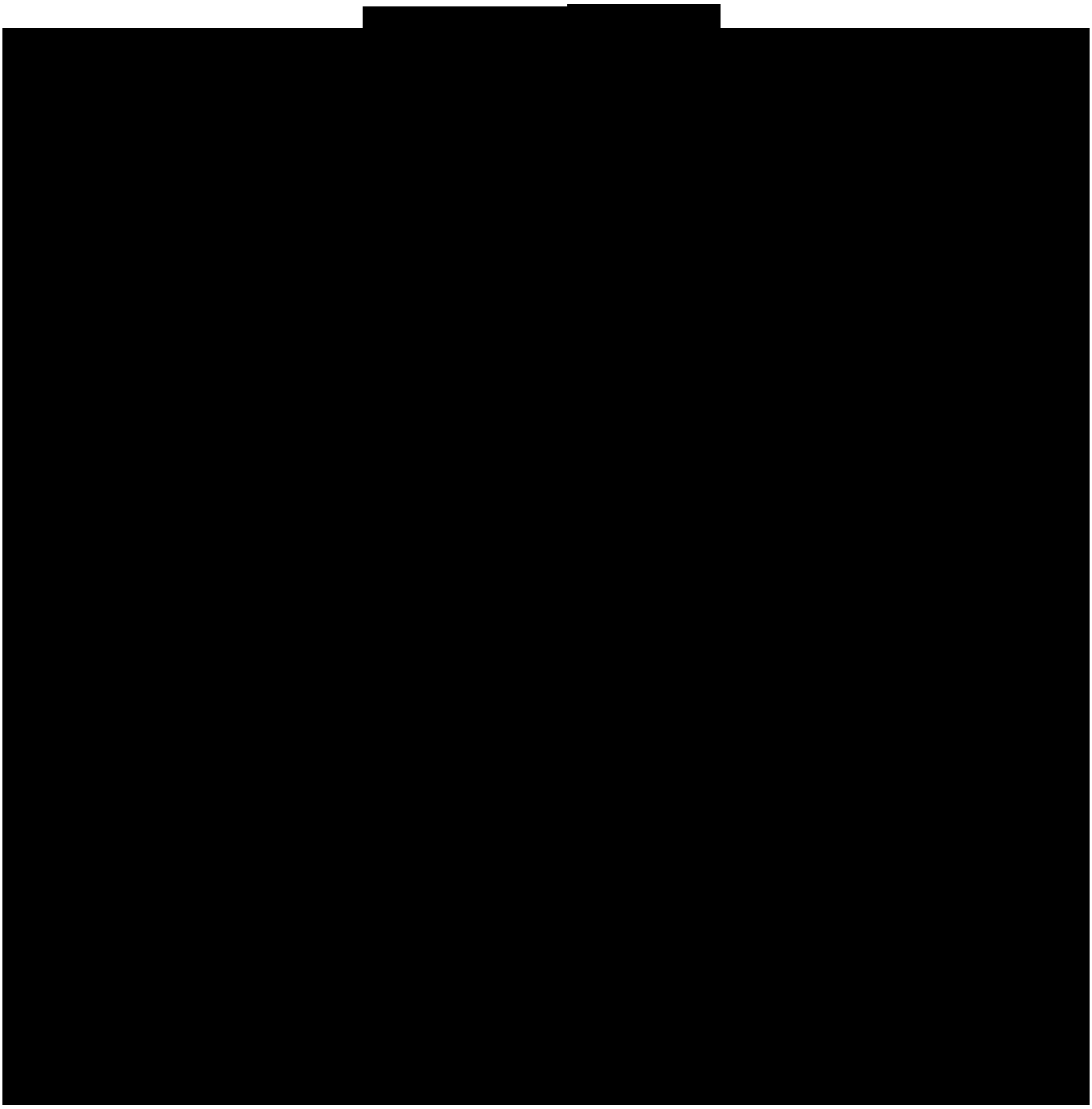


EXHIBIT X[12]



12 Parties to discuss.