

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Yellow Pine Solar III, LLC (“**Seller**”)

Buyer: San Diego Community Power, a California joint powers authority (“**Buyer**”)

Description of Facility: A 35 MW_{AC} solar renewable energy generation facility and 35 MW_{AC} (4-hour) battery energy storage facility located in Clark County, in the State of Nevada, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Executed Interconnection Agreement	Completed
Procure Storage Facility Major Equipment	
Procure Generating Facility Major Equipment	
Evidence of Site Control	
CEC Pre-Certification Obtained	
Obtain Federal and State Discretionary Permits	
Guaranteed Storage Facility Construction Start Date	
Guaranteed Generating Facility Construction Start Date	
Earliest Storage Facility Commercial Operation Date	
Expected FCDS Date	
Guaranteed Storage Facility Initial Delivery Date	
Guaranteed Generating Facility Initial Delivery Date	

Delivery Term: Twenty (20) Contract Years, provided that as set forth in the defined term “Contract Year”, the first Contract Year may be longer than twelve (12) consecutive months with respect to either the Storage Facility Delivery Term or the Generating Facility Delivery Term.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	

2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Guaranteed Generating Capacity: 35 MW_{AC} of Generating Facility capacity

Guaranteed Storage Capacity: 35 MW_{AC} for four (4) hour discharge

Guaranteed Storage Output: 140 MWh (based on four (4) hour discharge)

Dedicated Interconnection Capacity: 35 MW_{AC}

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	
2 – 20	

Minimum Efficiency Rate (Storage Facility): for all Contract Years during the Storage Facility Delivery Term.

Contract Price:

The “Renewable Rate” shall be [REDACTED] (flat) with no escalation from Generating Facility IDD until the end of the Generating Facility Delivery Term; *provided, however*, that the Renewable Rate may be adjusted in accordance with Section 3.10.

The “Storage Rate” shall be [REDACTED]
[REDACTED] m Storage Facility IDD until the end
of the Storage Facility Delivery Term.

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Effective Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☒ Energy Only Status (for the Generating Facility)
 - ☒ Full Capacity Deliverability Status (for the Storage Facility)
- ☒ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security

Storage Facility Development Security:

Generating Facility Development Security:

Performance Security

Storage Facility Performance Security:

Generating Facility Performance Security:

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of June [REDACTED], 2023 (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, construct, own, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**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 Transfer” and “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the

ownership of operating power generation, storage, or transmission assets (such as a “yield co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP (“**NEP**”), NextEra Energy Operating Partners, LP (“**NEOP**”), and NextEra Energy Capital Holdings, Inc. (“**NEECH**”), and their respective direct or indirect subsidiaries.

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“**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, ancillary services-related products and other ancillary services-related attributes, if any, associated with the Facility, provided, for avoidance of doubt, the Ancillary Services do not include Black Start.

“**Approved Forecast Vendor**” means Seller or any vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

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

“**Available Charging Capacity**” means the capacity of the Storage Facility, expressed in whole MWs, that is mechanically available to receive Charging Energy.

“**Available Discharging Capacity**” means the capacity of the Storage Facility, expressed in whole MWs, that is mechanically available to provide Discharging Energy.

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

“**Availability Forecast**” means any Notice of any change to the Available Generating Capacity, Available Charging Capacity, or Available Discharging Capacity to be delivered by or on behalf of Seller and provided to facilitate creation of the CAISO VER generation forecast as required by CAISO Tariff Appendix Q and pursuant to Section 4.3(d).

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

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

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

“Buyer” means San Diego Community Power, a California joint powers authority.

“Buyer Bid Curtailment” means the occurrence of both of the following:

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

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:

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

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

(iii) submitted a bid or schedule of the Storage Facility (including for ancillary services) that results in curtailment of the Generating Facility; or

(iv) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event 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 Generating 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 or SC to Seller to reduce Generating Facility Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Buyer Bid Curtailment, Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) any other action or omission by Buyer (or its agents) including a Buyer Default which causes Seller to be unable to deliver Generating Facility Energy to the Delivery Point; *provided*, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(b).

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Generating Facility Energy, Charging Energy, and Discharging Energy delivered to or from the Delivery Point.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Storage Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Storage Facility.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined 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, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Storage Facility can discharge 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 Section 6(a) of 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 Generating Facility IDD, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Generating Facility Energy delivered to the Delivery Point (net of round-trip efficiency losses if required by Law) qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CPUC, (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC, or (g) any change in STC REC-1, STC REC-2 or STC 6.

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

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or

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

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

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

“Charging Energy” means Energy, net of Station Use, delivered to the Storage Facility pursuant to a Charging Notice, as measured by the Storage 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 and Station Use. All Charging Energy shall be used solely to charge the Storage Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Storage Facility, directing the Storage Facility to charge with Charging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Procedures.

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

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Action” has the meaning set forth in Section 3.12(b).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12(b).

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

“Contract Capacity” means the sum of the Guaranteed Generating Capacity and the Guaranteed Storage Capacity.

“Contract Price” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

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

“Contract Year” means a period of twelve (12) consecutive months; *provided*, the first Contract Year shall begin on the earlier of the Storage Facility COD and the Generating Facility

IDD and continue up to, but not including, (i) the first anniversary of the later of the Storage Facility IDD and the Generating Facility IDD; or (ii) if the Agreement has been terminated with respect to the Storage Facility or the Generating Facility, the date that is immediately prior to the first anniversary of the commencement of such first Contract Year (and thus for avoidance of doubt, the first Contract Year may be longer than twelve (12) consecutive months with respect to either the Storage Facility Delivery Term or the Generating Facility Delivery Term). Each Contract Year thereafter shall begin with the day immediately following the last day of the prior Contract Year and continue up to, but not including, the date immediately prior to the first anniversary of the commencement of such Contract Year, until the end of the Storage Facility Delivery Term and Generating Facility Delivery Term. For clarification purposes, and notwithstanding anything to the contrary in this Agreement, any figures, obligations, or requirements under this Agreement pertaining to the first Contract Year shall be evaluated, and appropriate adjustments made, to take into account that the first Contract Year may be longer than twelve (12) consecutive months for either the (a) Storage Facility Delivery Term, or (b) the Generating Facility Delivery Term.

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

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

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC System RA Penalty Price” means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

“**Credit Rating**” means, with respect to 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. If ratings by Fitch, S&P and Moody's are not equivalent, the lower rating shall apply.

"Cure Plan" has the meaning set forth in Section 11.1(b)(vi).

"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 Generating 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 prevents (i) Buyer from receiving or (ii) Seller from delivering Generating Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

Notwithstanding anything to the contrary in this Agreement, if in the future the CAISO adopts any rule or regulation that would allow for the Parties and/or Buyer's SC to deliver Charging Energy to the Storage Facility during any Curtailment Order, the Parties agree to use commercially reasonable efforts to do so. For clarification, any notice, order, or instruction from the CAISO to curtail or reduce Generating Facility Energy and/or the Generating Facility that results from a Buyer instruction or lack of instruction to the Buyer SC and/or having submitted a Self-Schedule, Energy Supply Bid, or bid for Ancillary Services for the Storage Facility, all of which is consistent with the definition of Buyer Bid Curtailment, is a Buyer Bid Curtailment not a Curtailment Order.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which generation from the Generating Facility is reduced pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

"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.

“Dedicated Interconnection Capacity” means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount, for any time period, shall be equal to the difference between (a) the amount of Energy as determined by the Lost Output / Deemed Delivered Energy Computation, *minus* (b) the amount of Energy that the Generating Facility produced and delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference between the foregoing clauses (a) and (b) is negative, the Deemed Delivered Energy shall be zero (0).

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

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Deliverability Network Upgrades” has the meaning set forth in the CAISO Tariff.

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

“Delivery Term” has the meaning set forth on the Cover Sheet and encompasses the Storage Facility Delivery Term and the Generating Facility Delivery Term, *provided*, for clarification purposes the Storage Facility Delivery Term and the Generating Facility Delivery Term may start on different dates, as set forth in the definition of “Contract Year”.

“Development Security” means, as applicable, Storage Facility Development Security and/or Generating Facility Development Security in the form of (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured by the Storage Facility Meter, as such meter readings are adjusted for Electrical Losses to the Delivery Point.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Storage Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Procedures and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer, Buyer’s SC or the CAISO to be discharging, the sum of Generating Facility Energy and Discharging Energy would exceed the Dedicated Interconnection Capacity, such “Discharging Instruction” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and Generating Facility Energy does not exceed the Dedicated Interconnection Capacity, until such time as Buyer, Buyer’s SC or the CAISO issues a further modified Discharging Notice.

“**Dispute Notice**” has the meaning set forth in Section 15.4.

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“**Earliest Storage Facility Commercial Operation Date**” has the meaning 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.

“**Effective Storage Capacity**” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Storage Facility Commercial Operation Storage Capacity Test, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto), in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Storage Facility Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“**Efficiency Rate**” means the measured round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Meter and the Delivery Point associated with delivery of Generating Facility Energy, (b) between the Storage Facility Meter and the Delivery Point associated with delivery of Discharging Energy, (c) between the Delivery Point and the Storage Facility Meter associated with delivery of Charging Energy.

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

“**Energy**” means alternating current electrical energy measured in MWh.

“**Energy In**” has the meaning set forth in Part II.B and Part III.A.4 of Exhibit O.

“**Energy Out**” has the meaning set forth in Part II.B Part III.A.9 of Exhibit O.

“**Energy Management System**” or “**EMS**” means the Storage Facility’s energy management system.

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

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

[REDACTED]

[REDACTED]

3.10 “**Estimated Pricing Date Projected Module Costs**” has the meaning set forth in Section

“**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 Energy**” means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

“**Expected FCDS Date**” means the date set forth in the Cover Sheet, which is the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.

“**Facility**” means the Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of the Generating Facility Energy and the Discharging Energy.

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

[REDACTED]

[REDACTED]

[REDACTED]

“**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 making all or a portion of the Generating Facility Energy and Discharging Energy available at the Delivery Point or receiving Charging Energy from the Delivery Point and that is not the result of a Force Majeure Event.

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

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

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

“Future Environmental Attributes” shall mean, except to the extent set forth in the last sentence of this definition, any and all generation attributes (other than Green Attributes or Tax Benefits) 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 (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Benefits associated with the development, construction, operation or ownership 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, (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 and/or air quality permits.

“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” 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 Generating Facility Energy; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Construction Start” has the meaning set forth in Section 1(b) of Exhibit B.

“Generating Facility Construction Start Date” has the meaning set forth in Section 1(b) of Exhibit B.

“Generating Facility Damage Payment” means

“Generating Facility Delivery Term” means the delivery term of the Generating Facility, commencing on the Generating Facility IDD and ending upon the earlier of (a) the expiration of the Delivery Term, or (b) the termination of the Delivery Term with respect to the Generating Facility.

“**Generating Facility Development Cure Period**” has the meaning set forth in Section 5(b) of Exhibit B.

“Generating Facility Development Security” means the Generating Facility Development Security in the form of (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Generating Facility Energy” means the Energy, net of Electrical Losses and Station Use, that is measured by the Generating Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices.

“Generating Facility IDD Certificate” has the meaning set forth in Section 3(c) of Exhibit B.

“Generating Facility IDD Delay Damages” means

“Generating Facility Initial Delivery Date” or **“Generating Facility IDD”** has the meaning set forth in Section 3(c) of Exhibit B.

“Generating Facility Meter” means the CAISO Approved Meter, along with a CAISO-approved 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 Generating Facility Energy delivered to the Generating Facility Meter for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Performance Security” means Generating Facility Performance Security in the form of (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“GEP Damages” has the meaning set forth in Section 4.7.

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

“Green Attributes” means, except to the extent set forth in the last sentence to of this definition, 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 under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Benefits associated with the development, construction, operation or ownership 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 and/or air quality permits.

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

“Guaranteed Efficiency Rate” means the guaranteed Efficiency Rate of the Storage Facility throughout the Storage Facility Delivery Term, as set forth on the Cover Sheet, as may be adjusted pursuant to Section 4.5(i).

“Guaranteed Energy Production” means

“Guaranteed Generating Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B, Section 6(b).

“Guaranteed Generating Facility Construction Start Date” has the meaning set forth on the Cover Sheet.

“Guaranteed Generating Facility Initial Delivery Date” or **“Guaranteed Generating Facility IDD”** has the meaning set forth on the Cover Sheet.

“Guaranteed RA Amount” shall be, at any point in time on or after the Guaranteed Storage Facility IDD, the maximum Net Qualifying Capacity (in MWs) for which a storage facility with storage capacity of 35 MW_{AC} with four (4) hour discharge (140 MWh of storage capacity) at the Delivery Point, having achieved FCDS to the extent required under the Agreement and performing with operational characteristics equal to those required by the Guaranteed Storage Availability, Guaranteed Efficiency Rate, and the Operating Restrictions, may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

“Guaranteed Storage Capacity” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 6(a) of Exhibit B.

“Guaranteed Storage Facility Construction Start Date” has the meaning set forth on the Cover Sheet.

“Guaranteed Storage Facility Initial Delivery Date” or **“Guaranteed Storage Facility IDD”** has the meaning set forth on the Cover Sheet.

“Guaranteed Storage Output” means the product of the Guaranteed Storage Capacity multiplied by four (4) hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, (a) NextEra Energy Capital Holdings, Inc., (b) an Affiliate of Seller with an Investment Grade Credit Rating, or (c) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iii) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

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

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

“**Indemnified Party**” has the meaning set forth in Section 16.1(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

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“**Installed Storage Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge Energy measured in MW(ac) at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Storage Facility COD (up to but not in excess of the Guaranteed Storage Capacity), demonstrated through a Storage Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“**Installed PV Capacity**” means the maximum generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Generating Facility IDD (up to but not in excess of the Guaranteed Generating Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

“**Insurable Force Majeure Event**” means any Force Majeure Event which (i) results in direct, physical loss to the Facility and (ii) excludes Force Majeure Events that occur beyond the Delivery Point.

“**Interconnection Agreement**” means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

“Investment Grade Credit Rating” means a Credit Rating [REDACTED]
[REDACTED]

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986, as in effect from time-to-time throughout the Contract Term or any successor provision.

“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 October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having at [REDACTED] and having a Credit Rating of at least [REDACTED] in a form substantially similar to the letter of credit set forth in: [REDACTED] Exhibit K if issued on behalf of Seller for the benefit of Buyer; [REDACTED]
[REDACTED]

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

“Limited Assignee” has the meaning set forth in Section 14.3.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

“**Losses**” means, with respect to the 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 Tax Benefits.

“**Lost Output**” means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Default, which amount shall be calculated using the Lost Output / Deemed Delivered Energy Computation for the period of time during such Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Default, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during such period of time (or other relevant period); *provided*, if the applicable difference is negative, the Lost Output shall be zero (0).

“**Lost Output / Deemed Delivered Energy Computation**” means the total amount of energy that the Generating Facility would have produced during a Buyer Curtailment Period or a Lost Output period.

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

“**Maximum Charging Capacity**” has the meaning set forth in in Exhibit Q.

“**Maximum Discharging Capacity**” has the meaning set forth in in Exhibit Q.

“**Meter Service Agreement**” has the meaning set forth in the CAISO Tariff.

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

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet, and for avoidance of doubt applies to the Storage Facility.

“**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.

“**NEECH**” has the meaning set forth in the definition of Affiliate.

“**NEER**” means NextEra Energy Resources, LLC.

“**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).

“**Negative LMP Costs**” has the meaning set forth in Exhibit C.

“**NEOP**” has the meaning set forth in the definition of Affiliate.

“**NEP**” has the meaning set forth in the definition of Affiliate.

“**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, next Business Day courier service, or electronic messaging (e-mail).

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

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

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

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

“Performance Measurement Period” means each two (2) consecutive Contract Year period during the Generating Facility Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2 of the Generating Facility Delivery Term. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be

comprised of Contract Years 3 and 4, and so on, each with respect to the Generating Facility Delivery Term.

“Performance Security” means, as applicable, Storage Facility Performance Security and/or Generating Facility Performance Security in the form of (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transfer” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that: (i) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) A Change of Control of Ultimate Parent, NEECH, NEP, NEOP, or NEER;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender;
or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER’s or Ultimate Parent’s renewable energy generation portfolio; or (iii) all or substantially all of NEER’s or Ultimate Parent’s solar generation and/or energy storage portfolio; or (iv) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an Affiliate of NEER continues to hold an economic interest in the Facility; provided, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

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

(a) A tangible net worth of [REDACTED]

and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent, NEER, NEECH, NEOP, and NEP, and their respective direct or indirect subsidiaries.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

“Planned Outage” means, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

“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.

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

“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 wind, solar or other renewable energy resources or by reference to storage of renewable energy resources for which Seller, as the owner of the Generating Facility or the Storage Facility, each as applicable, is eligible.

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

[REDACTED]

“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 energy storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable 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, equal to the Production Tax Credits that Seller would have earned in respect of Generating Facility Energy at the time, grossed up on an After-Tax Basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of a Buyer Curtailment Period, with the applicable MWh figure to be calculated by reference to the amount of Deemed Delivered Energy.

“Qualified Operator” means Seller or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated three (3) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than three (3) years and at least one (1) battery energy storage facility having a nameplate capacity rating of one (1) MW and/or two (2) MWh or more, for not less than two (2) years.

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

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

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

“RA Guarantee Date” means the Storage Facility IDD.

“RA Shortfall” has the meaning set forth in in Section 3.8(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which (i) the (a) lowest amount of Net Qualifying Capacity eligible to be qualified as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month, plus (b) any Replacement RA (if applicable) that was included

in the Showing Month for Buyer was less than (ii) the Guaranteed RA Amount for such Showing Month.

“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.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in 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 Rate” has the meaning set forth on the Cover Sheet.

“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 Generating Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Storage Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and located within the CAISO Grid and, to the extent that the Storage Facility would have qualified as a Local Capacity Area Resource for such Showing Month, located within the same Local Capacity Area as the Storage Facility.

“Resource Adequacy Benefits” means the rights and privileges attached to the Storage 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 and flex attributes associated with the Storage Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“RETA” means the State of Nevada Renewable Energy Tax Abatement including pursuant to NRS 701A.300-.390, inclusive, and NAC 701A.500- 660, inclusive, as in effect from time-to-time throughout the Contract Term or any successor provision.

“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 Generating Facility Energy, 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 8.9.

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

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; provided, that the Parties agree that the value of Green Attributes, Capacity Attributes, and Tax Benefits 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.

“SQMD Plan” 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 Affiliates and/or third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

“Showing Month” shall be the calendar month of the Storage Facility Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“Site Control” means that Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“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 (1) with respect to the Generating Facility, the Energy that is used within the Generating Facility when the Generating Facility is not providing Generating Facility Energy; and (2) with respect to the Storage Facility, the Energy that is used within the Storage Facility to power the information technology, telecommunications, lights, motors, temperature control systems, control facility systems and other electrical loads that are necessary for operation of the Storage Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

“Storage Capacity Test” or **“SCT”** means any test or retest of the capacity of the Storage 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 Cure Plan” has the meaning set forth in Section 11.1(b)(ix).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding the Generating Facility and 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.

B.

Exhibit B.

meaning set forth in Section 3(a) of Exhibit B.

Exhibit B.

Exhibit B.

“Storage Facility Damage Payment” means [REDACTED]

Delivery Term, or (b) the termination of the Delivery Term with respect to the Storage Facility.

of Exhibit B.

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

“Storage Facility IDD Delay Damages” means an amount equal to [REDACTED]

forth in Section 3(b) of Exhibit B.

aggregated data of all such measurement devices, taken together.

Cover Sheet.

“Storage Payment” means the amount calculated pursuant to Section (e) of Exhibit C.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

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

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

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) 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 Benefits” means the PTC, ITC, RETA, and any and all other federal, state, and/or local tax benefit, grant or incentive, including energy credits determined under Section 38, 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production, sale, or storage of renewable energy and/or the operation, construction, investments in or ownership of, the Generating Facility, the Storage Facility, and/or the Facility (including any cash payment or grant).

“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 Generating Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Generating 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 Generating Facility IDD.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Throughput” means, at any point in time during any day or Contract Year of the Storage Facility Delivery Term, as applicable, the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such day or Contract Year of the Storage Facility Delivery Term, as applicable (expressed in MWh).

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

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

[REDACTED]

“Ultimate Parent” means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.

“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 4.10(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 terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided, however*, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any applicable Product are subject to Seller’s completion of the applicable conditions precedent pursuant to Section 2.2 (i.e., Section 2.2(a) for payment of the Storage Rate at the reduced rate set forth on the Cover Sheet, Section 2.2(b) for payment of the Storage Rate at the full rate set forth on the Cover Sheet, and Section 2.2(c) for payment of the Renewable Rate set forth on the Cover Sheet).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 Conditions Precedent.

(a) The Storage Facility Commercial Operation Date shall not commence until Seller completes each of the following conditions to Buyer’s reasonable satisfaction with respect to the Storage Facility:

(i) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H-1 and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed Storage Capacity on the Storage Facility Commercial Operation Date;

(ii) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(iii) 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;

(iv) All necessary and applicable regulatory authorizations, approvals and permits for the operation of the Storage Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Storage Facility COD have been satisfied;

(v) The Storage Facility has obtained CAISO Certification;

(vi) The Storage Facility has successfully completed all testing required by any requirement of Law necessary to operate the Storage Facility; and

(vii) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(b) The Storage Facility IDD shall not commence until Seller completes each of the following conditions to Buyer's reasonable satisfaction with respect to the Storage Facility:

(i) Storage Facility Commercial Operation has been achieved;

(ii) Seller has obtained Interim Deliverability Status or Full Capacity Deliverability Status;

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

(iv) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Storage Facility IDD Delay Damages.

(c) The Generating Facility IDD shall not commence until Seller completes each of the following conditions to Buyer's reasonable satisfaction with respect to the Generating Facility:

(i) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H-2 and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed PV Capacity on the Generating Facility IDD;

(ii) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(iii) 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;

(iv) All necessary and applicable regulatory authorizations, approvals and permits for the operation of the Generating Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Generating Facility IDD have been satisfied;

(v) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Generating Facility IDD);

(vi) 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 Generating Facility IDD 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, qualified reporting entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system;

(vii) The Generating Facility has successfully completed all testing required by any requirement of Law necessary to operate the Generating Facility; and

(viii) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

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

(x) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Generating Facility IDD Delay Damages.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the earlier of the Storage Facility Construction Start Date or Generating Facility Construction Start Date, and (ii) each calendar month thereafter, Seller shall provide to Buyer a Progress Report until the last to occur of the Storage Facility IDD and the Generating Facility IDD that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones. The Progress Reports shall be substantially in the form set forth in Exhibit E. Seller agrees to quarterly or monthly (as applicable) 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 reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller misses 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 the end of such ninety (90)-day period following such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's reasonably detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones; *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. 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.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any 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 **Sale of Green Attributes.** During the Generating Facility Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Generating Facility Energy; *provided*, that the Generating Facility Energy will be subject to proportional adjustments resulting from any reductions or offsets imposed under applicable rules or policies of the California Energy Commission to account for losses resulting from the Storage 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, any payments related to such Imbalance Energy shall be for the account of Buyer.

3.4 **Ownership of Tax Benefits.** Seller shall have all right, title and interest in and to all Tax Benefits. Buyer acknowledges that any Tax Benefits belong to Seller. If any Tax Benefits, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Tax Benefits 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 Tax Benefits.

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 associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(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; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Generating Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Generating Facility generates Test Energy, Seller shall sell, and Buyer shall purchase from Seller, all Test Energy and any associated Product of the Generating Facility on an as-available basis. As full compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status for the Guaranteed Storage Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Deliverability Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) From and after Storage Facility IDD, and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Storage Facility.

(b) Throughout the Storage Facility Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Storage Facility Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Storage Facility Delivery Term, and subject to Section 3.12, Seller shall take 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 and/or provide Replacement RA, as set forth in Section 3.8(b), in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Guaranteed RA Amount for such Showing Month, minus (ii) the lowest amount of Net Qualifying Capacity included on the Supply Plan as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month (such difference, the “**RA Shortfall**”), multiplied by

[REDACTED] provided, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M to Buyer at least ten (10) Business Days before the deadline (as established by CAISO or any other Governmental Authority) that Buyer must meet to submit its Resource Adequacy Plan for the applicable Showing Month for the purpose of monthly RA reporting. Notwithstanding anything to the contrary herein, the aggregate RA Deficiency Amount in any Contract Year shall not exceed [REDACTED]

3.9 CEC Certification and Verification. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Generating Facility Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Generating Facility IDD. Within thirty (30) days after the Generating Facility IDD, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Generating Facility IDD, Seller shall obtain and maintain throughout the remainder of the Generating Facility 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 Generating Facility.

3.11 **California Renewables Portfolio Standard.**

(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].

(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].

(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].

(d) With respect to the immediately preceding paragraphs (a) – (c), (i) the reference in Section 3.11(a) to “first delivery under the contract” has the same meaning as “first delivery of Generating Facility Energy under this Agreement”, (ii) the references in Section 3.11(c) to “Project” have the same meaning as “Generating Facility”, (iii) the reference in Section 3.11(c)(ii) to “the Project’s output” has the same meaning as “the Generating Facility Energy net of losses if required by Law”, 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) The Parties acknowledge that a purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement a Change in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with a Change in Law to maximize benefits to Buyer provided under this Agreement as of the Effective Date, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities from Seller; or (iii) all other actions that may be required by Seller to assure that this Agreement or the Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a Change in Law occurring after the Effective Date increases Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of ██████████ Attributes or Capacity Attributes (any action required to be taken by Seller to comply with such Change in Law, a "**Compliance Action**"), ██████████
 (the "**Compliance Expenditure Cap**").

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

(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 costs and expenses that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days, or if Buyer does not timely pay the costs and expenses in excess of the Accepted Compliance Costs, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability or obligation under this Agreement for any failure to take, such Compliance Actions.

(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 and expenses 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 and expenses from Seller.

(f) If a Change in Law prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, or 3.11, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then, [REDACTED]

[REDACTED] Seller shall provide Notice to Buyer of such Change in Law and the consequences for Seller's performance hereunder, the Parties shall enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered consistent with such Change in Law, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, *provided* that if no such agreement is achieved resolution shall be determined in accordance with Article 15.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(e) 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 the applicable Product to Buyer at the Delivery Point (except for Generating Facility Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for Generating Facility Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Generating Facility Energy, Charging Energy, and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(f) Green Attributes. All Green Attributes associated with the Facility during the Generating Facility 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 Generating Facility Energy and Discharging Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

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

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Generating Facility Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Generating Facility Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Generating 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 agreed to by the Parties.

(b) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the beginning of the first to occur of Storage Facility Commercial Operation or Generating Facility IDD, and thereafter at least ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly (i) Available Generating Capacity, (ii) Available Charging Capacity, and (iii) Available Discharging Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2, or as reasonably agreed to by the Parties ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. During the Delivery Term, by 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer or the Buyer's SC consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) (i) Available Generating Capacity, (ii) Available Charging Capacity, and (iii) Available Discharging 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 (i) (i) Available Generating Capacity, (ii) Available Charging Capacity, and (iii) Available Discharging Capacity. These Day-Ahead Forecasts shall be sent to Buyer's SC. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely

on any Availability 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) Availability Forecasts. During the Delivery Term, Seller shall notify Buyer and Buyer's SC of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity, (ii) Available Charging Capacity, and (iii) Available Discharging Capacity, each reported in a format in accordance with the CAISO Tariff, 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 Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Available Charging Capacity, or Available Discharging 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 and Buyer's SC as soon as reasonably possible. Such Availability Forecasts 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 Available Generating Capacity, Available Charging Capacity, or Available Discharging 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer and Buyer's SC of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer and Buyer's SC of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Availability Forecasts shall be communicated in a method reasonably acceptable to Buyer, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the CAISO VER day-ahead forecast, and (ii) the actual Generating Facility Energy based upon the CAISO VER forecast (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy generated, charged and discharged 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, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Generating Facility Energy, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment including any notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent reduction is or would be inconsistent with the limitations of the Generating Facility. In the event the Facility is curtailed: (i) due to a System Emergency or any Force Majeure Event, Seller shall not be liable for failure to deliver such curtailed Generating Facility Energy and Buyer shall not be obligated to pay for such curtailed Generating Facility Energy; (ii) by the CAISO or the PTO including a Curtailment Order, Seller shall not be liable for failure to deliver such curtailed Generating Facility Energy and Buyer shall not be obligated to pay for such curtailed Generating Facility Energy; and (iii) for any reason other than during a Buyer Curtailment Period, Seller shall not be liable for failure to deliver such curtailed Generating Facility Energy and Buyer shall not be obligated to pay for such curtailed Generating Facility Energy.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders and to curtail deliveries of Generating Facility Energy through Buyer Bid Curtailments, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

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

(d) 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 from the CAISO, Buyer and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as 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(c) 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.

4.5 Charging Energy Management.

(a) Generally. Upon receipt of a Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point and Generating Facility to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy including, subject to 4.5(i), procuring Charging Energy from the CAISO.

(b) Charging Notices. During the Storage Facility Delivery Term, Buyer will have the right to charge the Storage 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 compliance with the CAISO Tariff and other applicable Laws 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 such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice). Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Storage Facility Delivery Term other than pursuant to a Charging Notice (it being understood that Seller may adjust a Charging Instruction to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Storage Facility Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage 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 Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer and Seller shall use commercially reasonable efforts to cause all curtailed Generating Facility Energy to be used as Charging Energy to the extent allowed by CAISO.

(d) Discharging Notices. During the Storage Facility Delivery Term, Buyer will have the right to discharge the Storage 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 Procedures. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. 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) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Storage Facility Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Instruction to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or 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 (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage 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 discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments 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 Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operational Procedures.

(g) Pre-Storage Facility Commercial Operation Date Period, etc. Prior to the Storage Facility Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility shall be for Seller's account. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid. Upon the Storage Facility Commercial Operation Date, (i) Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices provided such scheduling shall be consistent with the final sentence of Exhibit D, Section (a), and (ii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account.

(h) **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for 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 (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

(i) **Grid Charging.** Prior to the Generating Facility IDD, Seller shall not restrict Buyer's ability to procure Charging Energy from the CAISO that is sourced from the CAISO Grid, provided that such procurement is consistent with the Operating Restrictions. [REDACTED]

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

(a) **Facility Maintenance.** Subject to providing Buyer sixty (60) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Storage Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer) and Seller shall either provide replacement Capacity Attributes as required by CAISO or reimburse Buyer for any cost Buyer incurs in connection therewith (including the cost of any replacement Capacity Attributes as required by the CAISO). During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is

required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. However, the impact of such reduced deliveries with respect to the Storage Facility shall be calculated in accordance with Exhibit P. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff. However, the impact of such reduced deliveries with respect to the Storage Facility shall be calculated in accordance with Exhibit P.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10. However, the impact of such reduced deliveries with respect to the Storage Facility shall be calculated in accordance with Exhibit P.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2. However, the impact of such reduced deliveries with respect to the Storage Facility shall be calculated in accordance with Exhibit P.

Notwithstanding anything in this Section 4.6 to the contrary, (i) any reduction in Product resulting from this Section 4.6 shall not reduce Seller's obligation to deliver Capacity Attributes unless the period of the outage is of a long enough duration to affect Seller's ability to provide Capacity Attributes; and (ii) to the extent Generating Facility Energy is not or cannot be delivered to Buyer as a result of any of the conditions in this Section 4.6, Buyer shall have no obligation to pay Seller for any associated Product from the Generating Facility.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. 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 ("**GEP Damages**"), which, except as set forth in Section 11.1(b)(vi), (vii) and (viii), shall be Buyer's sole and exclusive remedy in connection with Seller's failure to meet the achieve the Guaranteed Energy Production amount in any Performance Measurement Period.

4.8 **Storage Availability and Efficiency.**

(a) During the Storage Facility Delivery Term, the Storage Facility shall maintain a Seasonal Storage Availability no less than the Guaranteed Storage Availability. The Seasonal Storage Availability shall be calculated in accordance with Exhibit P with respect to the then-applicable Effective Storage Capacity.

(b) If, during the Storage Facility Delivery Term the Seasonal Storage Availability during any Season is less than the Guaranteed Storage Availability, then Seller shall owe an Availability Adjustment to Buyer as liquidated damages, as determined in accordance with Exhibit P, which, except as set forth in Section 11.1(b)(ix) and (x), shall be Buyer's sole and exclusive remedy in connection with Seller's failure to meet the Guaranteed Storage Availability.

(c) During the Storage Facility Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. If the Efficiency Rate during any month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C which, except as set forth in Section 11.1(b)(xi), shall be Buyer's sole and exclusive remedy in connection with the Efficiency Rate.

4.9 **Storage Capacity Tests.**

(a) Prior to the Storage Facility 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. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access. For any Storage Capacity Tests, or other operational tests during Off-Peak Flexible Ramp Hours as defined by CAISO, initiated by Seller ("**Seller Initiated Test**"), including all tests conducted prior to Storage Facility Commercial Operation, any Storage Facility Commercial Operation Storage Capacity Test, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below ██████████ of the Installed Storage Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including all required annual tests pursuant to Exhibit O ("**Buyer Dispatched Test**"), Buyer shall (x) pay Seller the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and

charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test. Charging Notices or Discharging Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Seasonal Storage Availability. For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit Q for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); *provided, however*, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer's cooperation for Seller to perform such tests shall not be unreasonably withheld.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit Q. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Effective Storage Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the Guaranteed Storage Capacity set forth on the Cover Sheet, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B, Section 6) shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **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 Generating Facility Energy (net of losses if required by Law) 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.

(a) Seller shall ensure that all steps necessary to register the Generating Facility with WREGIS have been taken prior to Commercial Operation and that, within ninety (90) days of Commercial Operation, Seller shall ensure the Generating Facility is registered with active status in WREGIS and is associated with an active account in WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Generating Facility Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Generating Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Generating Facility Energy generated (net of losses if required by Law), 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 Generating Facility Energy for such calendar month as evidenced by the Generating Facility's metered data (net of losses if required by Law).

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. 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 Generating Facility Energy (net of losses if required by Law) 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 Generating 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 of the Generating Facility Delivery Term; *provided, however*, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes delivered to CAISO as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, 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) Subject to Section 3.12, 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 4.10 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, the Parties promptly shall modify this Section 4.10 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 maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.

4.11 **Interconnection**. Seller shall be responsible for all costs of interconnecting the Facility to the Delivery Point. During the Delivery Term, Seller shall have and maintain

interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity throughout the Delivery Term.

4.12 **Green-E Certification**. Upon request of Buyer, Seller shall submit, an Approved Tracking Attestation Form (“**Attestation**”) in connection with a request that the Generating Facility be qualified as “CRS” listed by the Center for Resource Solutions (“**CRS**”) at <https://www.tfaforms.com/4652008> or its successor. If requested, the Attestation shall be submitted yearly, within thirty (30) days of Buyer’s request, and in accordance with the requirements of CRS.

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, the generation and sale of Product, and the disposal or recycling of any equipment associated with the Facility, including without limitation, batteries and solar panels.

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, commercially 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 and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility, (iii) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 Metering.

(a) The Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter, and Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then all Facility Meters, or all Storage Facility Meters, as applicable, will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable, at Seller's cost (including, for avoidance of doubt, reimbursement to Buyer of reasonable and customary costs owed by Buyer to its Scheduling Coordinator for submitting SQMD Plan meter data to the CAISO), throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written

approval, not to be unreasonably withheld. Seller shall separately meter all Station Use through a separate register within the Generating Facility Meter and/or Storage Facility Meter, as applicable. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan, a final version of which shall be provided to Buyer at least thirty (30) days before the earlier of the Storage Facility Commercial Operation Date or the Generating Facility Initial Delivery Date. Each Generating Facility Meter and Storage Facility 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, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable. Seller and Buyer, or Buyer's Scheduling Coordinator, 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, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Instructions and Discharging Instructions as set forth in the definitions of Charging Instruction and Discharging Instruction in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification.** Seller shall test the Generating Facility Meter and Storage Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified at least seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and also with respect to the Generating Facility Meter, WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include 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 and any other payment amounts under this Agreement, including the amount of Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any); the calculation of Deemed Delivered Energy, Lost Output, 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) reflect any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, 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 under this Agreement is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus ██████████ (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Invoice Adjustments; Billing Errors.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments 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 with respect to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Storage Facility Development Security and the Generating Facility Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the applicable Development Security in full force and effect until the earlier of (i) Seller's delivery of the applicable Performance Security, or (ii) sixty (60) days after termination of this Agreement with respect to the Storage Facility or Generating Facility, as applicable, at which time Buyer shall return the applicable Development Security to Seller, less any 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, 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. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver (a) the Storage Facility Performance Security to Buyer on or before the Storage Facility IDD and (b) the Generating Facility Performance Security to Buyer on or before the Generating Facility IDD. 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 or such other form as may be agreed to by the Parties. Seller shall maintain the applicable Performance Security in full force and effect until the following have occurred: (i) the Delivery Term with respect to the Storage Facility or the Generating Facility, as applicable, 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, if any, are paid in full (whether directly or indirectly such as through set-off or netting). Within ten (10) Business Days after any draw by Buyer on either the Storage Facility Performance Security or the Generating Facility Performance Security, as applicable, Seller shall replenish the amount drawn from the applicable Performance Security so that such Performance Security is restored to the applicable amount; *provided*, the total amount of any replenishments shall not exceed two (2) times the amount of the original Storage Facility Performance Security or the original Generating Facility Performance Security, as applicable, and provided, further, that the limit on number of replenishments is not a cap on Seller's liability under this Agreement. 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 with respect to the Storage Facility or the Generating Facility, as applicable, 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 (a) exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as (b) change the issuer of Letter of Credit for any such Development Security or Performance Security.

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, each Party ("**Party A**") hereby grants to the other Party ("**Party B**") a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of, as applicable, 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, 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 Party B, and Party A agrees to take all action as Party B

reasonably requires in order to perfect Party B'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 Party A, an Early Termination Date resulting from an Event of Default caused by Party A, or an occasion provided for in this Agreement where Party B is authorized to retain all or a portion of the Development Security, Performance Security, [REDACTED]

[REDACTED] Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, [REDACTED] as applicable, 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 Party B as Development Security, Performance Security, [REDACTED]; and

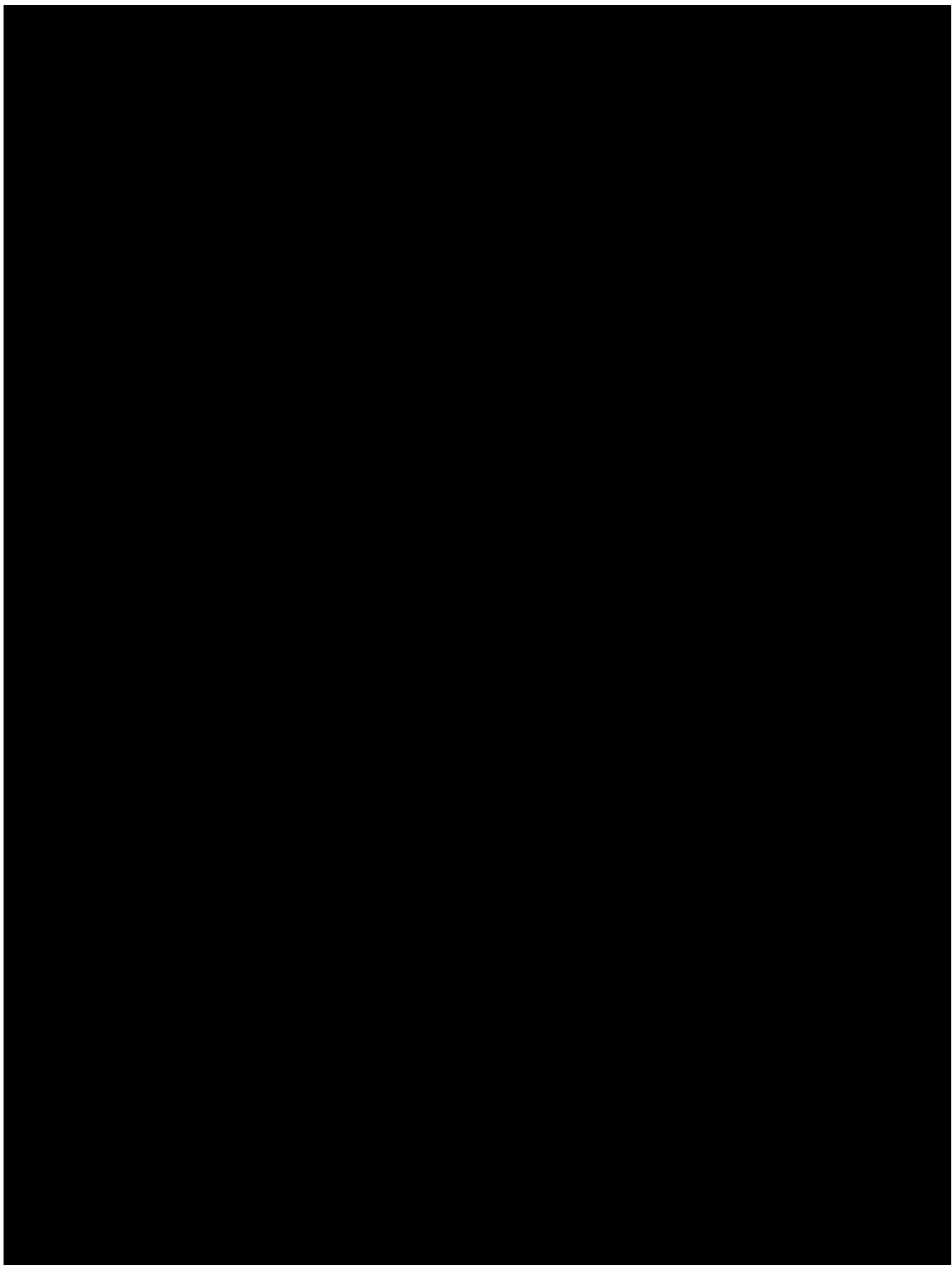
(c) Liquidate all Development Security, Performance Security [REDACTED] then held by or for the benefit of Party B free from any claim or right of any nature whatsoever of Party A, including any equity or right of purchase or redemption by Party A.

(d) Party B shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Party A's obligations under this Agreement (Party A remains liable for any amounts owing to Party B after such application), subject to Party B's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Provision of Financial Statements.**

(a) From the Effective Date, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of end of each quarter and audited financial statements within one hundred eighty (180) days after the end of each fiscal year; *provided, however*, that this requirement shall be satisfied if such financial statements are publicly available on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) 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 if applicable, 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.** 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 next Business Day 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 next Business Day delivery carrier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic ((including COVID-19) and any quarantine related to any such epidemic or pandemic); 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 Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell Product at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Generating Facility or the Storage Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Generating Facility, the Storage Facility, or the Shared Facilities except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Generating Facility or the Storage Facility; or (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, *provided* the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. 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 Storage Facility Construction Start Date, Guaranteed Generating Facility Construction Start Date, Guaranteed Storage Facility IDD or Guaranteed Generating Facility IDD beyond the extensions provided in Exhibit B, (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(iii) or Section 11.1(b)(iv) and receive a Storage Facility Damage Payment and Generating Facility Damage Payment as liquidated damages upon exercise of Buyer's default rights pursuant to Section 11.2 (provided that promptly upon Buyer's receipt of the Storage Facility Damage Payment and the Generating Facility Damage Payment, Buyer shall return to Seller the Storage Facility Development Security and the Generating Facility Development Security to the extent either of them did not comprise (i.e., was not used as) the Storage Facility Damage Payment or the Generating Facility Damage Payment)), or (d) limit Buyer's right to terminate the Agreement with respect to either the Storage Facility or Generation Facility pursuant to Section 2 and/or Section 4 of Exhibit B and receive the Storage Facility Development Security and/or the Generating Facility Development Security, as applicable, as liquidated damages, provided that promptly upon Buyer's receipt of the Storage Facility Damage Payment or the Generating Facility Damage Payment, as applicable, Buyer shall return to Seller the Storage Facility Development Security or the Generating Facility Development Security, as applicable to the extent such applicable security did not comprise (i.e., was not used as) the Storage Facility Damage Payment or the Generating Facility Damage Payment, as applicable.

10.3 Notice. Within five (5) Business Days of becoming aware of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of becoming so aware, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely written Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim as to all periods prior to the delivery of a timely Notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

10.4 Termination of the Generating Facility, Storage Facility, or the Facility Following Post-IDD Force Majeure Event.

(a) If a Force Majeure Event has occurred after the later of the Storage Facility IDD and the Generating Facility IDD that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement with respect to the Generating Facility and/or the Storage Facility experiencing the Force Majeure Event upon Notice to the other Party. Upon any such termination, Buyer shall promptly return to Seller any Performance Security with respect to the Generating Facility and/or the Storage Facility experiencing the Force Majeure Event then held by Buyer, less any amounts drawn in accordance with this Agreement, and for the avoidance of doubt, such termination shall not affect this Agreement with respect to the other Facility (i.e., the Storage Facility or the Generating Facility), and, in the event of such termination, the Parties shall cooperate in good faith to promptly amend this Agreement to remove the terminated Facility provisions and maintain the other Facility provisions consistent with existing terms).

(b) If the Force Majeure Event causes either Party to be wholly or partially unable to perform its obligations hereunder in any material respect as to the entire Facility, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement with respect to the entire Facility upon Notice to the other Party. Agreement, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, 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 thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1 and except to the extent an exclusive remedy for such performance failure is set forth herein including without limitation (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failure in connection with unauthorized charging, the exclusivity remedies for which are set forth in Section 4.5(c), (C)

failure in connection with unauthorized discharging, the exclusivity remedies for which are set forth in Section 4.5(e), (D) failure related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (vii) or (viii), the exclusive remedies for which are set forth in Section 4.7, (E) failures related to the Seasonal Storage Availability that do not trigger the provisions of Section 11.1(b)(ix) or (x), the exclusive remedies for which are set forth in Section 4.8(b); and (F) failures related to the Guaranteed Efficiency Rate that do not trigger Section 11.1(b)(xi), the exclusive remedies for which are set forth in Section 4.8(c)); and any such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except as may be permitted under Section 4.5(i);

(ii) [intentionally omitted];

(iii) the failure by Seller to *both* (A) achieve Storage Facility Construction Start on or before the Guaranteed Storage Facility Construction Start Date, as such date may be extended pursuant to a Storage Facility Development Cure Period pursuant to Section 5(a) of Exhibit B, and (B) to achieve Generating Facility Construction Start on or before the Guaranteed Generating Facility Construction Start Date, as such date may be extended pursuant to a Generating Facility Development Cure Period pursuant to Section 5(b) of Exhibit B; ██████████

(iv) The failure of Seller to *both* (A) achieve Storage Facility IDD on or before the Guaranteed Storage Facility IDD, as such date may be extended pursuant to a Storage Facility Development Cure Period pursuant to Section 5(a) of Exhibit B and/or Seller's payment of Storage Facility IDD Delay Damages pursuant to Section 3(b) of Exhibit B, and (B) achieve Generating Facility IDD on or before the Guaranteed Generating Facility IDD, as such date may be extended pursuant to a Generating Facility Development Cure Period pursuant to Section 5(b) of Exhibit B and/or Seller's payment of Generating Facility IDD Delay Damages pursuant to Section 3(c) of Exhibit B; *provided, however*, if such failure is caused by a failure of the Facility's

final step-up transformer, Seller shall not be in breach of the Agreement so long as Seller commences a Cure Plan and/or Storage Cure Plan, as applicable, within one hundred eighty (180) days and thereafter diligently pursues such Cure Plan and/or Storage Cure Plan, as applicable, to completion (such Cure Plan and/or Storage Cure Plan, as applicable, not to exceed three hundred sixty-five (365) days); provided, however, that ██████████

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer, except as expressly permitted under this Agreement;

(vi) if, during any consecutive six (6) month period, the Adjusted Energy Production (calculated in accordance with Exhibit G) for such period is not at least ██████████ of the Expected Energy amount for such period, and Seller fails to (x) deliver to Buyer within thirty (30) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time (“Cure Plan”) ██████████

(vii) If, beginning with the second Contract Year of the Generating Facility Delivery Term, the Adjusted Energy Production (calculated in accordance with Exhibit G) is not at least ██████████ of the Expected Energy amount in any Contract Year of the Generating Facility Delivery Term and Seller fails to (x) deliver to Buyer within thirty (30) days after Notice from Buyer a Cure Plan, ██████████

(viii) If, beginning with the second Contract Year of the Generating Facility Delivery Term, during any two (2) consecutive Contract Year period during the Generating Facility Delivery Term, the Adjusted Energy Production (calculated in accordance with Exhibit G) is not at least ██████████ of the Expected Energy amount for such two (2) consecutive Contract Year period and Seller fails to (x) deliver to Buyer within thirty (30) days after Notice from Buyer a Cure Plan, ██████████

of time (“**Storage Cure Plan**”)

[REDACTED]

sixty-five (365) consecutive days, [REDACTED]
[REDACTED]

(xiii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount to the extent set forth this Agreement in the event Buyer draws against the Generating Facility Performance Security or the Storage Facility Performance Security, as applicable, for any reason other than to satisfy a Termination Payment;

(xiv) 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.

(xv) 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;

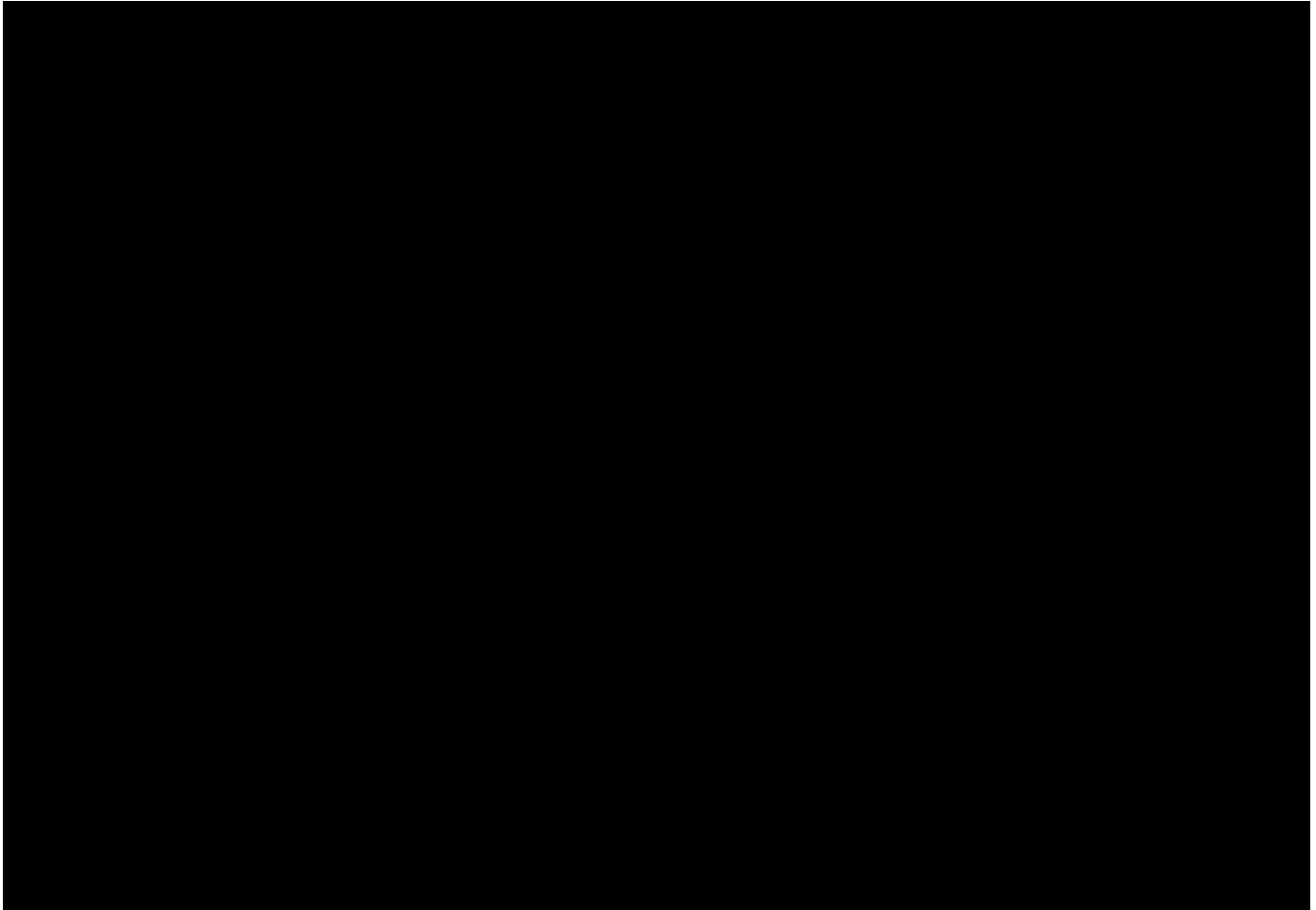
(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(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

(xvi) 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.

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



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 Storage Facility Damage Payment and the Generating Facility Damage Payment (in the case of an Event of Default by Seller occurring before the either of the Storage Facility IDD and the Generating Facility IDD, including an Event of Default under Section 11.1(b)(iii) and Section 11.1(b)(iv), subject to the limitations in Section 11.6), 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, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto except to the extent applicable Buyer’s rights set forth in Section 11.7, and *further provided*, promptly upon Buyer’s receipt of the Damage Payment or Termination Payment, as applicable Buyer shall return to Seller the Development Security or the Performance Security to the extent either of them, as applicable, did not comprise (i.e., was not used as) the Damage Payment or the Termination Payment, as applicable.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for

a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to 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 a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of 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 of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Damage Payment or Termination Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Damage Payment or Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Seller Pre-IDD Liability Limitations. Notwithstanding anything to the contrary in this Agreement, Seller's total liability with respect to the Storage Facility prior to the Storage Facility IDD [REDACTED] shall not exceed [REDACTED] and Seller's aggregate liability with respect to the Generating Facility prior to the Generating Facility IDD [REDACTED] shall not exceed [REDACTED]

11.7 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from

Applicable Portion of Facility after Early Termination Date Prior to Storage Facility IDD or Generating Facility IDD, Respectively. If the Agreement is terminated by either Party with respect to either the Storage Facility or Generating Facility prior to the Storage Facility IDD or Generating Facility IDD, respectively, for any reason except due to Buyer's Event of Default, then neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to such portion of the Facility to a party other than Buyer for a period of ██████████ following such early termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (other than, with respect to the Generating Facility, price adjustments required ██████████ and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. So long as the limitations contained in this Section 11.7 still apply, neither Seller nor Seller's Affiliates may sell or transfer such portion of the Facility, or any part thereof, or land rights or interests in the Site (including with respect to the interconnection queue position), unless the transferee agrees to be bound by the terms set forth in this Section 11.7 pursuant to a written agreement approved by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.7.

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

11.9 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

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 INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND

MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.5(c), 4.5(e), 4.7, 4.8, 11.2, 11.3, 11.6, 11.7, 11.8, 11.9, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C (SECTION (f)), EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) As of the Effective Date, Seller represents and warrants to Buyer that it has not received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Storage Facility or Generating Facility or the delivery of materials necessary to complete the Storage Facility or Generating Facility, in each case that would cause either the Storage Facility IDD to be later than the Guaranteed Storage Facility IDD or the Generating Facility IDD to be later than the Guaranteed Generating Facility IDD. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 5 of Exhibit B for a Development Cure Period on the basis of such delays.

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

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

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

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

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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 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 Nevada 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 Nevada labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, project labor agreement, collective bargaining agreement, or other similar agreement by Seller’s primary EPC contractor related to construction of the Facility.

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. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable third-party costs, including reasonable attorneys’ fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement and Estoppel Certificate as provided in Section 14.2, to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement; *provided, however*, Buyer will 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, or to modify the Agreement, except as provided in this Article 14.

14.2 **Collateral Assignment; Financing Cooperation.** 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, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in Exhibit T (“**Collateral Assignment Agreement**”) and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit U (“**Estoppel Certificate**”).

14.3 Permitted Assignment by Buyer. Subject to the terms and conditions of this Agreement, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity (“**Limited Assignee**”) that has an Investment Grade Credit Rating of Buyer’s right to receive certain Product (which shall not be for retail sale) and Buyer’s obligation to make payments for such Product to the Seller (“**Assigned Product**”). The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under the Agreement or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement, and shall be expressly subject to the Limited Assignee’s timely payment of amounts due under this Agreement with respect to the Assigned Product. Buyer shall pay Seller for any payments not timely made by Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payment for all amounts due and owing under this Agreement, including the total gross amount due to Seller under each invoice. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified in this Agreement. Subject to the foregoing, Buyer may make such an assignment upon not less than thirty (30) days’ advance written notice by delivering to Seller a written request for Seller’s consent to such assignment and the proposed form of limited assignment agreement in form and substance acceptable to Seller and its Lenders (if any), including that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or its Lenders. Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to such limited assignment, or (2) Seller’s performance of any obligation under the assignment agreement, including without limitation if Seller makes any change to the recipient of the WREGIS Certificates, fails to meet any requirements of this Agreement, then Seller shall not be deemed to be in breach of any obligation in this Agreement, including without limitation any representation or warranty herein. Buyer shall reimburse Seller for its out-of-pocket costs and expenses, including reasonable attorneys’ fees in excess of \$5,000, incurred in connection with any such assignment, or requested assignment, including in connection with obtaining required consents from its Lenders. Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any Lender in connection with such limited assignment, including providing any requested acknowledgments with respect to any Collateral Assignment Agreement.

14.4 Permitted Assignment by Seller. Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a Lender or any other financing party in accordance with Section 14.2; or (c) make any Permitted Transfer or otherwise assign this Agreement pursuant to or in connection with any Permitted Transfer. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, Buyer’s consent shall not be required if: (a) such Change of Control is, or is a result of, a direct or indirect Change of Control of NEOP or NEP; or (b) the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. For avoidance of doubt, (i) a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, and no consent is required under this Agreement with respect to a Permitted Transfer, and (ii) Seller may, without the prior written consent of

Buyer, finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities utilizing debt financing, equity financing (including tax equity), lease financing, or any other form of financing or any combination thereof, including pursuant to a portfolio financing of multiple energy generation, storage, and transmission facilities and other assets of Seller or Seller's Affiliates (which may include cross-collateralization or similar arrangements).

ARTICLE 15

DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

15.3 **Venue.** 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 the County of San Diego, California.

15.4 **Dispute Resolution.** In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement, any Party may deliver to the other Party notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "**Dispute Notice**"). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with the PPA.

ARTICLE 16

INDEMNIFICATION

16.1 **Indemnity.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement ("**Indemnifiable Losses**").

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These

indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of ██████████ per occurrence, and an annual aggregate of not less than ██████████, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of ██████████. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than ██████████ for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the ██████████ 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 Nevada Law

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, until the last to occur of the Storage Facility Commercial Operation Date or the Generating Facility IDD, 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.

[REDACTED]

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED] (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Property Insurance. On and after the first to occur of the Storage Facility Commercial Operation Date and the Generating Facility IDD, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations.

(i) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.) and that any request made thereunder may require disclosure of Confidential Information, if not subject to an exception from disclosure.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available except as otherwise limited under this Agreement, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best

endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

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

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

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

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members.

Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract; Inapplicability/Waiver of Bankruptcy Code Section 366.**

(a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” and at least one of the Parties is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Performance Security to any amounts due and owing to such Party, constitute “settlement payments” within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a “contractual

right to liquidate, terminate or accelerate” or offset under a forward contract within the meaning of 88556, 561 of the Bankruptcy Code.

(b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.

(c) Each Party acknowledge and agrees that, for all purposes of this Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or 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 any other provision of 11 U.S.C. § 101-1532.

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

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

[Signatures on following page]

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

YELLOW PINE SOLAR III, LLC

By: _____
Name: _____
Title: _____

**SAN DIEGO COMMUNITY POWER, a
California joint powers authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

Signature Page

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Yellow Pine Solar III

Site includes all or some of the following APNs: 17100001004, 17100001010, 17100001011, 17100001012, 17100001009, 16800002025, 16800002024, 17100001007, 17100001008, 17100001005, 17100001006, 17100001004, 17100001005

County: Clark County, Nevada

Zip Code: 89061

Latitude and Longitude: 36.067942°, -115.780358°

Facility Description: A 35 MW_{AC} solar renewable energy generation facility and 35 MW_{AC} (4-hour) battery energy storage facility located in Clark County, in the State of Nevada, as will be depicted in the preliminary Site Plan to be provided within 90 days of Effective Date, which Seller is to provide updated site plan at least sixty (60) prior to the earlier of the Storage Facility COD and the Generating Facility IDD.

Interconnection Point: The Facility shall interconnect at the PNode.

Delivery Point: The Delivery Point for the Generating Facility and Storage Facility shall be the CAISO node for the Generating Facility and the CAISO node for the Storage Facility, respectively.

Generating Facility Meter: See Exhibit R.

Storage Facility Meter: See Exhibit R.

PNode: If not available at the Effective Date, the PNode shall be established prior to the prior to the earlier of the Storage Facility Commercial Operation Date and Seller's initial delivery of Test Energy under this Agreement. Seller shall promptly notify Buyer following establishment of the PNode.

Participating Transmission Owner: GridLiance

Additional Information: Preliminary Site Plan to be provided within 90 days of Effective Date and to be updated, not to exceed the Guaranteed Storage Capacity, no later than 60 days prior to the earlier of the Storage Facility COD or the Generating Facility IDD.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Facility Construction.

(a) Storage Facility. “**Storage Facility Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Storage Facility and issuance of a full notice to proceed with the construction of the Storage Facility under the EPC contract, mobilization to the Site by Seller and/or its designees and includes the physical movement of soil at the Site. The date of Storage Facility 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-1 hereto, and the date certified therein by Seller shall be the “**Storage Facility Construction Start Date**.” Seller shall cause Storage Facility Construction Start to occur no later than the Guaranteed Storage Facility Construction Start Date.

(b) Generating Facility. “**Generating Facility Construction Start**” will occur following Seller’s execution of an engineering, procurement and construction (EPC) contract related to the Generating Facility and issuance of a full notice to proceed with the construction of the Generating Facility under the EPC contract, mobilization to the Site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Generating Facility 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-2 hereto, and the date certified therein by Seller shall be the “**Generating Facility Construction Start Date**.” The Seller shall cause Generating Facility Construction Start to occur no later than the Generating Facility Guaranteed Construction Start Date.

2. Termination for Failure to Achieve Construction Start.

(a) Storage Facility. If Seller fails to achieve the Storage Facility Construction Start on or before the Guaranteed Storage Facility Construction Start Date, as such date may be extended by a Storage Facility Development Cure Period, Buyer shall have the right, in its sole discretion, to: (i) terminate this Agreement solely with respect to the Storage Facility (for the avoidance of doubt, such termination shall not affect this Agreement with respect to the Generating Facility, and, in the event of such termination, the Parties shall cooperate in good faith to promptly amend this Agreement to remove the Storage Facility provisions and maintain the Generating Facility provisions consistent with existing terms) and (ii) collect the Storage Facility Damage Payment as liquidated damages and Buyer’s sole and exclusive remedy for Seller’s failure to achieve the Storage Facility Construction Start on or before the Guaranteed Storage Facility Construction Start Date. Promptly upon Buyer’s receipt of the Storage Facility Damage Payment, Buyer shall return to Seller the Storage Facility Development Security to the extent it did not comprise (i.e., was not used as) the Storage Facility Damage Payment.

(b) Generating Facility. If Seller fails to achieve the Generating Facility Construction Start on or before the Guaranteed Generating Facility Construction Start Date, as such date may be extended by a Generating Facility Development Cure Period, Buyer shall have the right, in its sole discretion, to: (i) terminate this Agreement solely with respect to the Generating Facility (for

the avoidance of doubt, such termination shall not affect this Agreement with respect to the Storage Facility, and, in the event of such termination, the Parties shall cooperate in good faith to promptly amend this Agreement to remove the Generating Facility provisions and maintain the Storage Facility provisions consistent with existing terms) and (ii) collect the Generating Facility Damage Payment as liquidated damages and Buyer's sole and exclusive remedy for Seller's failure to achieve the Generating Facility Construction Start on or before the Guaranteed Generating Facility Construction Start Date. Promptly upon Buyer's receipt of the Generating Facility Damage Payment, Buyer shall return to Seller the Generating Facility Development Security to the extent it did not comprise (i.e., was not used as) the Generating Facility Damage Payment.

3. **Storage Facility Commercial Operation and Initial Delivery Dates.**

(a) **"Storage Facility Commercial Operation"** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2(a) of this Agreement and (ii) Seller has confirmed to Buyer in writing that Storage Facility Commercial Operation has been achieved by providing Notice to Buyer substantially in the form of Exhibit H-1 (the **"Storage Facility COD Certificate"**). The **"Storage Facility Commercial Operation Date"** or **"Storage Facility COD"** shall be the later of (x) the Earliest Storage Facility Commercial Operation Date or (y) the date on which Storage Facility Commercial Operation is achieved. Seller shall notify Buyer at least sixty (60) days before the anticipated Storage Facility COD.

(b) **"Storage Facility IDD"** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2(b) of this Agreement and (ii) Seller has confirmed to Buyer in writing that Storage Facility IDD has been achieved. Seller shall notify Buyer at least sixty (60) days before the anticipated Storage Facility IDD. Seller may extend the Guaranteed Storage Facility IDD, one (1) or more times, by paying Storage Facility IDD Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Storage Facility IDD, not to exceed a total of [REDACTED] days of extensions by such payment of Storage Facility IDD Delay Damages. If Seller elects to extend the Guaranteed Storage Facility IDD, on or before the date that is five (5) Business Days prior to the then-current Guaranteed Storage Facility IDD, Seller shall provide Notice and payment to Buyer of the Storage Facility IDD Delay Damages for the number of days of extension to the Guaranteed Storage Facility IDD. If Seller achieves Storage Facility IDD prior to the Guaranteed Storage Facility IDD, as extended by the payment of Storage Facility IDD Delay Damages, Buyer shall refund to Seller the Storage Facility IDD Delay Damages for each day Seller achieves Storage Facility IDD prior to the Guaranteed Storage Facility IDD times the Storage Facility IDD Delay Damages, not to exceed the total amount of Storage Facility IDD Delay Damages paid by Seller pursuant to this this Section 3(b) of Exhibit B.

(c) **"Generating Facility IDD"** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2(c) of this Agreement and (ii) Seller has confirmed to Buyer in writing that Generating Facility IDD has been achieved by providing Notice to Buyer substantially in the form of Exhibit H-2 (the **"Generating Facility IDD Certificate"**). Seller shall notify Buyer at least sixty (60) days before the anticipated Generating Facility IDD. Seller may extend the Guaranteed Generating Facility IDD, one (1) or more times, by paying Generating Facility IDD Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Generating Facility IDD, not to exceed a total of [REDACTED] days

of extensions by such payment of Generating Facility IDD Delay Damages. If Seller elects to extend the Guaranteed Generating Facility IDD, on or before the date that is five (5) Business Days prior to the then-current Guaranteed Generating Facility IDD, Seller shall provide Notice and payment to Buyer of the Generating Facility IDD Delay Damages for the number of days of extension to the Guaranteed Generating Facility IDD. If Seller achieves Generating Facility IDD prior to the Guaranteed Generating Facility IDD, as extended by the payment of Generating Facility IDD Delay Damages, Buyer shall refund to Seller the Generating Facility IDD Delay Damages for each day Seller achieves Generating Facility IDD prior to the Guaranteed Generating Facility IDD times the Generating Facility IDD Delay Damages, not to exceed the total amount of Generating Facility IDD Delay Damages paid by Seller pursuant to this this Section 3(c) of Exhibit B.

4. **Termination for Failure to Achieve Commercial Operation.**

(a) Storage Facility. If Seller fails to achieve the Storage Facility IDD on or before the Guaranteed Storage Facility IDD, as such date may be extended by a Storage Facility Development Cure Period or payment of Storage Facility IDD Delay Damages, Buyer shall have the right, in its sole discretion, to (i) terminate this Agreement solely with respect to the Storage Facility (for the avoidance of doubt, such termination shall not affect this Agreement with respect to the Generating Facility, and, in the event of such termination, the Parties shall cooperate in good faith to promptly amend this Agreement to remove the Storage Facility provisions and maintain the Generating Facility provisions consistent with existing terms) and (ii) collect the Storage Facility Damage Payment as liquidated damages and Buyer's sole and exclusive remedy for Seller fails to achieve the Storage Facility IDD on or before the Guaranteed Storage Facility IDD. Promptly upon Buyer's receipt of the Storage Facility Damage Payment, Buyer shall return to Seller the Storage Facility Development Security to the extent it did not comprise (i.e., was not used as) the Storage Facility Damage Payment. Buyer must exercise this termination right prior to Seller achieving Storage Facility IDD; *provided*, the Parties acknowledge that Buyer's termination right shall not be affected by the occurrence of the Generating Facility IDD prior to such termination.

(b) Generating Facility. If Seller fails to achieve the Generating Facility IDD on or before the Guaranteed Generating Facility IDD, as such date may be extended by a Generating Facility Development Cure Period or payment of Generating Facility IDD Delay Damages, Buyer shall have the right, in its sole discretion, to (i) terminate this Agreement solely with respect to the Generating Facility (for the avoidance of doubt, such termination shall not affect this Agreement with respect to the Storage Facility, and, in the event of such termination, the Parties shall cooperate in good faith to promptly amend this Agreement to remove the Generating Facility provisions and maintain the Storage Facility provisions consistent with existing terms) and (ii) collect the Generating Facility Damage Payment as liquidated damages and Buyer's sole and exclusive remedy for Seller fails to achieve the Generating Facility IDD on or before the Guaranteed Generating Facility IDD. Promptly upon Buyer's receipt of the Generating Facility Damage Payment, Buyer shall return to Seller the Generating Facility Development Security to the extent it did not comprise (i.e., was not used as) the Generating Facility Damage Payment. Buyer must exercise this termination right prior to Seller achieving Generating Facility IDD; *provided*, the Parties acknowledge that Buyer's termination right shall not be affected by the occurrence of the Storage Facility IDD prior to such termination.

5. **Development Cure Period.**

(a) **Storage Facility.** The Guaranteed Storage Facility Construction Start Date and the Guaranteed Storage Facility IDD shall, subject to notice and documentation requirements set forth in Section 5(c) of this **Exhibit B**, both be extended on a day-for-day basis (the “**Storage Facility Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines: (i) a Force Majeure Event occurs; or (ii) delays caused by transmission provider (e.g., the CAISO) or the Participating Transmission Owner that are outside the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure Event, shall be no longer than [REDACTED]

[REDACTED] For clarity, a Storage Facility Development Cure Period shall extend both the Guaranteed Storage Facility Construction Start Date and the Guaranteed Storage Facility IDD simultaneously.

(b) **Generating Facility.** The Guaranteed Generating Facility Construction Start Date and the Guaranteed Generating Facility IDD shall, subject to notice and documentation requirements set forth in Section 5(c) of this **Exhibit B**, both be extended on a day-for-day basis (the “**Generating Facility Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines: (i) a Force Majeure Event occurs; or (ii) delays caused by transmission provider (e.g., the CAISO) or the Participating Transmission Owner that are outside the reasonable control of Seller; [REDACTED] Such day-for-day extensions, including for Force Majeure Event, shall be no longer than [REDACTED]

[REDACTED] For clarity, a Generating Facility Development Cure Period shall extend both the Guaranteed Generating Facility Construction Start Date and the Guaranteed Generating Facility IDD simultaneously.

(c) **Development Cure Period Requirements Generally.** Notwithstanding anything to the contrary herein, no extension shall be given under a Storage Facility Development Cure Period or a Generating Facility Development Cure Period if, and to the extent that (i) the delay was the result of Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required for a Force Majeure Event (provided for clarification purposes, if the Force Majeure Event written notice is provided but not timely under Section 10.3, Seller shall be entitled to a Development Cure Period extension but reduced by the number of days that such notice is late), if applicable, or as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the earlier of either the Guaranteed Storage Facility IDD or Guaranteed Generating Facility IDD, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

6. **Failure to Reach Guaranteed Storage Capacity or Guaranteed Generating Capacity.**

(a) Guaranteed Storage Capacity. If Seller has not installed one hundred percent (100%) of the Guaranteed Storage Capacity [REDACTED] after the Storage Facility Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of this Agreement shall be adjusted accordingly. “Capacity Damages” means an amount equal to [REDACTED]
[REDACTED]

(b) Guaranteed Generating Capacity. If Seller has not installed one hundred percent (100%) of the Guaranteed Generating Capacity [REDACTED] after the Generating Facility IDD, Seller shall pay Capacity Damages (as defined above) to Buyer for each MW that the Guaranteed Generating Capacity exceeds the Installed PV Capacity, and the Guaranteed Generating Capacity and other applicable portions of this Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus the Renewable Rate for each MWh of Deemed Delivered Energy, if any, [REDACTED] of the Expected Energy for each Contract Year of the Generating Facility Delivery Term.

[REDACTED] Excess Contract Year Deliveries [REDACTED] If, at any point in any Contract Year of the Generating Facility Delivery Term, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year of the Generating Facility Delivery Term, the price to be paid for additional Generating Facility Energy and/or Deemed Delivered Energy shall be equal to [REDACTED].

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, the amount of Generating Facility Energy delivered to the Delivery Point is greater than the product of the Guaranteed Generating 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").

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Generating Facility Energy reduced pursuant to a Curtailment Order during any Curtailment Period.

(e) Storage Payment. All Storage Product shall be paid on a monthly basis (and prorated by the number of days in a month for the first calendar month and the last calendar month, if the Storage Facility Delivery Term for that first calendar month does not start on the first day of a calendar month and if the Storage Facility Delivery Term for that last calendar month does not end on the last day of the prior calendar month, respectively), and such payment shall be calculated by *multiplying* (i) the Storage Rate, *by* (ii) 1,000, *by* (iii) the Effective Storage Capacity, for such month ("Storage Payment"). Such Storage Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test on any day other than the first day of a calendar month, Storage Payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Storage Facility Delivery Term, the Efficiency Rate(s) applicable to such month is/are less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate(s) is/are less than

the Guaranteed Efficiency Rate, *by* (iii) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(g) PTC Amount. During the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for each such Contract Year of the Generating Facility Delivery Term.

(h) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(i) Tax Benefits. The Parties agree that the neither the Renewable Rate, the Storage Rate, nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Benefits, or if any Tax Benefits 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 Benefits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Benefits 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 Benefits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon the Storage Facility Commercial Operation Date, or earlier if requested by Seller to accommodate an earlier operation date of the Generating Facility, 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 Storage Facility Commercial Operation Date, or such earlier date for the Generating Facility as referenced above, including for the delivery of Test Energy, (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 Storage Facility Commercial Operation Date or earlier date for the Generating Facility as referenced above, 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 Storage Facility Commercial Operation Date or earlier date for the Generating Facility as referenced above. On and after the Storage Facility Commercial Operation Date or earlier date for the Generating Facility as referenced above, 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. Notwithstanding anything to the contrary in this Exhibit D or elsewhere in this Agreement, prior to both the Storage Facility IDD and Generating Facility IDD, each of the Buyer and Buyer's SC shall provide Seller commercially reasonable assistance with the need to test, commission and timely achieve each of the Generating Facility IDD and the Generating Facility IDD, and in connection therewith each of the Storage Facility and the Generating Facility shall be scheduled in manner which prioritizes, and Buyer and Buyer's SC shall not provide any scheduling instructions including any Charging Notices or Discharging Notices which interfere with, that need to, test, commission and timely achieve each of the Storage Facility IDD and Generating Facility IDD.

(b) Notices. Beginning on the Storage Facility Commercial Operation Date or earlier date for the Generating Facility as referenced above, 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, or other 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 (including penalties,

Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 assume all liability and reimburse Buyer for any and all costs, charges or sanctions (i) due to Seller's failure to perform its obligations under this Agreement, (ii) incurred by Buyer as a result of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive, including due to outages for which notice by Seller has not been provided as required, or (iii) associated with Resource Adequacy Capacity (as defined in the CAISO Tariff) from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)). Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and any Non-Availability Charges are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Starting on the Storage Facility Commercial Operation Date, or earlier date for the Generating Facility as referenced above, and continuing throughout the Delivery Term, 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 for which Seller is responsible under this Agreement within thirty (30) 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 Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(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 or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month, as applicable.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by applicable Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

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

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 AVAILABLE EFFECTIVE DISCHARGING AND
CHARGING STORAGE CAPACITY AND GENERATING CAPACITY**

[Parties to mutually agree on reasonably acceptable form]

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

$$[(A - B) * (C - D)] - (E)$$

where:

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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of

plus (b) the market value of Replacement Green Attributes as reasonably determined by Buyer

D = the Renewable Rate for the Contract Year of the Generating Facility Delivery Term which ends each Performance Measurement Period, in \$/MWh

E = The amount of GEP Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

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

No payment shall be due if the calculation of (a) (A - B), (b) (C - D), or (c) [(A - B) * (C - D)] - (E), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year of the Generating Facility Delivery Term, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

EXHIBIT H-1

FORM OF STORAGE FACILITY COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Storage Facility Commercial Operation Date is delivered by [licensed professional engineer] (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] by and between [SELLER 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 Storage Facility is fully operational, interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
3. Seller has commissioned all Storage Facility equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Storage Facility’s communication systems and automatic generation control (AGC) interface to operate the Storage 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/or the CAISO.
5. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Guaranteed Storage Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Storage Facility was obtained from the Participating Transmission Owner on ____ [DATE] ____.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation of the Storage Facility ____ [DATE] ____.
8. The CAISO has provided notification supporting Commercial Operation of the Storage Facility, in accordance with the CAISO Tariff on ____ [DATE] ____.
9. Seller shall have caused the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Storage Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT H-2

FORM OF GENERATING FACILITY INITIAL DELIVERY DATE CERTIFICATE

This certification (“**Certification**”) of Generating Facility Initial Delivery Date is delivered by [licensed professional engineer] (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] by and between [SELLER 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 Generating Facility is fully operational, interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Generating Capacity.
3. Seller has commissioned all Generating Facility equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Generating Facility’s communication systems and automatic generation control (AGC) interface to operate the Generating 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/or the CAISO.
5. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Generating Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
6. Authorization to parallel the Generating Facility was obtained from the Participating Transmission Owner.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation of the Generating Facility.
8. The CAISO has provided notification supporting Commercial Operation of the Generating Facility, in accordance with the CAISO Tariff.
9. Seller shall have caused the Generating Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Generating Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I-1

FORM OF INSTALLED STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Storage Capacity is delivered by [*licensed professional engineer*] ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*Date*] by and between [*SELLER 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:

1. The Storage Capacity Test demonstrated an Effective Storage Capacity of __ MW, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit Q (the "**Installed Storage Capacity**").

2. [Reserved].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I-2

FORM OF INSTALLED PV CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed PV Capacity is delivered by [*licensed professional engineer*] ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*Date*] by and between [*SELLER 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:

1. The performance test for the Generating Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed PV Capacity**").

2. [Reserved].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J-1

FORM OF CONSTRUCTION START DATE CERTIFICATE

STORAGE FACILITY

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power, 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. Storage Facility Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Storage Facility Construction Start Date occurred on _____ (the “**Storage Facility 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 J-2

FORM OF CONSTRUCTION START DATE CERTIFICATE

GENERATING FACILITY

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power, 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. Generating Facility Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Generating Facility Construction Start is attached hereto;
2. the Generating Facility Construction Start Date occurred on _____ (the “**Generating Facility 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\$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power Authority
PO Box 12716
San Diego, CA 92112

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of San Diego Community Power, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated 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 your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail 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 Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own

Exhibit K - 1

immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) 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. \$_____, 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 San Diego Community Power 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 San Diego Community Power by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA (the “**Obligations**”), 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; provided, that the Guarantor’s aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed _____ Dollars (\$_____) (the “**Guaranteed Amount**”). 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 punctual payment, 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 PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure

(the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) the [_____] anniversary of the Effective Date. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate *[limited liability company][corporate]* powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (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 (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Diego, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or

unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N

NOTICES

YELLOW PINE SOLAR III, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: 561-691-2866 (Office) 561-371-0992 (Mobile) Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com and dl-bmo-west-caiso@nexteraenergy.com	All Notices: PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: [REDACTED] Email: bvosburg@sdcommunitypower.org , powercontracts@sdcommunitypower.org
Reference Numbers: Duns: [To be provided by Seller prior to the Delivery Term] Federal Tax ID Number: [To be provided by Seller prior to the Delivery Term]	Reference Numbers: [REDACTED]
Invoices: Attn: Business Management Phone: E-mail: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com and NEER-REVENUE-TEAM.SharedMailbox@nexteraenergy.com	Invoices: Attn: SDCP Settlements Phone: [REDACTED] Email: settlements@sdcommunitypower.org
Scheduling: Attn: DA – Christin Neff RT – PMI RT desk Phone: DA - 561-304-6053 RT – 561-625-7100 Facsimile: Email: dl-nepm-dayaheaddesk-wecc@nexteraenergy.com , nepm.realtimedesk@nexteraenergy.com	Scheduling: Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104

YELLOW PINE SOLAR III, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
Confirmations: Attn: Phone: Email: DL-Confirmations-Juno-PMI@nexteraenergy.com >	Confirmations: Attn: SDCP Settlements Phone: [REDACTED] Email: settlements@sdcommunitypower.org
Payments: Attn: Business Management Phone: (561) 694-4725 E-mail: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com	Payments: Attn: SDCP Settlements Phone: [REDACTED] Email: settlements@sdcommunitypower.org
Wire Transfer: Seller shall provide to Buyer the information below at least 60 days prior to the earlier to occur of the Storage Facility Commercial Operation Date and the Generating Facility IDD BNK: ABA: ACCT:	Wire Transfer: [REDACTED]
Defaults: Yellow Pine Solar III, LLC 700 Universe Blvd. Juno Beach, FL 33408 Attn: Emre Ergas and Jess Melin Telephone: (561) 691-2866 & (415) 318-5901 E-mail: Emre.Ergas@nexteraenergy.com & Jess.Melin@nexteraenergy.com With a simultaneous copy provided to: Attn: General Counsel E-mail: NEER-General-Counsel@nexteraenergy.com	With additional Notices of an Event of Default to: Best, Best & Krieger Attn: Ryan Barron, General Counsel 655 West Broadway, 15th Floor San Diego, CA 92101 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com

YELLOW PINE SOLAR III, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
Emergency Contact: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: 561-694-3636 (Office) Email: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nexteraenergy.com and FPDC-Wind.SharedMailbox@nexteraenergy.com	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: [REDACTED] Email: bvosburg@sdcommunitypower.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 Storage Facility Commercial Operation Date. Such initial Storage Capacity Test (and any subsequent Storage Facility Commercial Operation Storage Capacity Test permitted in accordance with Section 6(a) of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year of the Storage Facility Delivery Term, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than ten (10) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement, Part II.J and Part II.K below, the actual Efficiency Rate and Effective Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity set forth on the Cover Sheet, as such original Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Section 6(a) of Exhibit B) shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Payment 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 and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Exhibit O - 1

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Effective Storage Capacity;
- (2) Determine the amount of Energy required to fully charge the Storage Facility;
- (3) Determine the Storage Facility charge ramp rate;
- (4) Determine the Storage Facility discharge ramp rate; and
- (5) Determine an updated Efficiency Rate.

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

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the maximum Stored Energy Level not to exceed the Guaranteed Storage Output (MWh) (“**Energy In**”);
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Storage Energy Level reaches zero MWh as indicated by the battery management system (“**Energy Out**”);
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility’s electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility’s electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

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

- (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 Storage Facility; and
 - (3) Ambient air Temperature (°F).
- E. Test Showing. Each SCT must demonstrate that the Storage Facility:
 - (1) successfully started;
 - (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
 - (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
 - (4) has a Stored Energy Level of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
 - (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.
- F. Test Conditions.
 - (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.
 - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters

shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- 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 C, including copies of the raw data taken during the test;
 - (3) the level of Effective Storage Capacity, Energy In, Energy Out, Efficiency Rate, Charging Capacity, 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 ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

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

- I. Supplementary Storage Capacity Test Protocol. No later than ninety (90) days prior to the Storage Facility 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 Effective Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four (4) hours of discharge (up to, but not in excess of, the Guaranteed Storage Output), shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.
- K. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), 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. INITIAL STORAGE CAPACITY TEST PROTOCOL

A. Initial Storage Capacity Test Protocol.

- Procedure:

- (1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.
- (2) Record the initial value of the Stored Energy Level.
- (3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the Maximum Stored Energy Level allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the Maximum Stored Energy Level, not to exceed six (6) hours of charging.
- (4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter ("Energy In"). All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy In.
- (5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the Maximum Discharging Capacity for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging capacity is [REDACTED] than the Maximum Discharging Capacity.

- (6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Effective Storage Capacity.
 - (7) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.
 - (8) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. “**Energy Out**” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.7, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.
- Test Results:
 - (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.
 - (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy in step (6) above divided by four (4) hours.

EXHIBIT P

STORAGE FACILITY AVAILABILITY

SEASONAL STORAGE AVAILABILITY CALCULATION

Seller shall calculate the “**Seasonal Storage Availability**” for a given Season of the Storage Facility Delivery Term using the formula set forth below:

$$\text{Seasonal Storage Availability (\%)} = \frac{[\text{AVAILHRS}_s + \text{EXCUSEDHRS}_s]}{[\text{SEASONHRS}_s]}$$

Where:

s = relevant Season “ s ” in which Seasonal Storage Availability is calculated;

SEASONHRS_s is the total number of hours for the Season; *provided*, for the first Season the SEASONHRS_s shall be between the Storage Facility COD and end of that Season;

AVAILHRS_s is the total number of hours, or partial hours, in the Season during which the Storage Facility was available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services (provided that notwithstanding anything to the contrary set forth above in this Exhibit P or elsewhere in this Agreement, to the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed EXCUSEDHRS_m , but the Storage Facility is able to charge and discharge Energy between the Storage Facility and the Delivery Point, then such impact on AVAILHRS_s shall be reduced by [REDACTED] at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller’s delivery of Product). If the Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Storage Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Forecast in Section 4.3(d), and (b) is the Effective Storage Capacity; and

EXCUSEDHRS_s is the total number of hours, or partial hours, in the Season that are not included as AVAILHRS_m due to Force Majeure Events (excluding Insurable Force Majeure Event [REDACTED])

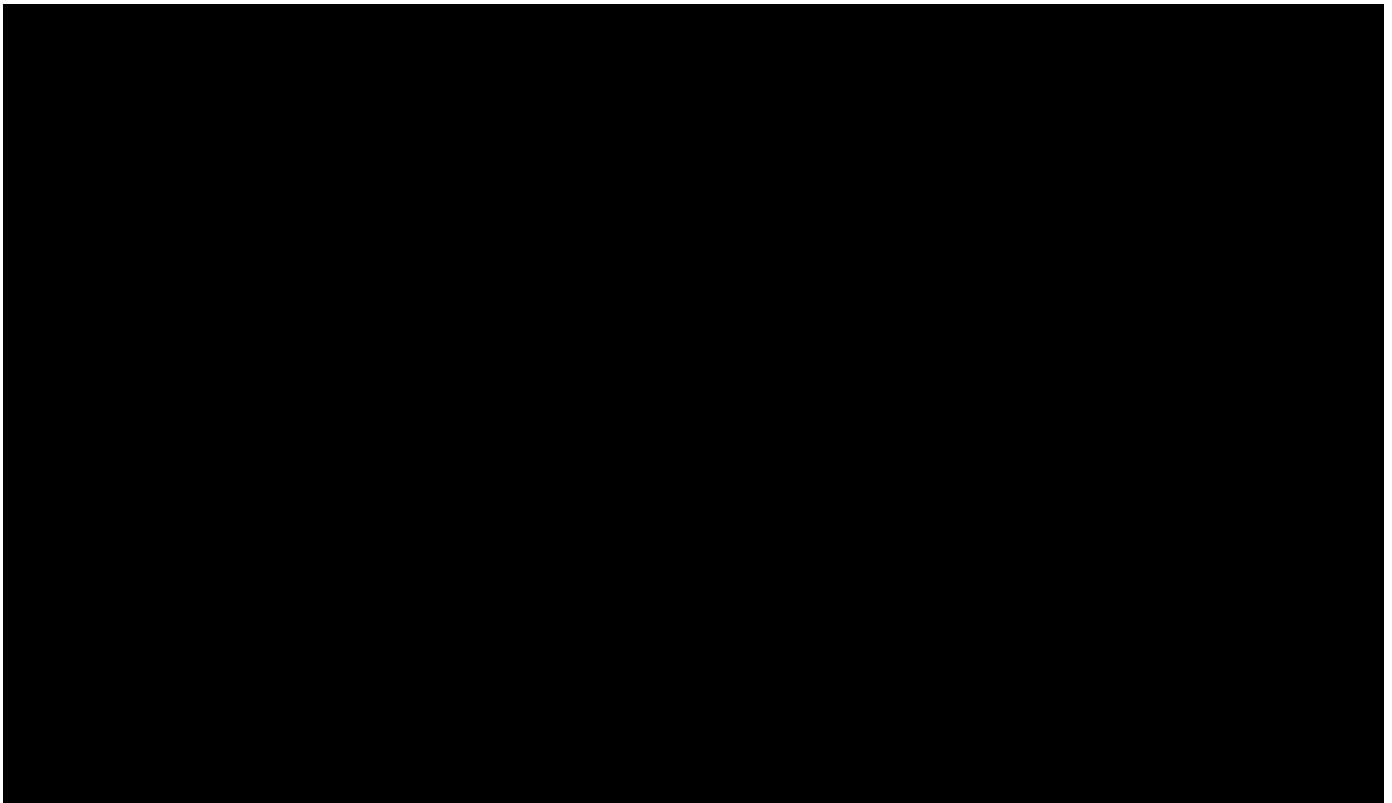
[REDACTED] Delivery Term (each, an “**Excused Event**”). For avoidance of doubt, the Storage Facility will not be deemed to be unavailable during System Emergencies, Curtailment Periods, Buyer Dispatched Tests, Buyer Defaults, or due to the

application of the Operating Restrictions in Exhibit Q. If an Excused Event results in less than the full amount of the Effective Storage Capacity for the Storage Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_m for such time period shall be calculated by multiplying such EXCUSEDHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of such Effective Storage Capacity amount that is not reported as available by (i) Seller's real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller's most recent Availability Forecast in Section 4.3(d), and (b) is the Effective Storage Capacity. For avoidance of doubt, the total of AVAILHRS_m plus EXCUSEDHRS_m for any hour, or partial hour, shall never exceed 1.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

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

Availability Adjustment



(IV) If the Seasonal Storage Availability is less than [REDACTED] then:

[REDACTED]

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Storage Facility Commercial Operation Date; *provided*, 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 Storage Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]
Technology:	Lithium-Ion Batteries
A. Contract Capacity	
Guaranteed Storage Capacity (MW):	35
Effective Storage Capacity (MW):	35 as updated pursuant to the most current Storage Capacity Test
B. Total Unit Dispatchable Range Information	
Maximum Stored Energy Level (MWh):	140
Minimum Stored Energy Level (MWh):	0
Maximum Charging Capacity (MW):	35
Maximum Discharging Capacity (MW):	35
Maximum annual average resting State of Charge (SOC)	
C. Maximum Throughput	
Maximum daily Throughput:	
Maximum annual Throughput:	
D. Charge and Discharge Rates	
Ramp Rate (MW/minute)	60
E. Ancillary Services	
Spinning reserve is included:	Yes
Non-spinning reserve is included:	Yes
Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	
Voltage support is included:	Yes
F. Charging Energy Restrictions	
Prior to Generating Facility IDD:	There shall be no limits on Buyer's ability to charge with grid energy prior to the Generating Facility IDD.
On and After Generating Facility IDD:	Pursuant to Section 4.5(i)

EXHIBIT R
METERING DIAGRAM

YELLOW PINE III SINGLE LINE DIAGRAM
35 MW SOLAR + 35 MW BESS
(PRELIMINARY DESIGN SUBJECT TO CHANGE)

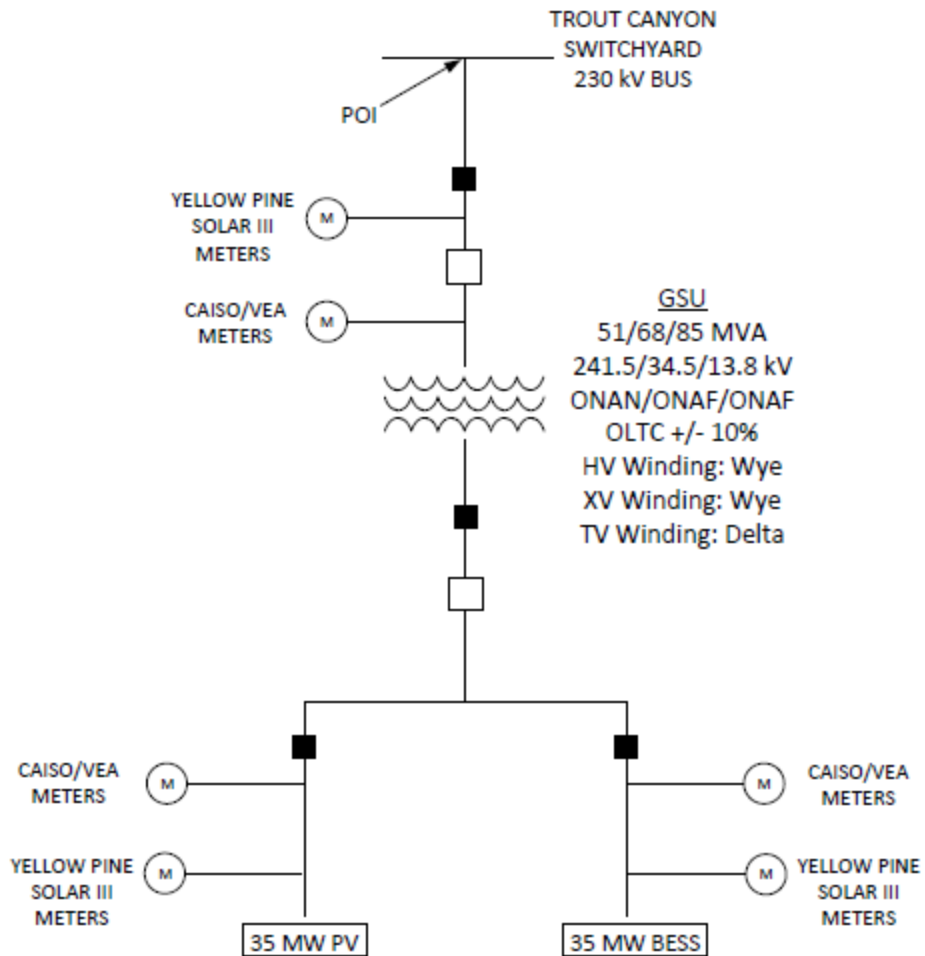


Diagram is preliminary and subject to change.

EXHIBIT S

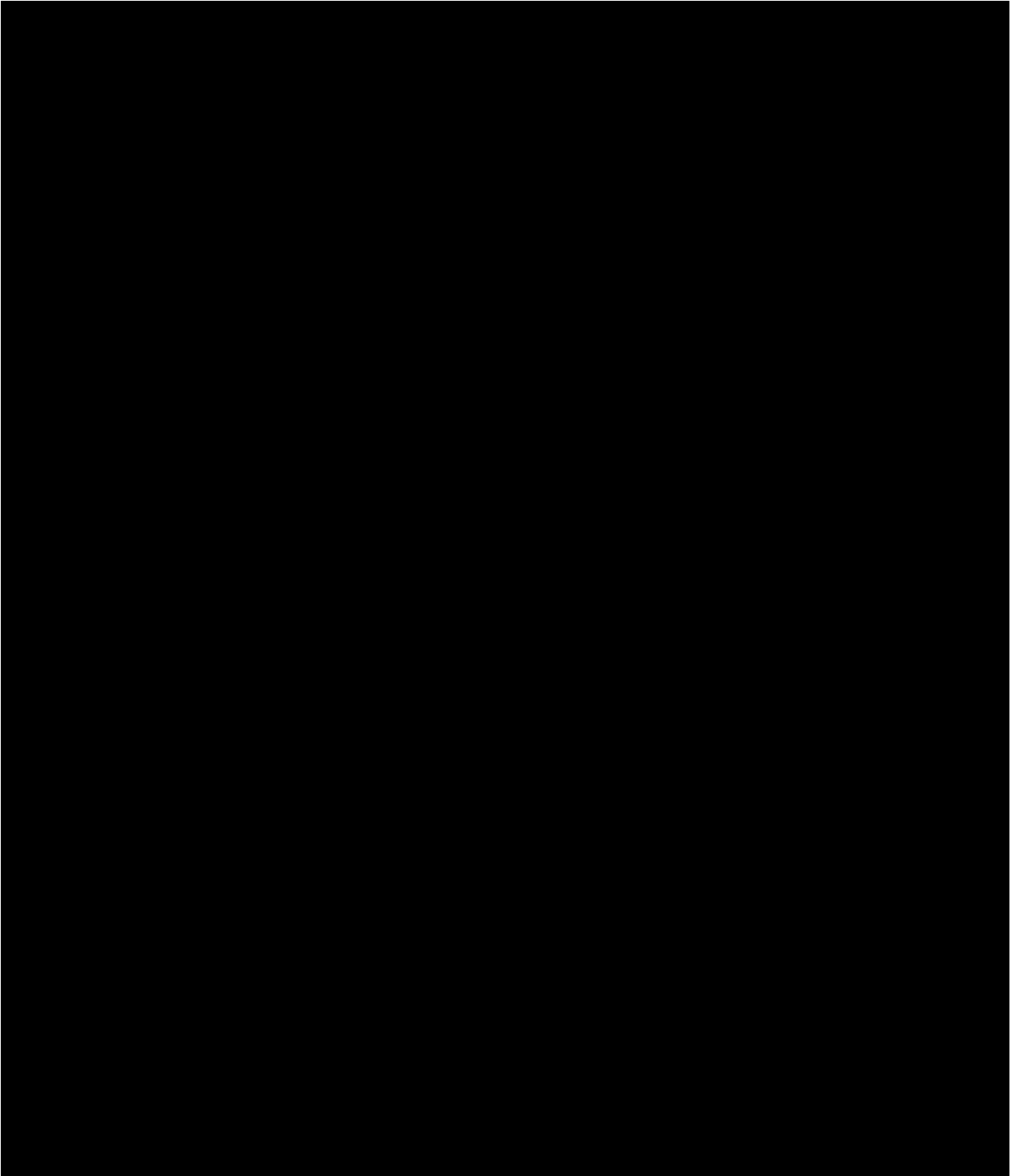
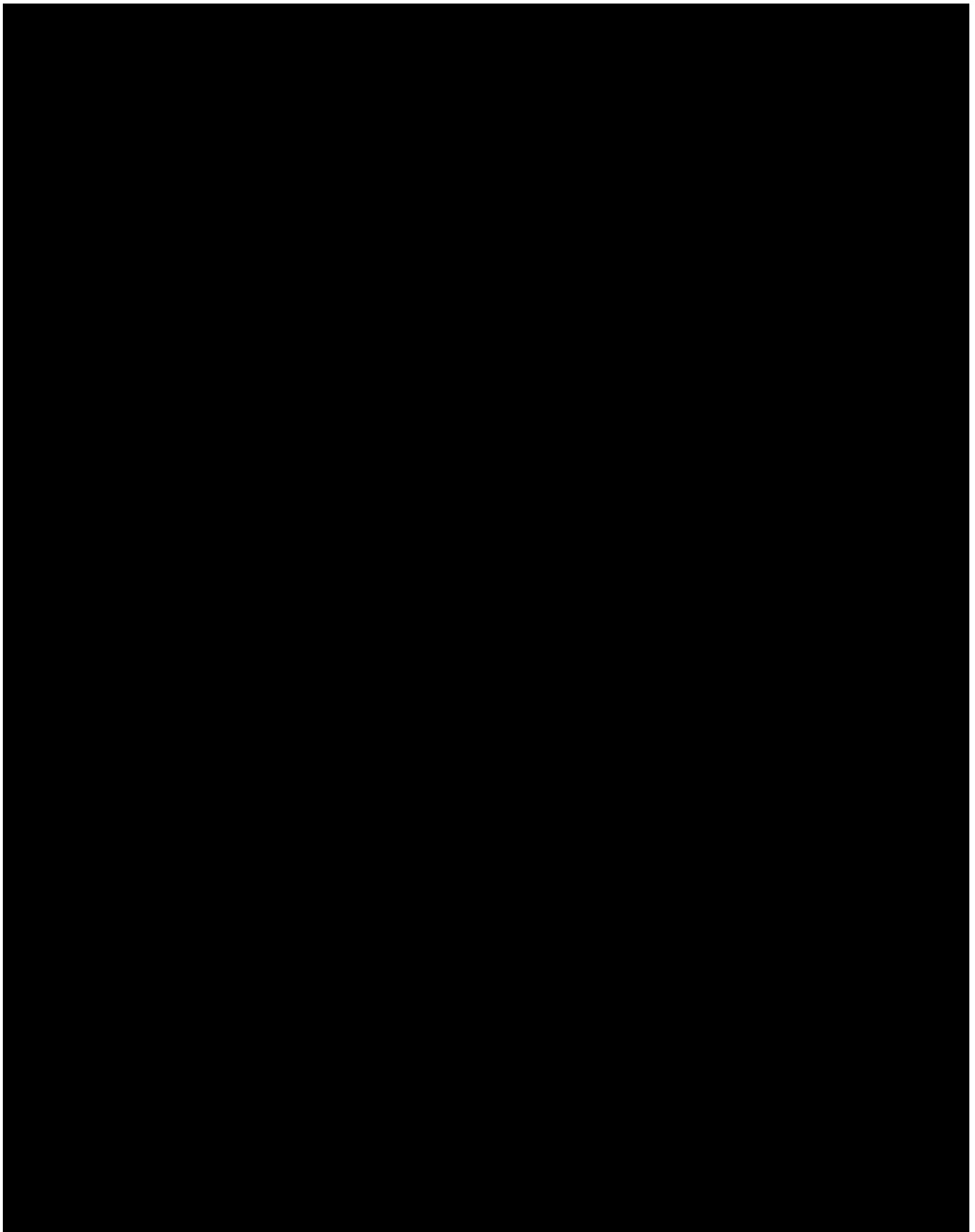
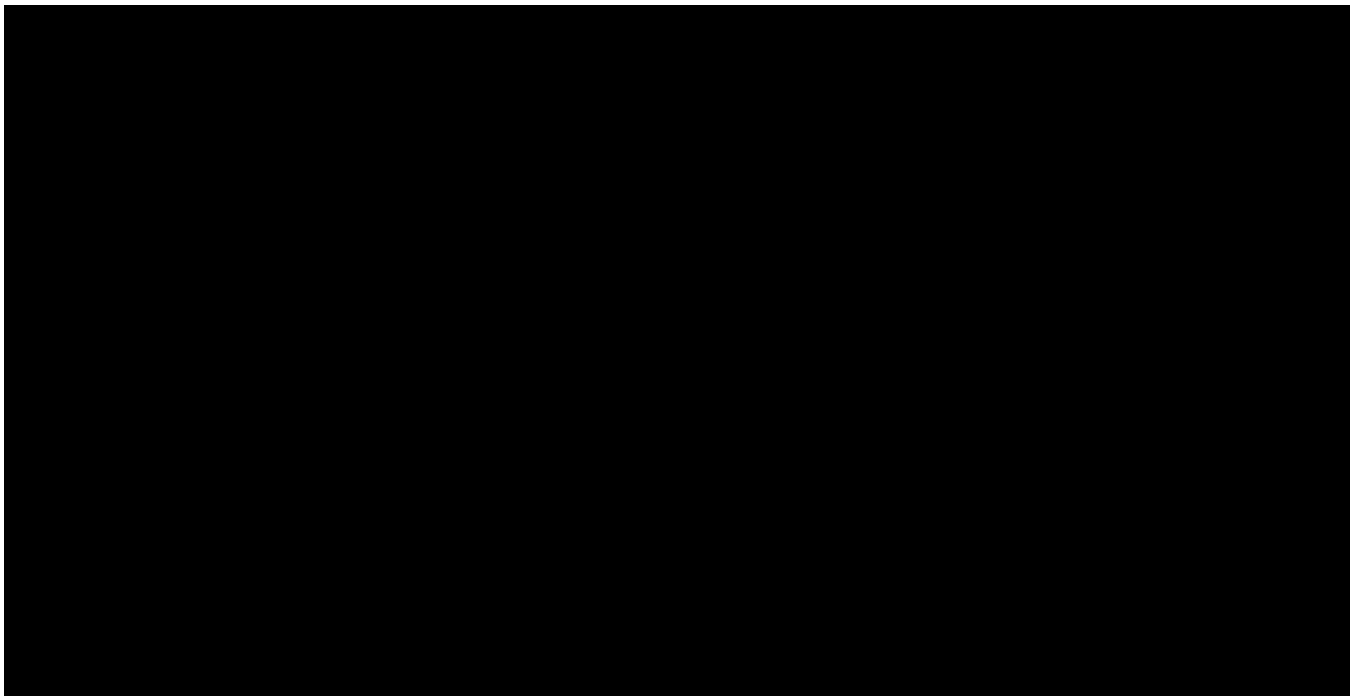
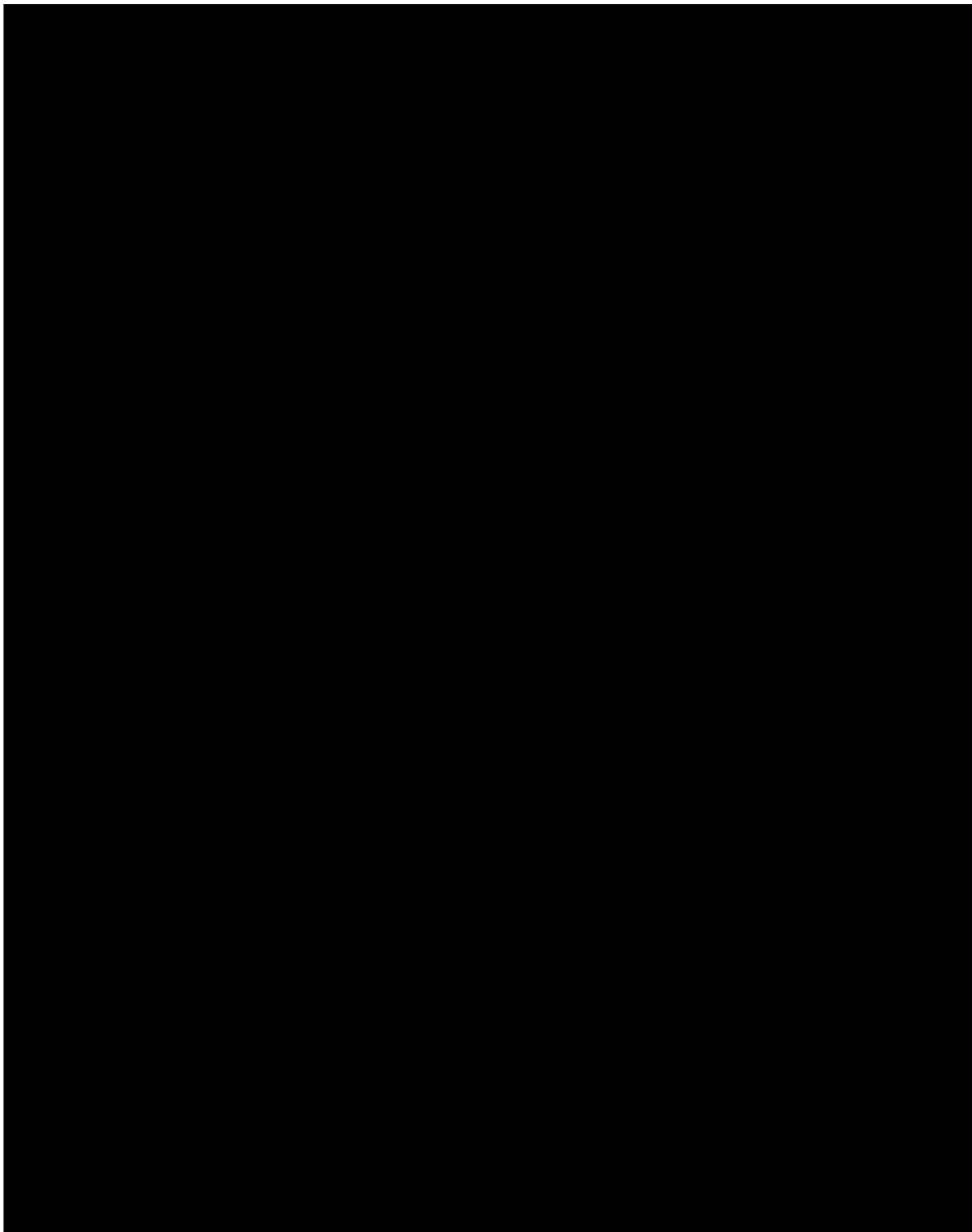
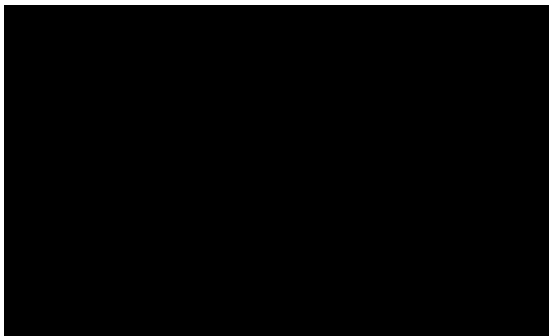


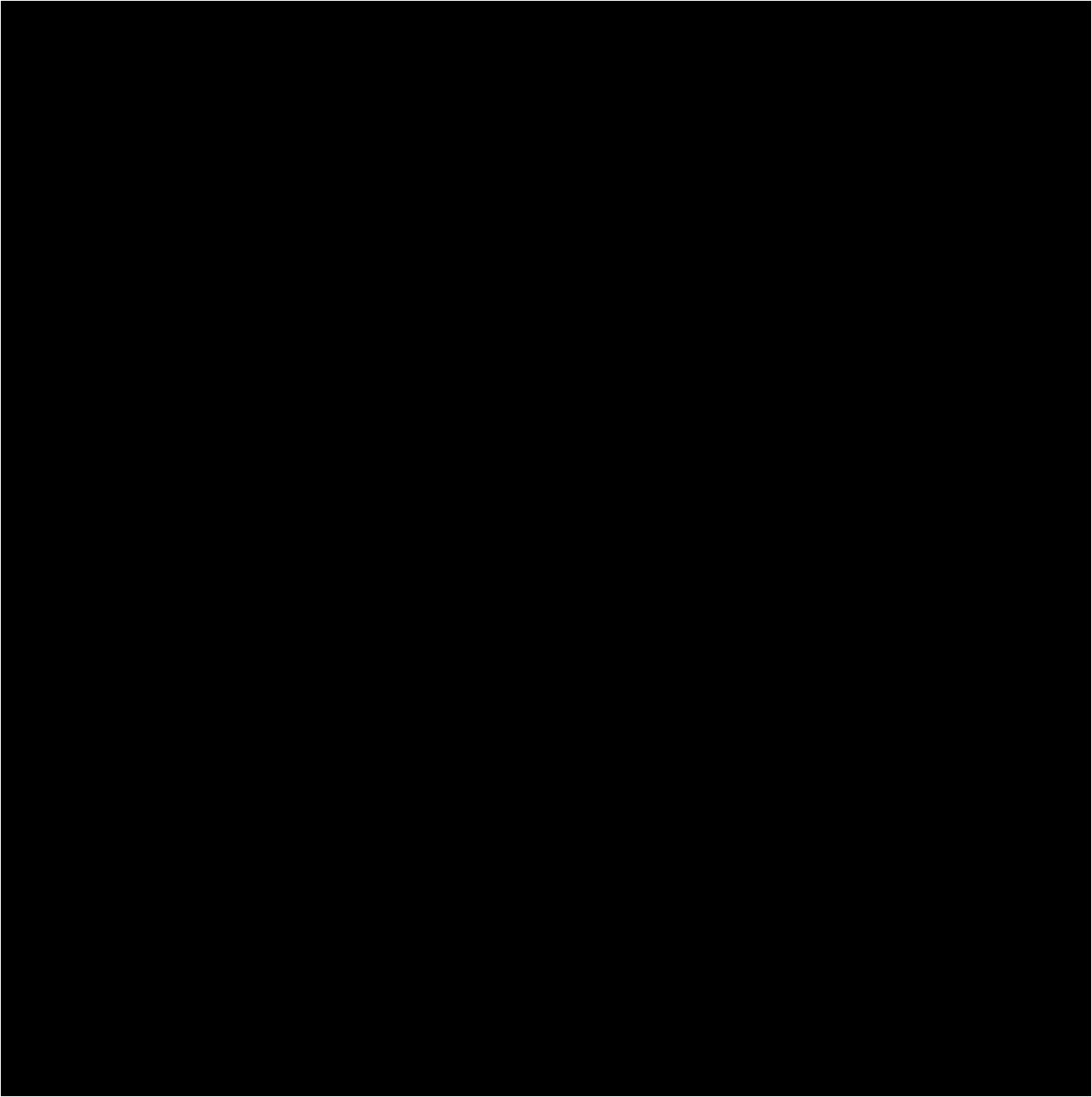
Exhibit S - 2











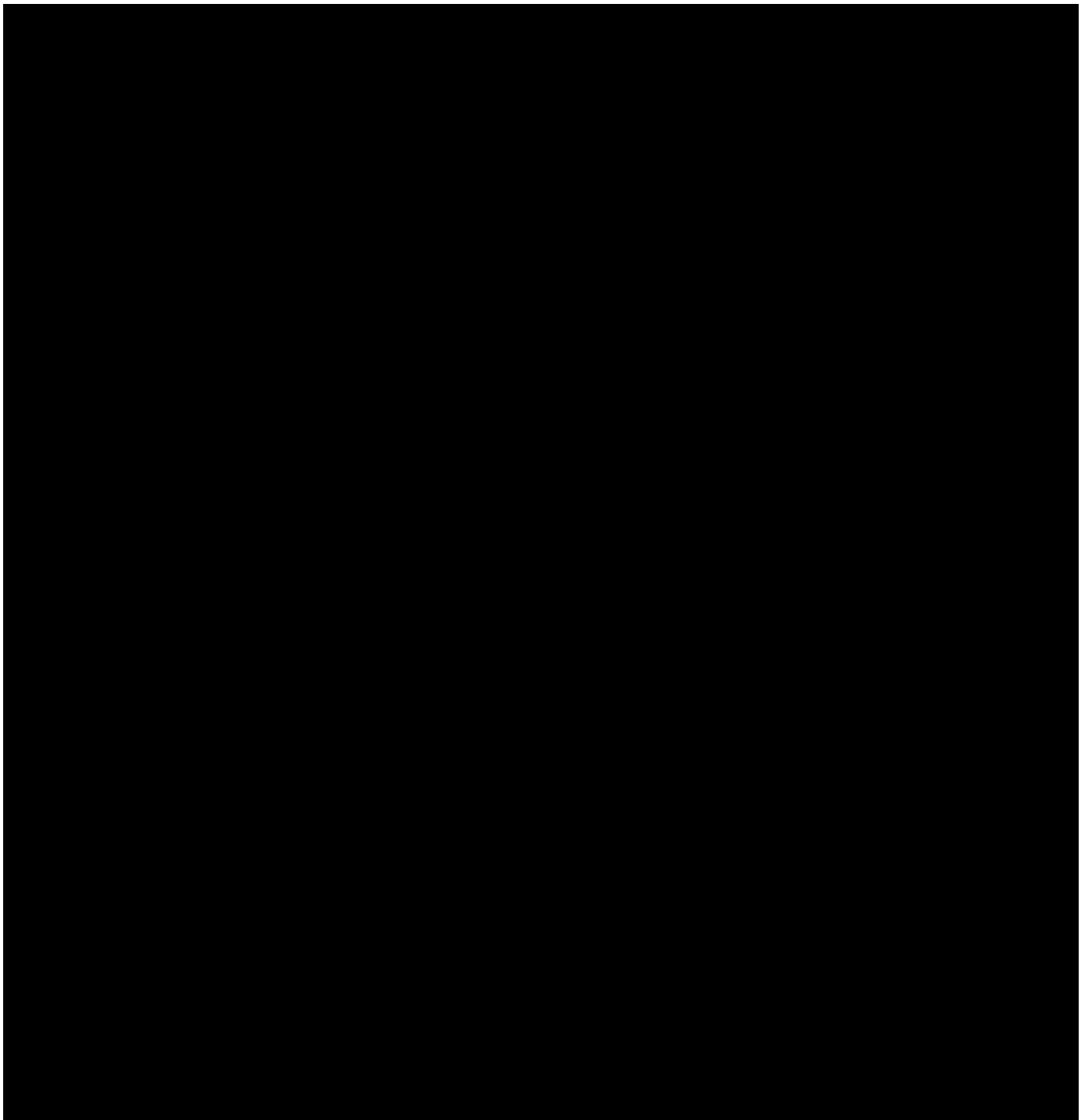


EXHIBIT T

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT
([NAME OF CONTRACTING PARTY])
([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the “Contracting Party”), [_____] a [_____] (the “Project Owner”), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [_____] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT. THE CONTRACTING PARTY HEREBY ACKNOWLEDGES AND CONSENTS TO THE PLEDGE AND ASSIGNMENT OF ALL RIGHT, TITLE AND INTEREST OF THE PROJECT OWNER IN, TO AND UNDER (BUT NOT ITS OBLIGATIONS, LIABILITIES OR DUTIES WITH RESPECT TO) THE ASSIGNED AGREEMENT BY THE PROJECT OWNER TO THE COLLATERAL AGENT PURSUANT TO THE SECURITY AGREEMENT.

2. REPRESENTATIONS AND WARRANTIES. THE CONTRACTING PARTY REPRESENTS AND WARRANTS AS FOLLOWS:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a “Termination Event”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. RIGHT TO CURE.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned

Agreement [(other than pursuant to Section __ of the Assigned Agreement)]¹ or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section __ of the Assigned Agreement)]², and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of [30]³ days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”) the Collateral Agent shall have such longer period as is required to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT’S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT’S

¹ Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

² Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

³ Or longer cure period specified in Assigned Agreement.

DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT.

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE "CUSTOMER" UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT'S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL NOT BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER EXCEPT TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY'S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED AGREEMENT.

7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT,

OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE PROJECT OWNER A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER OR CONSENT HAS BEEN MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT THERETO.

8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]

9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HEREWITH), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS RECEIVED; PROVIDED THAT ANY FACSIMILE COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:

The Collateral Agent: [_____]]
[_____]]
Attn: [_____]]
Telephone No.: [_____]]
Facsimile No.: [_____]]

The Project Owner: _____

The Contracting Party: _____

10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.

11. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.

12. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREUNDER (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

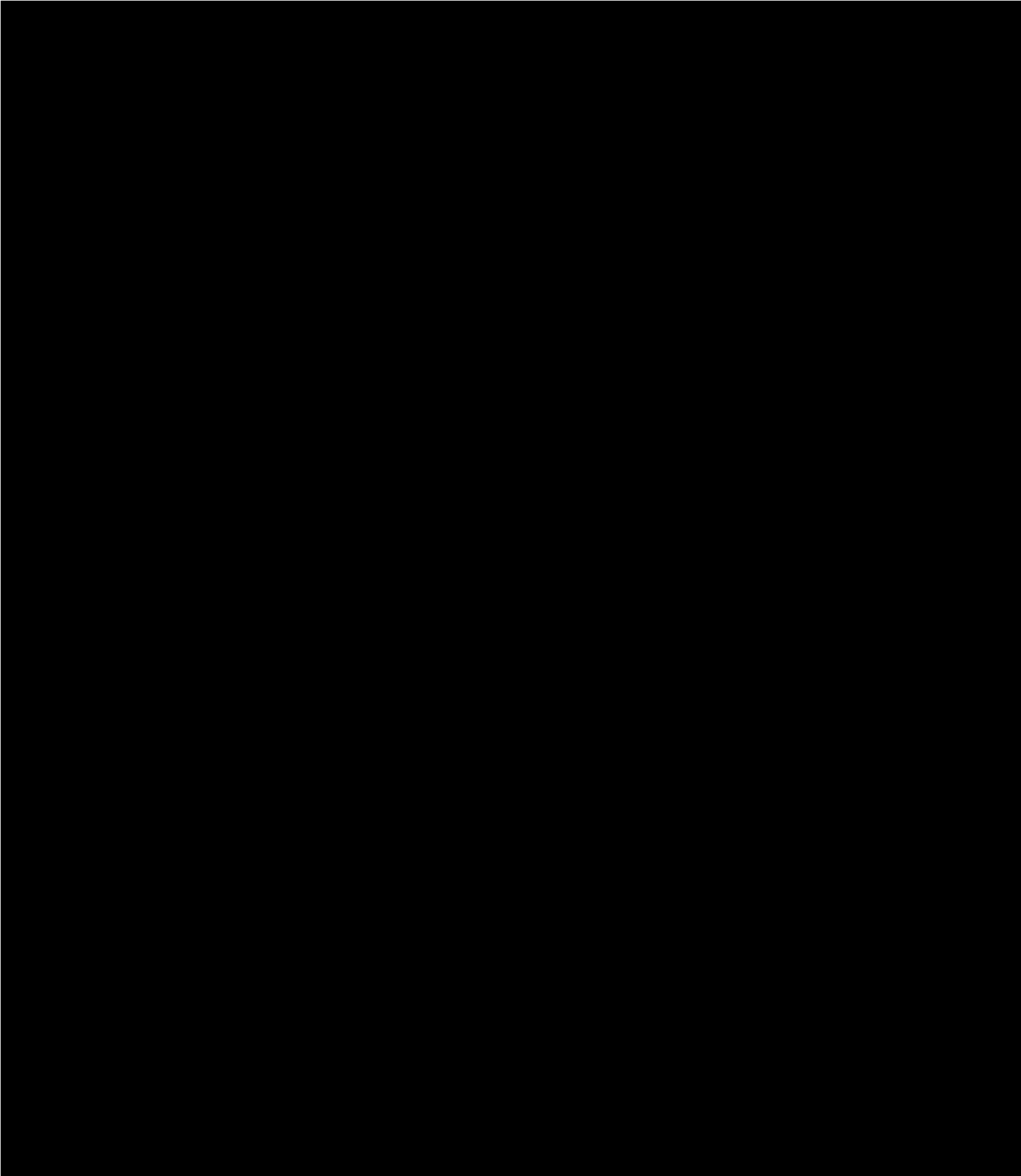
Assigned Agreement

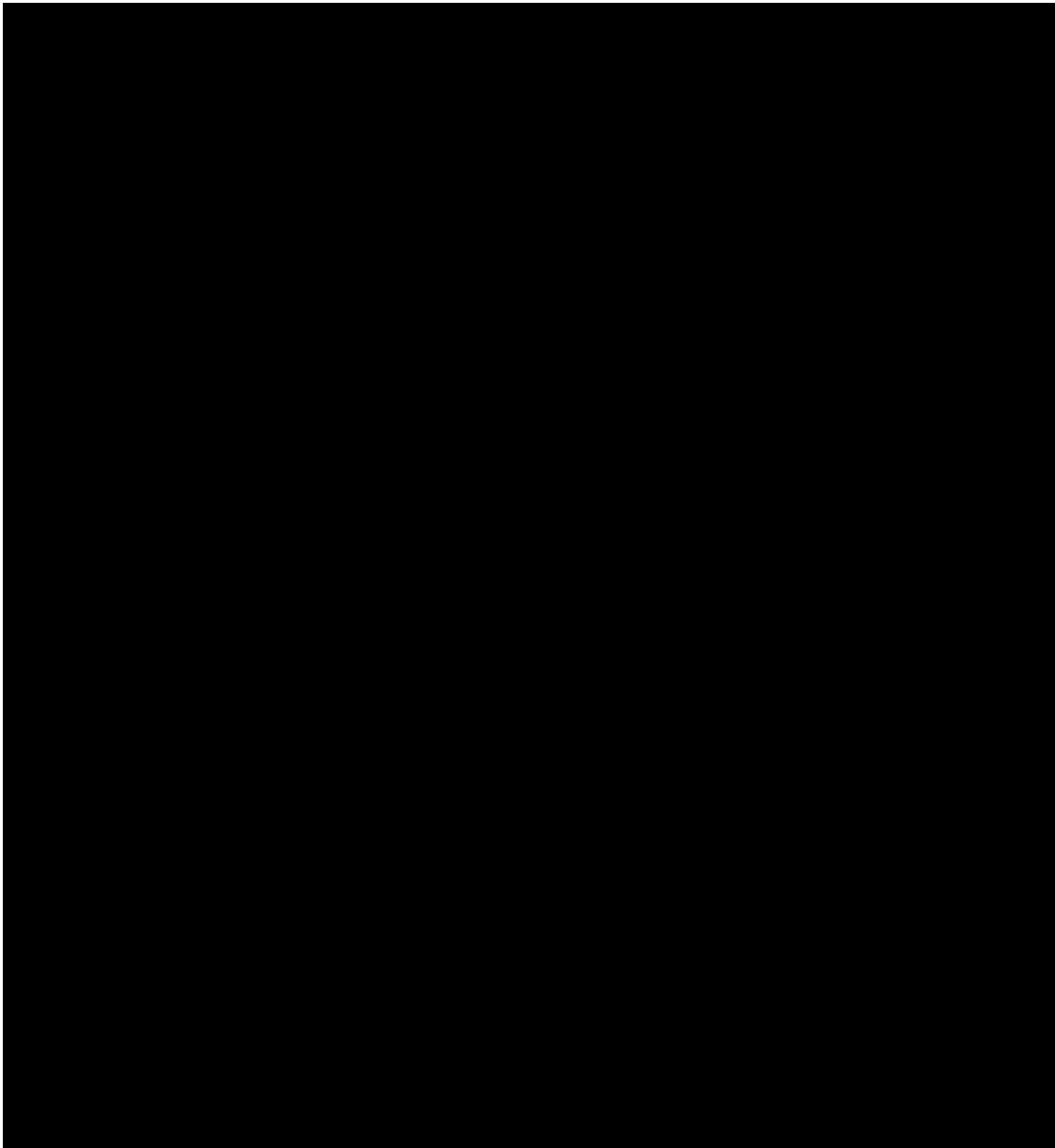
Payment Instructions
(Section 6)

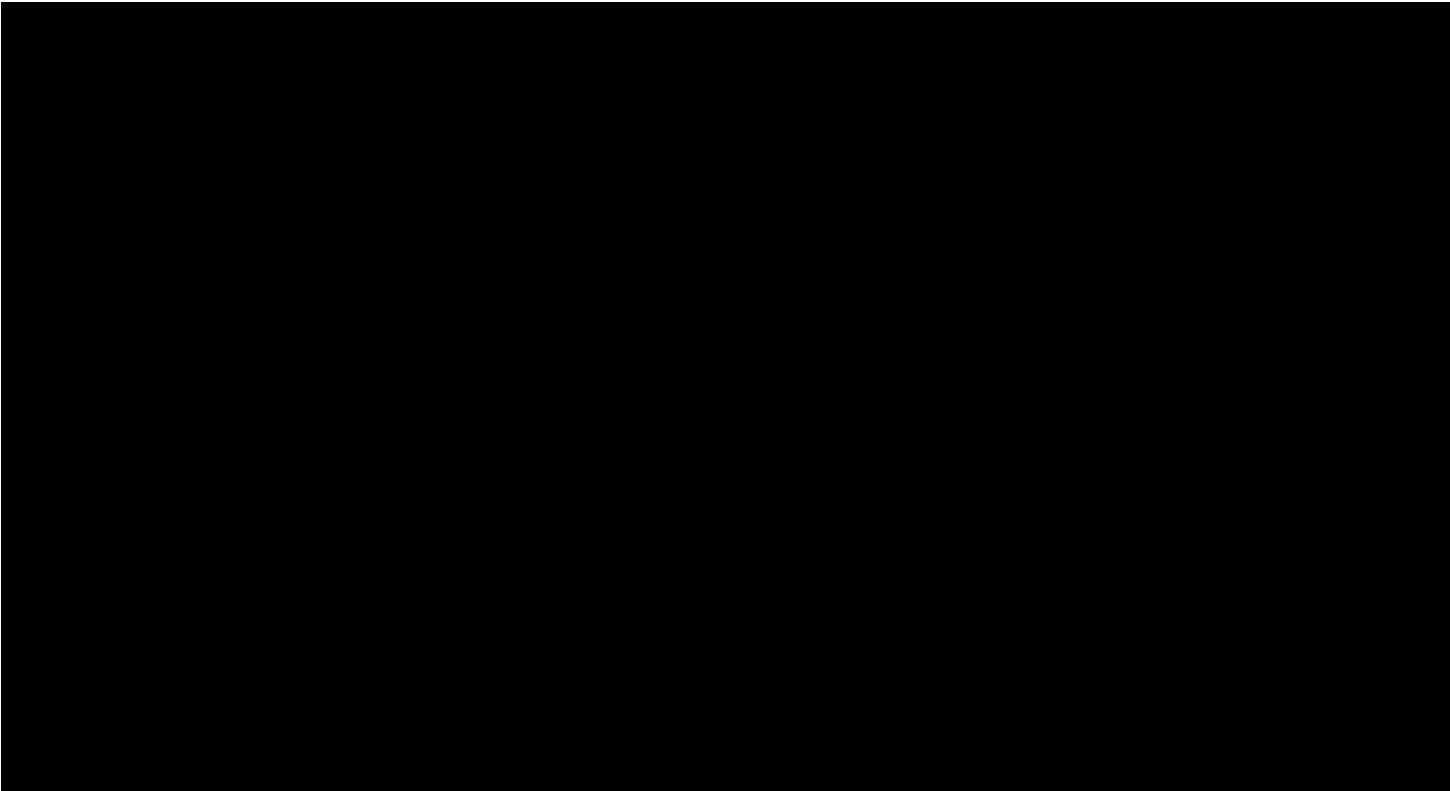
All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT U







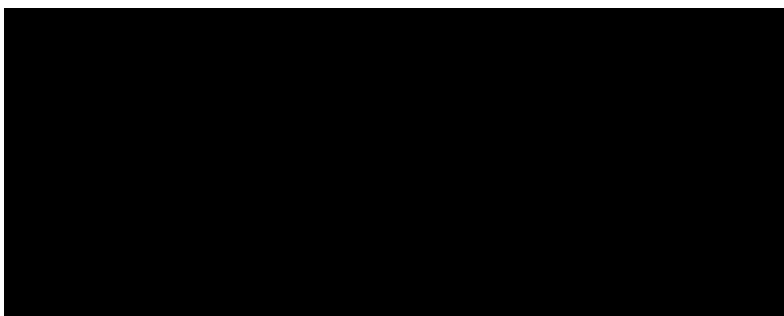


Exhibit S - 1