



Silicon Valley Clean Energy Executive Committee Special Meeting

Wednesday, July 29, 2020
3:00 pm

Howard Miller, Chair
City of Saratoga

Nancy Smith, Vice Chair
City of Sunnyvale

Liz Gibbons
City of Campbell

Rod Sinks
City of Cupertino

Fred M. Tovar
City of Gilroy

Neysa Fligor
City of Los Altos

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Town of Los Altos Hills

Rob Rennie
Town of Los Gatos

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City of Milpitas

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City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Susan Ellenberg
County of Santa Clara

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

Teleconference Meeting
Webinar:

<https://zoom.us/j/98401982285>

Or by Telephone (Audio only):
US: +1 669 900-9128
Webinar ID: 984 0198 2285

This meeting will be conducted in accordance with [State of California Executive Order N-29-20](#), dated March 17, 2020, in consideration of the Coronavirus (COVID-19). All members of the Silicon Valley Clean Energy Executive Committee and staff will participate in this meeting by teleconference.

Members of the public may observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be read within the public comment period or the applicable agenda item. The public will also have an opportunity to provide comments during the meeting.

The public may provide comments on any matter listed on the Agenda. Speakers are customarily limited to 3 minutes each, however, the Committee Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA") please contact Board Clerk Andrea Pizano at andrea.pizano@svcleanenergy.org prior to the meeting for assistance.

AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any matter not listed on the Agenda provided that it is within the subject matter jurisdiction of SVCE. Speakers are customarily limited to 3 minutes each, however, the Committee Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.



Regular Calendar

Howard Miller, Chair
City of Saratoga

Nancy Smith, Vice Chair
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Liz Gibbons
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- 1) Authorize the Chief Executive Officer to Execute a Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in an Amount Not to Exceed \$7,400,000 and for a Term from December 31, 2022 through December 31, 2032 (Action)
- 2) CEO Update (Discussion)

Committee/Staff Remarks

Adjourn

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087



Staff Report – Item 1

Item 1: Authorize the Chief Executive Officer to Execute a Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in an Amount Not to Exceed \$7,400,000 and for a Term from December 31, 2022 through December 31, 2032 (Action)

From: Girish Balachandran, Chief Executive Officer

Prepared by: Aimee Bailey, Director of Decarbonization & Grid Innovation
Monica Padilla, Director of Power Resources

Date: 7/29/2020

RECOMMENDATION

Staff recommends that the Executive Committee of the Board authorize the Chief Executive Officer to execute a Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc. in an amount not to exceed \$7,400,000, and for a capacity delivery term from December 31, 2022 through December 31, 2032 in substantially the same form as the attached agreement.

BACKGROUND

In response to PSPS events, last fall, SVCE issued a joint solicitation with three other load serving entities (LSEs) (East Bay Community Energy (EBCE), Peninsula Clean Energy (PCE) & Silicon Valley Power (SVP)) for resource adequacy (RA) from customer-sited battery storage backup systems. The joint solicitation targeted over 30MW of RA across the four LSEs, from both residential and commercial systems, which is estimated to translate to approximately 6,000 homes and hundreds of businesses in Alameda, San Mateo, and Santa Clara counties. The general premise is by providing compensation for grid services from these systems during times of regular grid operation can help buy down the system cost for the end customer who can use the battery storage systems during grid outages, such as PSPS events.

Staff issued the RFP on November 5, 2019, which closed on December 23, 2019. The RFP garnered a strong response, with 19 proposals submitted and 36 unique bids. Staff carried out a rigorous evaluation process over multiple months, which included in-person interviews the weeks of January 27 and February 3, 2020. The primary evaluation criteria were pricing, relevant experience, and proposed go-to-market plan. The proposal submitted by Sunrun was selected as the top finalist in the residential sector (single-family and multi-family).

SVCE negotiated an agreement with Sunrun to install 1-7.5 MW (4-30 MWh) of solar and battery energy storage systems on single family and multi-family residences in SVCE service territory, with a minimum of 20% installed for customers in multi-family residences that are low income, on CARE, FERA or Medical Baseline rates or located in a disadvantaged community. As a part of the contract, SVCE will assist with marketing and purchase grid services to help meet RA compliance requirements from these systems during times of regular grid operation. Paying for grid services from the systems will help decrease the overall system cost for the end customer, who will be able to use the battery storage systems for backup power during grid outages such as PSPS events. Through this contract, thousands of single-family and multi-family customers are expected to benefit from this program. EBCE and PCE both selected Sunrun for residential offering and have executed agreements with similar terms.

Agenda Item: 1**Agenda Date: 7/29/2020**

Sunrun is a local organization, founded in 2007 and based in San Francisco, CA. Since its founding, Sunrun has developed over 1.8 GW of residential solar capacity for over 270,000 customers in 22 states, the District of Columbia, and Puerto Rico. Since 2016, Sunrun added residential storage to a growing number of its solar installations, starting in Hawaii and growing quickly in California. They have installed over 8,000 residential solar+storage systems to date. Sunrun has a multifamily residential project pipeline in the Bay Area, with a focus on affordable housing. Their current portfolio includes over 11 MW in development across over 75 sites. The projects are serving both common area and tenant area loads under long-term agreements with the property owner. In addition to Sunrun's experience installing, operating and maintaining battery storage technologies, Sunrun has been a national leader in aggregating customer-sited systems to provide grid services, including in the New England and California markets.

ANALYSIS & DISCUSSION

The aggregation of distributed behind-the-meter (BTM) batteries to deliver both load modification and resilience is a first-of-its-kind initiative. Specifically, the negotiated contract is an innovative alternative approach to meeting RA obligation through reducing peak demand through the coordinated dispatch of BTM resources. This so-called "load modifying resource", which is a capacity product, will be dispatched daily during SVCE's highest peak hours to decrease SVCE's RA obligation and reduce wholesale energy procurement volumes. The capacity payments to vendors will be shared with customers to reduce the cost of batteries through improved pricing and encourage customer participation.

Led by EBCE, the LSEs have worked with the California Energy Commission (CEC) to develop this load modification approach to meet our RA obligation. Every year, SVCE will submit a peak demand forecast to the CEC. This forecast is used by the CEC to set SVCE's annual RA procurement obligation. The energy storage systems under this contract will be dispatched on a daily basis during SVCE's highest peak hours, which will decrease SVCE's peak load. The reduction in SVCE's peak load will reduce our RA obligation and thereby also reduce our wholesale energy procurement volumes. This approach with the CEC is new, and not fully tested yet. Because there is still some uncertainty, the negotiated agreement includes a product transition clause that allows SVCE to receive RA benefits by converting the load modification approach to a Proxy Demand Response (PDR), which is an existing, albeit suboptimal, mechanism for providing RA from distributed energy resources. Therefore, the negotiated agreement allows Sunrun to provide and SVCE to receive RA benefits through either method, and includes provisions on how the two parties will work together if the rules change. If the product reverts to the PDR approach, how SVCE values and counts the resources will also be contingent on the final rules for the CPUC's RA program resulting from the decision to move toward a central buyer construct.

The negotiated agreement also includes a co-marketing plan. Under the plan, SVCE will leverage its marketing channels and brand to help market the program to those best positioned to benefit. This allows for faster program deployment and helps defray the cost of customer acquisition. In return for SVCE participating in a co-marketing arrangement, Sunrun will provide single-family customers who sign up for participation in this program an upfront monetary incentive of \$1,000. Additional monetary incentives are not expected to be needed for multi-family customers, because they will already receive significant financial subsidies through the statewide Solar on Multi-family Affordable Housing (SOMAH) program. However final incentive amounts will be decided in the coming months.

Time is of the essence. SVCE is striving to launch the program as soon as possible before the 2020 fire season. Because acquiring customers and getting new solar and storage systems installed can take up to 6 months, customer enrollment and system installation will continue through 2022. This product also helps with meeting SVCE's RA compliance obligations and need to procure "shed demand response", which is called for in the state's integrated resource plan (IRP) reference system plan. This agreement is a major step forward in meeting SVCE's organizational priorities and strategic goals, including supporting innovation, our decarbonization mission and enhanced resiliency for our communities.

STRATEGIC PLAN

Approving the staff recommendation will enable Staff to meet its power supply procurement and resource adequacy compliance obligations as provided for in SVCE's Strategic Plan, Power Supply Goal 10, Strategy 10.5: "Identify and pursue cost effective, local distributed energy resources to meet RPS and reliability needs". The proposal also supports SVCE's Strategic Plan Goal 5, which is to work with the community to achieve energy and transportation GHG emissions reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030.

FISCAL IMPACT

This capacity procurement will reduce SVCE's RA obligation by up to 7.5 MW over the ten-year term. The negotiated capacity price is estimated to be a slight premium compared to purchasing resource adequacy via traditional bilateral contracts, which is generally sourced from existing natural gas power plants. Given the range of capacity volume delivered through this program, SVCE will be committing between \$1,200,000 - \$7,400,000 in capacity payments over the ten-year term. This range is dependent on the final installed capacity and whether we receive RA benefits through load modification or PDR.

The capacity costs will be covered under the power resources budget and will be appropriated during the annual budgeting process.

ATTACHMENTS

1. Distributed Energy Storage Agreement for Resilience and Capacity with Sunrun Inc.

**SVCE BEHIND THE METER LOAD MODIFYING AGREEMENT
(July 2020)**

**BEHIND THE METER
ENERGY STORAGE AGREEMENT FOR RESILIENCE
COVER SHEET**

Seller: Sunrun Inc., a Delaware corporation

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority

Execution Date:

Description of Portfolio:

Contract Amount (Load Modification):

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”) for _4_ hours per day

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”) for _4_ hours per day

Contract Price (Load Modification): \$ [REDACTED] /kW-month

Contract Amounts (Capacity Attributes):¹

RA Attributes:

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”)

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”)

Local RA Attributes

Minimum of [REDACTED] kW (“Minimum Commitment Contract Amount”)

Not to Exceed [REDACTED] kW (“Maximum Commitment Contract Amount”)

Contract Price (Capacity Attributes): \$ [REDACTED] /[kW-month]

¹ NTD: Capacity Attributes will apply in event of Product Transition from LM to RA pursuant to Section 5.2(b).

Milestones:²

Milestone	Date
Customer Agreements Signed	10% of Contract Amount by: January 15, 2021 25% of Contract Amount by: September 15, 2021 50% of Contract Amount by: July 15, 2022 Remaining Contract Amount by: October 15, 2022
Load Modifying Supply Plan Submitted	[March __], 2021
Construction Start Deadlines	10% of Contract Amount by: March 31, 2021 25% of Contract Amount by: November 15, 2021 50% of Contract Amount by: August 15, 2022 Remaining Contract Amount by: November 15, 2022
Expected Initial Delivery Date	December 31, 2022

Delivery Term: __10__ Contract Years

² NTD: Host customer-related matters are addressed in Appendix XI; milestones in this agreement focus on other key project development tasks.

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ENERGY STORAGE AGREEMENT FOR RESILIENCE

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

RECITALS

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

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

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

ARTICLE 1: DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**CARE**” means the California Alternate Rates for Energy Program and any successor thereto.

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

“**Change of Control**” means, except in connection with public market transactions of equity interests of Seller’s Ultimate Parent, any circumstance in which Seller’s Ultimate Parent as of the Execution Date ceases to be the Ultimate Parent or ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity

interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

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

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

“Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and any other resource adequacy or capacity procurement requirements, or associated reliability requirements, imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, by NERC, or by any other Governmental Authority having jurisdiction.

“Compliance Showings” means the total combination of (a) through (d) below that a Load Serving Entity (as defined in the CAISO Tariff) is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Authority having jurisdiction: (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings).

“Conditions Precedent” has the meaning set forth in Section 4.2.

“Confidential Information” has the meaning set forth in Section 20.1.

“Confirmation Notice” means a Downward Change Confirmation Notice or an Upward Change Confirmation Notice, as applicable.

“Construction Delay Cure Period” has the meaning set forth in Section 3.1(c).

“Construction Delay Damages” means daily liquidated damages in an amount equal to

[REDACTED]

“Construction Start” means (i) acquisition of all Governmental Approvals necessary for the construction of the applicable Project(s), (ii) engagement of each Contractor, (iii) execution of each required Customer Agreement for such Project(s), and (iv) ordering of all essential equipment

and supplies, in each case (i)-(iv), as reasonably necessary so that physical construction of the applicable Projects of the Portfolio may begin and proceed to completion without foreseeable interruption of material duration.

“Construction Start Deadline” has the meaning set forth in the Cover Sheet.

“Contract Price” means the amount specified in Section 5.2(d).

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date.

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Portfolio during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Portfolio during the Term.

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

“Cover Sheet” has the meaning set forth in the preamble to this Agreement.

“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” means “Capacity Procurement Mechanism” and has the meaning set forth in the CAISO Tariff and is inclusive of any successor mechanisms authorized by CAISO.

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

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

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

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

“**Critical Milestone**” has the meaning set forth in Section 3.5.

“**Customer**” means a Person that is a retail electric customer of Buyer.

“**Customer Agreement**” means Seller’s agreement with a Customer for the installation and operation of a Project as part of the Portfolio.

“**Customer Information**” means Customer-related information that is subject to CPUC rules, regulations or orders or other applicable Laws regarding customer privacy, including California Public Utilities Code Section 8380 et seq.

“**DAC**” means disadvantaged community as defined by CPUC regulations and published guidance.

“**Damage Payment**” means the dollar amount equal to the total amount required to be posted by Seller as Development Security pursuant to Section 10.1.

“**Defaulting Party**” means the Party that is subject to an Event of Default.

“**Delay Damages**” means any Construction Delay Damages or IDD Delay Damages.

“**Delay Notice**” has the meaning set forth in Section 4.1(b)(i).

“**Delivered Quantities**” has the meaning set forth in Section 5.2(c).

“**Delivery Term**” has the meaning set forth in Section 2.2(b).

“**Delivery Term Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] of the Contract Amount that has reached the Initial Delivery Date at the time of calculation.

“**Development Security**” means (i) cash or (ii) a Letter of Credit in an amount equal to [REDACTED] per kilowatt of the Minimum Commitment Contract Amount.

“**Disclosing Party**” has the meaning set forth in Section 20.2.

“**Disclosure Order**” has the meaning set forth in Section 20.2(a).

“**Disclosure Request**” has the meaning set forth in Section 20.2(b).

“**Dispatch Plan Deadline**” means, with respect to each year of the Delivery Term, March 20, or such other date which is 30 days prior to the date on which Buyer is required to submit its annual aggregate peak demand forecast pursuant to rules and published guidance of the CEC. If the Dispatch Plan Deadline is prior to March 20 Buyer shall provide Seller notice of the adjustment 30 days prior to the new deadline.

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

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

“Early Termination Date” has the meaning set forth in Section 7.2(a).

“EFC” or **“Effective Flexible Capacity”** has the meaning given to “Effective Flexible Capacity” in the CAISO Tariff.

“Electric System Upgrades” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Portfolio to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Portfolio such that the Portfolio can provide Product at all times during the Delivery Term.

“Energy” means single- or three-phase, 60-cycle alternating current electric energy, measured in MWhs.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Portfolio’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Portfolio, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all emission reduction credits, marketable emission trading credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Portfolio.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“Event of Default” means a Seller’s Event of Default or a Party’s Event of Default.

“Execution Date” has the meaning set forth in the preamble.

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Portfolio or portion thereof.

“Expected Initial Delivery Date” has the meaning set forth on the Cover Sheet.

“FERA” means the Family Electric Rate Assistance Program and any successor thereto.

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes, Local RA Attributes, or Other Capacity Attributes.

“Flexible RAR” means the flexible resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Agreement, but only if and to the extent (x) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation excused thereby, (y) the Party seeking to have its performance obligation excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under the Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (z) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Additionally:

(a) Force Majeure may include:

(i) acts of God, including landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather-related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the applicable Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy;

(iv) restraint by court order or other Governmental Authority; or

(b) Force Majeure does not include:

(i) COVID-19 related restrictions imposed by Governmental Authorities as currently in place as of the Effective Date;

(ii) a failure of performance of any third party, including Participating TO, Utility Distribution Company, or any other party providing electric interconnection, distribution or transmission service;

(iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iv) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Portfolio;

(v) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(vi) Seller's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Portfolio, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller's inability to complete interconnection by the applicable Expected Initial Delivery Date, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) Seller's inability to obtain sufficient Charging Energy, fuel, power or materials to operate the Portfolio, except if Seller's inability to obtain sufficient Charging Energy, fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(ix) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(x) Seller's failure to obtain Site Control, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(xi) Seller's failure to obtain or retain Customers; or

(xii) any failure of a Customer to perform (whether or not due to Force Majeure affecting a Customer).

"Force Majeure Failure" has the meaning set forth in Section 8.1(d).

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

“Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

“Go to Market Plan” (“GTM Plan”) refers to the processes and obligations jointly agreed to by the Parties as set forth in Appendix XI.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the development, use and operation of the Portfolio, including any approvals required under the California Environmental Quality Act.

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

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

“IDD Cure Period” has the meaning set forth in Section 4.1(b)(i).

“IDD Delay Damages” means daily liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) [REDACTED]

“Indemnifiable Loss(es)” has the meaning set forth in Section 15.1(a).

“Initial Delivery Date” has the meaning set forth in Section 2.2(b).

“Interconnection Agreement” means the agreement(s) and associated documents (or any successor agreement and associated documentation approved by FERC or the CPUC) by and among Seller or a Customer and, as applicable, the Utility Distribution Company, the Participating Transmission Owner, and the CAISO, governing the terms and conditions of the interconnection of the Projects with the Utility Distribution Company’s or CAISO’s grid, including any description of the plan for interconnecting the Projects to the applicable grid.

“Interest Rate” has the meaning set forth in Section 9.2.

“Joint Powers Agreement” means that certain Joint Powers Agreement of Buyer, dated as of March 31, 2016, by and among the City of Campbell, City of Cupertino, City of Gilroy, City

of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga, and the City Sunnyvale.

“**Law**” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Portfolio, 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 Portfolio or purchasing equity ownership interests of Seller or its Affiliates for purposes of providing financing or refinancing for the Portfolio, 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 Portfolio.

“**Letter of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Appendix V.

“**LIBOR**” means the London Interbank Offered Rate for the corresponding deposits of U.S. dollars.

“**Load Modification**” means the reduction of Buyer’s aggregate peak demand forecast pursuant to applicable CEC regulations and published guidance.

“**Load Modifying Resource**” means a behind the meter generation or storage system that is capable of being dispatched to provide Load Modification.

“**Load Modifying Resource Dispatch Plan**” means a one-year plan, submitted for each calendar year of the Delivery Term, specifying on a month by month basis the hours of day during which the Contract Amounts will be delivered from the Portfolio and substantially in the form of Appendix XIII.

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

“**Local RA Attributes**” means any and all resource adequacy attributes or other locational attributes related to a Local Capacity Area, as may be identified at any time during the Delivery

Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with a physical location or point of electrical interconnection within the CAISO's Balancing Authority, that can be counted toward a Local RAR.

“Local RAR” means the local resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to CPUC Decisions, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs, all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal or state tax credits, grants, or benefits related to the Portfolio or generation therefrom or any costs or fees related to the Site or Portfolio.

“Low Income” means, with respect to a Customer, that such Customer has a household income at or below eighty percent (80%) of Santa Clara County's median income or at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Health and Safety Code (H&SC) Section 50093.

“Maximum Commitment Contract Amount” has the meaning set forth in the Cover Sheet.

“Medical Baseline Program” means the program administered by the Utility Distribution Company that provides a financial benefit to customers who have special energy needs due to qualifying medical conditions, and any successor program thereto.

“Minimum Commitment Contract Amount” has the meaning set forth in the Cover Sheet.

“Monthly Payment” has the meaning set forth in Section 5.2(d).

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

“MUA Decision” has the meaning set forth in Section 4.2(p).

“Must Offer Obligations” means Seller’s obligation to Bid or cause Seller’s SC to Bid the Portfolio into the CAISO Markets due to delivery of the Product to Buyer and in accordance with the CAISO Tariff.

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

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

“**Non-Availability Charges**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 7.2(a).

“**Non-Spinning Reserve**” has the meaning set forth in the CAISO Tariff.

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

“**Notice of Claim**” has the meaning set forth in Section 15.2(a).

“**Notify**” means to provide a Notice.

“**NQC**” or “**Net Qualifying Capacity**” has the meaning given to “Net Qualifying Capacity” in the CAISO Tariff as may be updated from time to time.

“**Operational Characteristics**” means the operational characteristics set forth in Appendix II.

“**Other Capacity Attributes**” means, exclusive of RA Attributes, Local RA Attributes, and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person, (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition, and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

“**Other Programs**” has the meaning set forth in Section 5.4(f).

“**Participating Transmission Owner**” or “**Participating TO**” means an entity that (a) owns, operates and maintains transmission lines and associated facilities or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities or entitlements to be made part of the CAISO Grid.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Party’s Event of Default**” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Development Security and Delivery Term Security.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

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

“Portfolio” means the energy storage facility consisting of Projects at multiple Sites, as further described in Appendix I, as such may be revised from time to time in accordance with this Agreement.

“Portfolio Modification” has the meaning set forth in Section 5.4(c).

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

“Product” has the meaning set forth in Section 5.1(a).

“Product Transition Trigger” shall mean either of the following (1) the CEC no longer accepts Buyer’s submission of Load Modifying Resources as a means of reducing Buyer’s annual peak demand forecast, or (2) the proportion between the aggregate amount of Load Modifying Resources related to the Portfolio submitted by Buyer, to the aggregate CEC reduction in Buyer’s annual peak demand forecast, falls below eighty percent (80%).

“Progress Report” means a reasonably detailed progress report including the items set forth in Appendix III.

“Project” means each behind-the-retail-meter energy storage facility installed at a Site as more particularly described in Appendices I, II, and IX, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide Product to Buyer pursuant to this Agreement.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Appendix VI.

“Proxy Demand Resource” or **“PDR”** has the meaning set forth in the CAISO Tariff.

“Prudent Operating Practice” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to energy storage facilities during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with

good business practices, reliability, safety and expedition. Prudent Operating Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence. Prudent Operating Practices also includes taking reasonable steps to ensure that:

(a) Safeguards are implemented and maintained for the Portfolio and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Portfolio safely and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Portfolio and at each Site, including identifying and responding to System Emergencies, emergencies, or Exigent Circumstances originating from or impacting the Portfolio or Site;

(d) the Portfolio's material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power or energy storage facilities operating in the relevant region; and

(e) the Portfolio is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

“RA Attributes” means, any and all resource adequacy attributes, exclusive of any Local RA Attributes, Flexible RA Attributes and Other Capacity Attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction, that can be counted toward RAR and Local RAR.

“Receiving Party” has the meaning set forth in Section 20.2(b).

“Regulatory Disclosure” has the meaning set forth in Section 20.2(a).

“Reliability Demand Response Resource” or **“RDRR”** has the meaning set forth in the CAISO Tariff.

“Reliability Organization” means an “Electric Reliability Organization” as defined in Section 215(a)(2) of the Federal Power Act or a “regional entity” as defined in Section 215(a)(7) of the Federal Power Act.

“Remedial Action Plan” has the meaning set forth in Section 3.5.

“Remediation Event” means the occurrence of any of the following with respect to the Portfolio or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by

Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Portfolio's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 11.2, in its reasonable discretion, that the Project Safety Plan is not consistent with the Safety Requirements; or (g) any actual condition related to the Portfolio or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Portfolio or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) days if Seller is unable to resolve the Remediation Event within the initial ninety (90) day period despite exercising diligent efforts (and Buyer shall not unreasonably withhold approval of such extension).

“Requirements” means Prudent Operating Practices and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CEC, CPUC, CARB, FERC, NERC and WECC.

“Resold Product” has the meaning set forth in Section 5.1(b).

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

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

“Resource Adequacy Requirement” or **“RAR”** means the Resource Adequacy or successor program requirements established by the CPUC, CAISO or any other regional entity, including submission of a Supply Plan or Resource Adequacy Plan.

“RMR” means **“Reliability Must-Run”** and has the meaning set forth in, and as used in, the CAISO Tariff.

“RMR Contract” has the meaning set forth in the CAISO Tariff.

“RMR Generation” has the meaning set forth in the CAISO Tariff.

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

“Safeguard” means any procedures, practices, or actions with respect to the Portfolio, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“**Safety Remediation Plan**” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“**Safety Requirements**” means Prudent Operating Practices, and all applicable safety-related (construed broadly) requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, FERC, NERC and WECC.

“**Scheduling Coordinator**” or “**SC**” has the meaning set forth the CAISO Tariff. Under the terms of this Agreement, the SC may be Seller or Seller’s designated agent (i.e., a third-party).

“**SEC**” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“**Security Interest**” has the meaning set forth in Section 10.3(a).

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

“**Seller’s Event of Default**” has the meaning set forth in Section 7.1(a).

“**Seller’s Initial Portfolio List**” has the meaning set forth in Section 4.2.

“**Seller’s Portfolio**” means the Customers and the corresponding Sites assembled by Seller for purposes of delivering the Product to Buyer under this Agreement, as such Seller’s Portfolio may be amended in accordance with this Agreement from time to time.

“**Seller’s Portfolio List**” has the meaning set forth in Section 5.4(d).

“**Serious Incident**” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Portfolio or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than [REDACTED]; (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“**Settlement Amount**” means an amount equal to the greater of (a) the amount of Delivery Term Security required under this Agreement and (b) the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Shortfall**” means any difference between a Delivered Quantity and a Contract Amount.

“**Shortfall LDs**” means a dollar amount equal to twelve (12) times the product of the Contract Amount and the Contract Price, paid by Seller to Buyer within thirty (30) days of a failure by Seller to deliver Delivered Quantities equal to the Contract Amounts in any month during the Delivery Term, or thereafter drawn by Buyer from the Delivery Term Security.

“**Showing Month**” incorporates each day of each calendar month of the Delivery Term that is the subject of the Compliance Showings, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showings made in June are for the Showing Month of August and the annual Compliance Showing made in October is for the twelve (12) Showing Months of the following year.

“**Site(s)**” means the real property on which the Portfolio is located, as identified in Appendix I and Appendix VIII, as updated by Seller pursuant to Section 5.4(d).

“**Site Control**” means that Seller owns the Site and the Portfolio or has demonstrable contractual real property rights to the Site sufficient for the permitting, control, development and operation of the Portfolio.

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

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

“**Supplying Party**” has the meaning set forth in Section 20.2(b).

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

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

“**Term**” has the meaning set forth in Section 2.2(a).

“**Terminated Transaction**” has the meaning set forth in Section 7.2(a).

“**Termination Payment**” has the meaning set forth in Section 7.3.

“**Transmission Provider**” means the CAISO.

“**Ultimate Parent**” means the



[REDACTED]

[REDACTED]

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

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

“**Utility Distribution Company**” has the meaning set forth in the CAISO Tariff.

“**WECC**” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“**Work**” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

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

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

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

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

(d) a reference to an article, section, paragraph, clause, Party, appendix, or exhibit is a reference to that section, paragraph, clause of, or that Party, appendix, or exhibit to, this Agreement unless otherwise specified;

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

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

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

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

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

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

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

(l) the terms "year" and "calendar year" mean the period of months from January 1 through and including December 31; the term "month" means a calendar month unless otherwise indicated, and a "day" means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively;

(m) unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed;

(n) when an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific Standard time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day;

(o) all references to Product mean each and all components of the Product unless the context infers a particular component of Product; and

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

Article 2: TERM

2.1 **Effectiveness.** Upon execution by both Parties, this Agreement shall be effective and binding as of the Execution Date.

2.2 **Term.**

(a) The “**Term**” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term (unless terminated earlier in accordance with the terms of this Agreement).

(b) The “**Delivery Term**” is the period commencing on the Initial Delivery Date and continuing for the number of Contract Years specified on the Cover Sheet. The “**Initial Delivery Date**” is the first day of the first calendar month for which Product in the Contract Amounts is delivered; provided that Initial Delivery Date may not occur until satisfaction of the Conditions Precedent set forth in Article 4

1.2 **Quantity.**

(a) Seller shall deliver to Buyer the Product in the Contract Amount specified on the Cover Sheet. Buyer will compensate Seller for all Product delivered in accordance with Section 5.2(c) up to but not exceeding the Maximum Contract Amount.

(b) If, at the end of the first year of the Delivery Term, Buyer and Seller agree that the Portfolio is capable of delivering Product in excess of the Maximum Commitment Contract Amount, Buyer and Seller may mutually agree to adjust and increase the Contract Amount (the “**Adjusted Contract Amount**”). Any agreement to an Adjusted Contract Amount shall be in writing and shall document the resulting increase in Delivery Term Security and any other terms of this Agreement impacted by the Adjusted Contract Amount.

Article 3: PORTFOLIO DEVELOPMENT

3.1 **Portfolio Construction.**

(a) Seller shall develop, design and construct the Portfolio in timely fashion in order to perform Seller’s obligations under this Agreement.

(b) Seller shall cause Construction Start to occur for the applicable Projects no later than the applicable Construction Start Deadline. Seller shall provide Notice to Buyer certifying the satisfaction of this Section 3.1(c) on or before the applicable Construction Start Deadline.

(c) If Construction Start is not achieved on or before the applicable Construction Start Deadline, then for each day beginning with the day after the applicable Construction Start Deadline through and including the date on which Construction Start occurs for the required Projects, for a period beyond the applicable Construction Start Deadline lasting no more than one-hundred twenty (120) days (“**Construction Delay Cure Period**”), Seller shall pay Construction Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any

Construction Delay Damages. Seller agrees that Buyer may draw any Construction Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due. Prior to the expiration of the Construction Delay Cure Period, so long as Seller has paid Construction Delay Damages to Buyer in accordance with this Section 3.1(c), Seller's failure to achieve Construction Start on or before the applicable Construction Start Deadline shall not be deemed a Seller's Event of Default. If Seller achieves the Initial Delivery Date on the applicable Expected Initial Delivery Date, any Construction Delay Damages paid by Seller for the applicable Construction Start Deadline shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the applicable Initial Delivery Date.

3.2 **Interconnection.** Seller shall (a) cause the execution all necessary Interconnection Agreements for the Projects in the Portfolio, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of the Product, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service including any Governmental Approvals required for the foregoing. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company's applicable tariffs, the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver the Product to Buyer.

3.3 **Metering.** At Seller's expense, Seller shall obtain and maintain one or more CAISO resource IDs dedicated exclusively to the Portfolio and shall install, or cause to be installed, all necessary metering and telemetry required by the CAISO to deliver the Product. CAISO-required meters shall be owned, maintained and operated by Seller at Seller's sole cost and expense. In addition, Seller shall install, and shall maintain throughout the Delivery Term unless Buyer exercises its Product Transition rights under Section 5.2, a revenue grade meter capable of measuring and demonstrating on a monthly basis the sufficiency of the Load Modification Delivered Quantities.

3.4 **Progress Reports.** Within fifteen (15) days after the close of every other calendar month, starting with the first calendar month following the Execution Date and until the Initial Delivery Date, Seller shall provide to Buyer a Progress Report in a Notice and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation, subject to the confidentiality restrictions set forth in this Agreement, directly related to the achievement of Critical Milestones within ten (10) Business Days of receipt of such request by Seller.

3.5 **March 2021 and March 2022 Elections.**

(a) No later than March 1, 2021,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment

Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

(iii) Buyer at its option may elect to change the accounting for the Load Modification Contract Amount from a kW-Month capacity construct to a kWh energy construct so long as no changes to the Seller's compensation and revenue hereunder results from such change.

(b) No later than March 1, 2022,

(i) Seller shall specify by written Notice to Buyer whether it elects to increase the Minimum Commitment Contract Amount to be delivered hereunder to an amount that is no greater than the Maximum Commitment Contract Amount. Seller shall include in such written Notice a new first page to the Cover Sheet specifying the new Minimum Commitment Contract Amount and shall be responsible for ensuring that the Development Security is reflective of the new Minimum Commitment Contract Amount within ten (10) Business Days of such Notice.

(ii) Buyer shall revise Appendix XIII hereto to reflect the revised Load Modifying Resource Dispatch Plan, taking into consideration the new Minimum Commitment Contract Amount to be delivered hereunder (as may be revised pursuant to this Section 3.5).

3.6 **Remedial Action Plans.** If Seller anticipates that it will not be able to timely satisfy any Milestone set forth on the Cover Sheet, except as the result of Force Majeure or a Buyer Event of Default, Seller shall submit to Buyer no later than thirty (30) days prior to the relevant deadline a remedial action plan ("**Remedial Action Plan**"), which will describe in detail the actual delay, any anticipated delay beyond the scheduled deadline, the cause of the delay, and Seller's proposed course of action to achieve the missed deadline, any subsequent Milestones, and the Initial Delivery Date by the Expected Initial Delivery Date. Delivery of a Remedial Action Plan shall not relieve Seller of any obligation under this Agreement.

Article 4: INITIAL DELIVERY DATES

4.1 Timing of the Initial Delivery Dates.

(a) **Initial Delivery Dates.** Seller shall cause the Initial Delivery Date to occur on, and not prior to, the applicable Expected Initial Delivery Date.

(b) **Failure to Meet Expected Initial Delivery Date.**

(i) Seller shall provide Buyer with advance Notice of any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, including a true and reasonably detailed explanation of the cause of such delay ("**Delay Notice**"), at least ninety (90) days in advance of the Expected Initial Delivery Date (or, if Seller's anticipation of such delay does not arise until after such advance window, then as soon as reasonably possible following such

anticipation arising). For each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, for a period beyond the Expected Initial Delivery Date lasting no more than one hundred eighty (180) days (“**IDD Cure Period**”), Seller shall pay IDD Delay Damages to Buyer. Buyer shall invoice Seller for the amount of any IDD Delay Damages. Buyer may draw any IDD Delay Damages that are due to Buyer from the Development Security after providing an invoice for the amounts due.

(ii) Prior to the expiration of the IDD Cure Period, so long as Seller has provided the Delay Notice to Buyer and paid IDD Delay Damages to Buyer in accordance with this Section 4.1(b), Seller’s failure to achieve the Initial Delivery Date on the Expected Initial Delivery Date shall not be deemed a Seller’s Event of Default. Upon (A) Seller’s failure to provide a Delay Notice to Buyer in accordance with this Section 4.1(b), (B) Seller’s failure to pay IDD Delay Damages in accordance with this Section 4.1(b), or (C) Seller’s failure to achieve the Initial Delivery Date prior to the expiration of the IDD Cure Period, in each case for any reason other than a Force Majeure extension or a Buyer Event of Default, Seller will be deemed a Defaulting Party pursuant to Section 7.1(a)(v).

(iii) Upon the expiration of the IDD Cure Period, if Seller has failed to achieve the Initial Delivery Date with respect to the entire Portfolio but is capable of achieving the Initial Delivery Date with respect to Projects of the Portfolio which could provide no less than [REDACTED] of the Contract Amount, then Buyer shall have the right, in lieu of terminating this Agreement based on such event of default, to reduce the Contract Amount accordingly and allow Seller to declare the Initial Delivery Date based on such reductions, in exchange for Seller’s one-time payment to Buyer of [REDACTED] per __kW_ of such reductions.

4.2 **Conditions Precedent to the Initial Delivery Date.** The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the “**Conditions Precedent**”) and must be satisfied by Seller, to Buyer’s reasonable satisfaction, at least seventy-five (75) days before the Initial Delivery Date, unless a different deadline is expressly set forth below, in which case such other deadline shall govern:

(a) reserved

(b) Thirty days (30) before IDD the seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Product to Buyer at the Contract Amounts.

(c) reserved

(d) Seller shall have executed a Customer Agreement with each Customer whose Project is to be a part of the Portfolio as necessary for the safe and lawful operation of the Portfolio and to enable Seller to deliver the Product to Buyer in the Contract Amounts, and such Customer Agreements shall remain valid and in full force and effect.

(e) Thirty days (30) before IDD the seller shall have constructed or caused to be constructed the Projects that are to be part of the Portfolio as of the Initial Delivery Date in accordance with this Agreement to enable Seller to satisfy the obligations of the Seller herein, including the provision of the Product in the Contract Amounts from the Portfolio.

(f) Thirty days (30) before IDD the seller shall have provided to Buyer a certification of Seller, substantially in the form attached hereto as Appendix IV, demonstrating (i) satisfactory installation, completion and commissioning of the Project(s) at the Site(s) that are comprising the Portfolio as set forth in Seller's Initial Portfolio List and (ii) that the Project(s) comprising the Portfolio as set forth in Seller's Initial Portfolio List, can deliver, in aggregate, the Product in the applicable Contract Amounts.

(g) Thirty days (30) before IDD the seller shall have executed and complied with any necessary Interconnection Agreement(s) and installed any necessary metering to deliver Product to Buyer in the Contract Amounts, in each case in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(h) Seller shall have submitted to Buyer a Project Safety Plan.

(i) Seller shall have provided Buyer with (A) Seller's Portfolio List in accordance with Section 5.4(d) that demonstrates Projects and Customers under executed Customer Agreements with Seller sufficient for Seller to deliver, in aggregate, Product in the Contract Amounts ("**Seller's Initial Portfolio List**"), and (B) a description of the Portfolio and Projects set forth in Appendix I. If Seller provides to Buyer Seller's Initial Portfolio List, but prior to the occurrence of the Initial Delivery Date Seller changes Seller's Initial Portfolio List, then this Condition Precedent shall not be satisfied and the date on which Seller provides to Buyer a changed Seller's Portfolio List in accordance with this Agreement shall constitute provision of Seller's Initial Portfolio List for purposes of this Condition Precedent.

(j) Seller shall have provided to Buyer an attestation, in the form attached hereto as Appendix VII, that Seller is following all of the rules set forth in CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities (the "**MUA Decision**").

(k) Thirty days (30) before IDD the seller shall have delivered to Buyer all insurance documents required under Article 16.

(l) By the occurrence of the IDD Seller shall have provided Delivery Term Security to Buyer as required by Section 10.2.

(m) By the occurrence of the IDD Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages

(n) No Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(o) Seller shall have satisfied the following conditions specific to Load Modifying Resources:

(i) No later than the Dispatch Plan Deadline, Seller shall have delivered to Buyer a Load Modifying Resource Dispatch Plan for the first year of the Delivery Term.

4.3 **Cooperation in Connection with Initial Delivery Date.** The Parties agree that, in order for Seller to achieve the Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date. The Parties shall cooperate with each other on marketing activities as outlined in the Go to Market Plan to assist the Seller in obtaining Customers. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Contract Amounts of Product beginning on the applicable Initial Delivery Date.

4.4 **Confirmation of Initial Delivery Dates.** Once each of the Conditions Precedent has been satisfied by Seller (other than any Condition Precedent that may only be satisfied as of the Initial Delivery Date), Seller shall certify such satisfaction to Buyer in a Notice confirming the anticipated occurrence of the applicable Initial Delivery Date. Buyer shall Notify Seller of any disagreement that Seller has satisfied such Conditions Precedent (with reasonable detail in regard to each Condition Precedent) within fifteen (15) Business Days of Seller's Notice. No later than seven (7) Business Days following the applicable Initial Delivery Date, Buyer shall provide a Notice to Seller confirming the occurrence of the applicable Initial Delivery Date.

Article 5: TRANSACTION

5.1 **Product.**

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver exclusively to Buyer, all Load Modification or, upon a Product Transition pursuant to Section 5.2(b), all Capacity Attributes, in each case that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Portfolio (collectively, the "**Product**"), pursuant to the terms and conditions contained herein. Operational Characteristics shall not be modified during the Term.

(b) Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement ("**Resold Product**").

5.2 **Purchase and Sale Obligation.**

(a) **Initial Product.** During the Delivery Term, unless and until a Product Transition occurs under Section 5.2(b), Seller shall deliver to Buyer all Load Modification, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Section 5.2(c).

(b) **Product Transition.** At any time during the Delivery Term, but only upon the occurrence of a Product Transition Trigger, Buyer may, by no less than 75 days written notice to Seller, elect to receive Capacity Attributes rather than Load Modification from the Portfolio (the "**Product Transition**"). Upon receipt of a Product Transition notice from Buyer, and as a condition to Buyer's obligation to take and pay for Capacity Attributes for the remainder of the Delivery Term, Seller shall within sixty (60) days satisfy the Capacity Attribute Conditions set forth in Part One of Appendix XI, with the allowance of an additional thirty (30) days to satisfy the Capacity Attribute Conditions, for a total of ninety (90) days, if required, based on commercially reasonable efforts undertaken by Seller. Commencing on the first day of the First Showing Month after Seller's satisfaction of the Capacity Attribute Conditions, and for each day of each Showing Month during the remainder of the Delivery Term, Seller shall deliver to Buyer

and Buyer shall pay for all Capacity Attributes of Product, including in the Contract Amounts, pursuant to the protocols and in consideration of the payments set forth in Part Two of Appendix XII. Upon a Product Transition, and for remainder of the Delivery Term the Product shall be Capacity Attributes and not Load Modification and Seller shall have no further obligation to provide, or to comply with any provision of this Agreement that is limited to, Load Modification. When the Product Transition occurs, Seller will update the table in Appendix XIV with the new expected value streams and capacity nominations for each Project in the Portfolio. Seller will calculate the contract price for the new Capacity Attributes to account for any economic losses, or gains, to Seller or Seller's Customers. For clarity, the Product Transition may occur a maximum of one (1) time during the Delivery Term.

(c) Payment. The provisions of this Section 5.2(c) shall apply unless a Product Transition Occurs, in which case the provisions of Part Two of Appendix XII shall become effective and replace this Section 5.2(c).

(i) Each monthly invoice prepared by Seller pursuant to Article 9 shall include meter data substantiating the quantity of Load Modification, in kW-months, delivered to Buyer from the Portfolio consistent with the Load Modifying Resource Dispatch Plan for the applicable month (the "**Delivered Quantities**").

(ii) For all Load Modification that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment ("Monthly Payment" or "MP") as follows:

$$MP = DQ \times CP$$

where,

DQ = The Delivered Quantities;

CP = The contract price set forth on the Cover Sheet ("Contract Price").

(iii) For clarity, Buyer has no obligation to pay Seller for Load Modification that is delivered outside the parameters of the applicable Load Modifying Resource Dispatch Plan.

5.3 **Allocation of CAISO Payments and Costs.**

(a) Except as may otherwise be provided in this Agreement, Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to the Product or Portfolio.

(b) To the extent that the Portfolio is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

5.4 **Customers.**

(a) **Seller Obligation to Obtain Customers.** Seller shall obtain or cause to be obtained the Customers necessary to enable the safe and reliable delivery of Product in the Contract Amounts to Buyer during the Delivery Term. Seller shall enter into a Customer Agreement with each such Customer, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority. In connection with but without limiting the foregoing, Seller shall at all times comply with the Go to Market Plan.

(b) **Customers Eligible for Inclusion in Portfolio.** Product provided to Buyer must come exclusively from Projects installed at Sites listed in Seller's Portfolio List in accordance with Section 5.4(d). Unless a Product Transition has occurred, Customers must meet the definition of a "Customer" during and throughout the Delivery Term in order to be included in Seller's Portfolio List.

(c) **Seller's Portfolio.** Seller shall cause Seller's Portfolio at all times during the Delivery Term to deliver at least twenty percent (20%) of the Contract Amount from assets associated with single-family residential Customer accounts and at least twenty percent (20%) of the Contract Amount from assets associated with DAC, Low Income Customer, CARE/FERA or Medical Baseline Program multi-family residential Customer accounts.

(d) **Seller's Portfolio List.** As of the date first submitted in accordance with Section 4.2 and throughout the Delivery Term, Seller shall maintain a list of Customers in Seller's Portfolio in the form and containing the information set forth in the **Seller's Portfolio List** in Appendix III ("**Progress Reporting Form**"). If any of the material Customer information in Seller's Portfolio List materially changes during the Delivery Term, such change shall be deemed a Portfolio Modification pursuant with Section 5.4(e) and upon completion of such Portfolio Modification, Seller shall submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List. In addition, Seller shall provide any additional Customer information reasonably requested by Buyer in connection with this Agreement.

(e) **Portfolio Modification.** The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio (a "**Portfolio Modification**") at any time during the Delivery Term, subject to the requirements of this Section 5.4 and Article 11, and provided that Seller shall Notify Buyer of any proposed Portfolio Modification within thirty (30) days of its occurrence. A Portfolio Modification may not alter (i) the Portfolio from the Portfolio description set forth in Appendix I as of the Execution Date, (ii) the Operational Characteristics, or (iii) the Portfolio's ability to deliver Product in the Contract Amounts throughout the Delivery Term. Within sixty (60) days of a Portfolio Modification, Seller shall provide Buyer a signed Portfolio Modification certification in the form set forth in Appendix IX. A Portfolio Modification will not alter nor relieve any of Seller's obligations under this Agreement.

(f) **Dual Participation.** Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("**Other**

Programs”), provided that (i) participation of Customers in both Seller’s Portfolio and Other Programs does not impair (in whole or in part) Seller’s ability to perform its obligations under this Agreement (including Section 14.4) and (ii) Seller complies with all rules and requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority. For the avoidance of doubt, a failure by Seller or a Customer to achieve participation in Other Programs shall not in any way limit or excuse Seller’s obligations to Buyer under this Agreement.

(g) **Seller’s Relationship with Customer**. The terms and conditions of the Customer Agreements governing the relationship between Seller and a Customer with respect to such Customer’s participation in Seller’s Portfolio are independent of Buyer, and Buyer shall have no responsibility with respect to such Customers for purposes of Seller’s Portfolio. Seller shall independently resolve any disputes arising between Seller and any Customer.

Article 6: OPERATIONS

6.1 **Operations**. Seller shall at all times retain operational control of the Portfolio and be responsible for operation and maintenance of the Portfolio, and Buyer shall have no liability for the failure of Seller, any Customer, or any Project owner or operator to comply with any applicable Law, Requirements, or other requirement of the Transmission Provider or Utility Distribution Company, including any penalties, charges or fines imposed for such noncompliance.

(a) **Islanding**: Projects have the capability to provide back-up power to Customers in the event of a power outage on the distribution system.

6.2 **Charging Energy**. As between Buyer and Seller, Buyer shall not be responsible for procuring and delivering Charging Energy to the Portfolio or paying costs associated with Charging Energy.

6.3 **Standard of Care**. In performing all of its obligations under this Agreement, including in its scheduling, interconnection, operation, and maintenance of the Portfolio, Seller shall comply with all Requirements and Safety Requirements.

6.4 **Buyer’s Use and Certification of Product**.

(a) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting requirements of all applicable Governmental Authorities and other Persons, as such requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product (including, solely in the event of a Product Transition, enabling Buyer to apply Product towards Buyer’s Compliance Obligations), or sell Resold Product, at all times during the Delivery Term. Promptly following Buyer’s written request, Seller agrees to take all actions and execute or provide any documents, information, or instruments with respect to Product reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority.

(b) During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and

use such Product (including, solely in the event of a Product Transition, use of such Product to satisfy its Compliance Obligations). If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

6.5 **Dispatch.** The provisions of this Section 6.5 shall apply unless a Product Transition Occurs, in which case the provisions of Part Three of Appendix XII (“Scheduling”) shall become effective and replace this Section 6.5.

(a) For each year of the Delivery Term, Seller shall submit to Buyer a Load Modifying Resource Dispatch Plan on or before the Dispatch Plan Deadline.

(b) No less than 15 days before the Dispatch Plan Deadline, the Parties shall meet to discuss the Load Modifying Resource Dispatch Plan for the coming year.

(c) Buyer may require seller to modify Dispatch Plan to maximize Load Modification for Buyer outside of Customers’ TOU periods upon mutual agreement of an equitable adjustment to the Contract Price to reflect the demonstrable economic loss to Seller or Seller’s Customers.

(d) At all times during the Delivery Term, Seller shall operate the Portfolio to provide the Contract Amounts of Load Modification as specified in the applicable Load Modifying Resource Dispatch Plan.

6.6 **Information Sharing and Shared Learning.** Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, and multiple uses of energy storage and storage assets as an integral part of Buyer’s portfolio of assets to meet its customers’ needs as well as to gain an understanding of the impact of energy storage on load forecasting as a load serving entity. Throughout the Term, Seller agrees to share such information with Buyer, including meter data and hourly charging and discharging data at least on an aggregated basis but excluding cost or similar proprietary information, upon Buyer’s request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable meter data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. Except with respect to services, attributes, or products delivered to Customers pursuant to Customer Agreements or products or services related to Renewable Energy Credits (which shall not require any Notice to Buyer), for information related to Seller’s multiple uses of the Portfolio, Seller shall promptly provide Notice to Buyer any time it provides any services, attributes, or products from the Portfolio to a third party.

6.7 **Changes in Law.**

(a)

(i) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in a *decrease* to the amount of Product that may be calculated or derived from the Operational Characteristics (including any extension by the CEC, CPUC or CAISO of the required duration of energy storage resources for Load Modification or, after a Product Transition, Resource Adequacy), Seller shall exercise commercially reasonable efforts to maintain the Contract Amounts. If despite such efforts Seller is unable to maintain the Contract Amounts as a result of such change in requirements, then either Party may provide Notice to the other Party, once it is reasonably evident that the Contract Amounts cannot be maintained, specifying the altered amounts of Product (“**Downward Change Notice**”). Following a Downward Change Notice, Buyer will confirm via Notice to Seller the amended Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts (“**Downward Change Confirmation Notice**”).

(ii) In the event of any change in Requirements by the CEC, CPUC, CAISO, or other Governmental Authority or Person results in an *increase* to the amount of Product that may be calculated or derived from the Operational Characteristics (including in the case of a new category of Load Modification or after a Product Transition, Capacity Attributes), then either Party shall provide Notice to the other Party as soon as practicable following knowledge of such change specifying the altered amounts of Product (“**Upward Change Notice**”). Following any Upward Change Notice, Buyer shall have sole discretion over whether to accept a corresponding increase to any Contract Amount. If the Seller increases its product delivery up to [REDACTED]

[REDACTED] If Buyer chooses to accept such increase, Buyer will confirm via Notice to Seller the amended Contract Amounts based on such change and the date that Seller shall commence delivery of such amended amounts (“**Upward Change Confirmation Notice**”). If Buyer declines to accept any such increase, Seller shall have the right to sell to third parties any resulting Product that is in excess of the Contract Amounts.

(iii) The Contract Amounts shall automatically adjust upon the date set forth in the Confirmation Notice without further need for the Parties to amend this Agreement. Until such date, Seller shall continue to deliver the Contract Amounts of Product as stated prior to the Confirmation Notice, unless otherwise required by Law or other Requirements.

(b) If a change in CAISO, CEC or CPUC Requirements renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 19.2. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or

constitute, or form the basis of, a Force Majeure, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(c) Without limitation or modification of Section 6.7(a) or Section 6.7(c), in the event of any change in Requirements by the CPUC, CEC, CAISO, or other Governmental Authority or Person that significantly modifies the market mechanisms or regulatory construct for delivery of Load Modification or (after a Product Transition) Capacity Attributes from resources similar to and including the Portfolio (but that does not fall under Section 6.7(c)), either Party may provide Notice to the other Party requesting that the Parties discuss in good faith changes to this Agreement that would enable each Party to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Execution Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith for a period of at least sixty (60) days but shall have no further obligation or rights under this Section 6.7(d).

Article 7: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “**Seller’s Event of Default**”):

(i) Seller fails to satisfy a Performance Assurance requirement set forth in Article 10 and Seller fails to provide replacement Performance Assurance within ten (10) Business Days of Buyer’s written demand therefor in accordance with Article 10;

(ii) any material misrepresentation or omission, in any metering or submetering, Load Modifying Resource Dispatch Plan, Supply Plan, Seller’s Portfolio List, report, or Notice with regard to delivery of the Product, or undue delay or withholding of such data, report or Notice, which misrepresentation or undue delay or withholding is not cured within ten (10) Business Days of Buyer’s receipt thereof;

(iii) Seller intentionally or knowingly delivers, or attempts to deliver Product that is not produced by the Portfolio;

(iv) Seller fails to achieve Construction Start by the applicable Construction Start Deadline for reasons other than Force Majeure, subject to Section 3.1(c);

(v) Seller fails (A) to deliver a Delay Notice in accordance with Section 4.1(b)(i) or (B) to achieve an Initial Delivery Date by the applicable Expected Initial Delivery Date for reasons other than Force Majeure, subject to Section 4.1(b)(ii);

(vi) Seller fails in any month to deliver Delivered Quantities to Buyer equal to the Contract Amounts (unless Buyer has received Shortfall LDs in lieu of Delivered Quantities); provided that Shortfall LDs may not be used to avoid a Seller’s Event of Default (A) during the months of August and September (unless a Product Transition has occurred) or (B) more than three (3) times in any twelve (12) month period during the Delivery Term; or

(vii) In any year in the Delivery Term, aggregate Delivered Quantities are less than eighty five percent (85%) of the Contract Amounts for such period.

(a) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “**Party’s Event of Default**”):”

(viii) 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;

(ix) any representation or warranty made by such Party under this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(x) the failure by such Party to perform any material covenant or obligation set forth in this Agreement, including any failure by Seller to comply with all Requirements and Safety Requirements in accordance with Section 6.3, except to the extent constituting a separate Event of Default, and such failure is not remedied within thirty (30) days after Notice thereof, or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts;

(xi) such Party becomes Bankrupt;

(xii) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 18; or

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

7.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, in the case of an Event of Default by Seller occurring

before the Initial Delivery Date, including an Event of Default under Section 7.1(a)(v), or (ii) the Termination Payment calculated in accordance with Section 7.3 below, in the case of any other Event of Default by either Party;

- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except where an express and exclusive remedy or measure of damages is provided under this Agreement;
- (f) provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

7.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party, as of the Early Termination Date, netted into a single amount; *provided*, that if the Termination Payment amount would be a negative number based upon the foregoing clause, the Termination Payment shall be deemed to be zero dollars (\$0.00). The Non-Defaulting Party shall calculate a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 7.2 or this Section 7.3, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

7.5 **Disputes with Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 19.

7.6 **Rights and Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 7 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

Article 8: FORCE MAJEURE

8.1 Force Majeure.

(a) **Effect of Force Majeure.** A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party's failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) **Notice of Force Majeure.** The Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide prompt Notice to the other Party in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) **Mitigation of Force Majeure.** The suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with this Agreement, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

(d) **Force Majeure Failure.** Subject to Section 8.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "**Force Majeure Failure**":

- (i) if during the Delivery Term:
 - (A) due to a Force Majeure event, Seller is unable to meet its obligations under this Agreement (including any failure to deliver Delivered Quantities to Buyer equal to the Contract Amounts) for a period greater than one hundred eighty (180) days; or
 - (B) the Portfolio is destroyed or rendered inoperable by an event of Force Majeure.
- (ii) if Seller is unable, due solely to a Force Majeure event, to achieve an Initial Delivery Date by one hundred eighty (180) days after the applicable Expected Initial Delivery Date.

(e) **Effect of Termination for Force Majeure Failure.** If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 21.3.

Article 9: INVOICING AND PAYMENT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice, in arrears, to Buyer no sooner than ten (10) Business Days after the end of each month of the Delivery Term for all amounts due from Buyer to Seller under this Agreement, including, as applicable: (a) the Monthly Payment, and (b) other compensatory adjustments required by this Agreement, including adjustments for Taxes. Each invoice shall (i) contain data sufficient to document and verify all amounts included therein, including any relevant records, invoices, or settlement data from CAISO, necessary to verify the accuracy of any amount and (ii) be in a format specified by Buyer.

9.2 **Payment.** Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within forty-five (45) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the three-month LIBOR, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.4 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in

full, in accordance with Section 9.2, accruing from the date on which the adjusted amount should have been due.

9.4 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date of the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 9.3. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.4 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.5 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Article 10: PERFORMANCE ASSURANCE

10.1 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) Business Days of the Execution Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Upon the earlier of (a) Seller's delivery of the Delivery Term Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Initial Delivery Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

10.2 Seller's Delivery Term Security. To secure its obligations under this Agreement, Seller shall deliver Delivery Term Security to Buyer on or before the Initial Delivery Date. Seller shall maintain the Delivery Term Security in full force and effect, and shall within five (5) Business Days after any draws made by Buyer in accordance with this Agreement (other than to satisfy a Termination Payment) replenish the Delivery Term Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Delivery Term Security. If the Delivery Term Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Delivery Term Security.

10.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Delivery Term Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 10.1 and 10.2 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of a Seller's Event of Default or a Party's Event of Default on the part of Seller, an Early Termination Date resulting from a Seller's Event of Default or a Party's Event of Default on the part of Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Delivery Term Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 10.3):

(i) Exercise any of its rights and remedies with respect to the Development Security and Delivery Term Security, including any such rights and remedies under Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Delivery Term Security; and

(iii) Liquidate all Development Security or Delivery Term Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

10.4 **Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles. Notwithstanding anything else herein to the contrary, to the extent Seller is a publicly traded corporation on a nationally recognized stock exchange, the obligation to deliver financial statements pursuant to Section 10.4 herein shall be waived.

Article 11: SAFETY

11.1 Safety.

(a) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Portfolio and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(b) Prior to Seller's execution of a Contractor's contract, Seller shall demonstrate to Buyer that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Portfolio, as applicable. During the period that a Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements.

(c) Seller shall document a Project Safety Plan and incorporate the Project Safety Plan's features into the design, development, construction, operation, and maintenance of the Portfolio. Seller shall submit for Buyer's review a Project Safety Plan, in a format acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements and (B) Seller's consideration of the Project Safety Plan items in Part Two (Portfolio Design and Description) of Appendix VI. Upon Notice to Buyer, Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, or maintaining the Portfolio, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Portfolio safely or in accordance with the Safety Requirements.

(d) Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to

provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(e) Seller shall remove any Contractor that engages in repeated, material violations of the Project Safety Plan or Safety Requirements, unless doing so would present an ongoing material adverse effect to the operation of the Portfolio.

11.2 **Reporting Serious Incidents**. Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the Contractor or Customer(s) involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its Contractors and Customer(s) to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

11.3 **Remediation**.

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) Business Days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(b) Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

Article 12: TAXES

12.1 **Taxes**. Seller shall pay or cause to be paid all Taxes (a) on or with respect to the Portfolio and (b) on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Execution Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

12.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any

financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party.

Article 13: LIMITATIONS

13.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 15 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

13.2 **Waiver and Exclusion of Other Damages.**

(a) EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

(b) FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(c) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.1(d), 4.1(c), 7.1(a)(vi), 7.2 AND 7.3, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR

ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

Article 14: REPRESENTATIONS; WARRANTIES; COVENANTS

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

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

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller (evidence of such due authorization Seller shall provide to Buyer if requested) and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

(e) The Portfolio is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Portfolio and Seller will be the applicant on any California Environmental Quality Act documents.

(g) Seller is familiar with conflict of interest Laws, including the California Political Reform Act, and Buyer's board policies governing conflicts of interest; Seller is in compliance with such Laws and board policies and does not know of any facts that would violate such Laws and board policies; Seller and its officers and agents have not, directly or indirectly, offered, paid, promised, or authorized the giving of money or anything of value to any employee, director, officer of Buyer or governmental official in Alameda County, California for the purpose of influencing any act or decision of such employee, director, officer or government official in her official capacity; no officer or agent of Seller (i) is a government official in Alameda County, California or a family member of a government official in Alameda County, California or (ii) has a personal, business, or other relationship or association with any government official in Alameda County, California or family member thereof who may have responsibility for or oversight of any activities of Buyer; Seller does not employ any government official in Alameda County, California or family member thereof.

(h) Seller will be responsible for ensuring all Projects in the Portfolio maintain compliance with the dual participation requirements of Section 5.4(f).

14.2 **Buyer's Representations and Warranties**. As of the Execution Date, Buyer represents and warrants as follows:

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

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

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

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

14.3 **General Covenants.** Each Party covenants that commencing on the Execution Date and continuing throughout the Term it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition.

14.4 **Covenants of Seller.** Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) Seller will (i) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Portfolio consistent with Safety Requirements, including any approvals required under the California Environmental Quality Act, (ii) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals, and (iii) at Buyer's request, provide to Buyer digital copies of any Governmental Approvals.

(b) Seller will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

(c) Seller will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Portfolio in order to satisfy its Compliance Obligations.

(d) Seller shall operate the Portfolio during the Delivery Term in accordance with Appendices I and II and Safety Requirements.

(e) Seller shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to energy storage facilities.

(f) Seller shall follow all the rules set forth in Exhibit A of the MUA Decision.

14.5 **Prevailing Wage.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing

wage laws. In addition, Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 14.5 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

Article 15: INDEMNITIES

15.1 **Indemnity by Seller.**

(a) Seller shall defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees, and representatives (“**Buyer Group**”) from and against all third party or Customer claims arising out of this Agreement, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, however described (collectively, “**Claims**”), which arise out of or relate to or are in any way connected with (i) Seller’s delivery of the Product to Buyer, (ii) Seller’s or its Affiliates’ ownership, development, construction, operation or maintenance of the Portfolio, including the Project(s) and the Site(s); (iii) Seller’s or its Affiliates’ actions or inactions, including Seller’s breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Portfolio, the Project(s), Seller’s Portfolio, Customer(s), or Site (including any Claims relating to a Shortfall); (iv) any environmental matters associated with the Portfolio, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) any agreement between Seller or its Affiliates and a third party including any Customer Agreement; (vi) the participation of Customers in the Portfolio (or the solicitation thereof); or (vii) Seller’s or its Affiliates’ violation of any applicable Law, Requirements, or other requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s Affiliates, Customers, or others, excepting only such losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group (collectively, “**Indemnifiable Losses**”).

(b) Seller shall defend, indemnify and hold harmless the Buyer Group harmless from and against all Claims incurred by or brought against Buyer in connection with Environmental Costs.

15.2 **Notice of Claim.**

(a) **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, Buyer will promptly Notify Seller in writing of any Claim which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 15.1. The Notice is referred

to as a “**Notice of Claim.**” A Notice of Claim will specify, in reasonable detail, the facts known to Buyer regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Seller is not obligated to indemnify Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 15.2(b), Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim as provided in the last sentence of Section 15.2(b), Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

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

15.5 **Rights and Remedies are Cumulative.** The rights and remedies of a Party pursuant to this Article 15 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement, except with respect to any expressly exclusive remedies herein.

Article 16: INSURANCE

16.1 **Insurance.** Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its Contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.1 constitute a material obligation of this Agreement.

(a) **Workers' Compensation and Employers' Liability.**

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(b) **Commercial General Liability.**

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional named insured.

(ii) An umbrella insurance policy in a minimum limit of liability of [REDACTED].

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) **Business Auto.**

(i) Business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement."

(d) **Construction All-Risk Insurance.** During the construction of the Portfolio prior to the Stage 2 Commercial Operation Date, construction all-risk form property insurance covering the Portfolio and naming Seller (and Lender if any) as the loss payee.

(e) **Contractor's Pollution Liability.**

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least [REDACTED] each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured.

16.2 **Evidence of Insurance.** Within ten (10) days after the Execution Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

16.3 **Failure to Comply.** If Seller fails to comply with any of the provisions of this Article 16, Buyer may, but is not obligated, to purchase the insurance coverage required under Section 16.1 and set off the cost thereof from any amounts owed by Buyer to Seller under this Agreement.

Article 17: RECORDS AND AUDIT RIGHTS

17.1 **Operations Logs.** Seller shall maintain a complete and accurate log of all material operations. Such log will include, but not be limited to, information, to be measured on an hourly basis and relayed to SVCE on a monthly basis, on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the energy storage systems and similar information relating to the availability, testing and operation of the Portfolio. Seller shall provide this information electronically to Buyer on a monthly basis. At the request of Buyer or any Governmental Authority having jurisdiction over any of the Requirements, Seller shall provide all records demonstrating that the Portfolio is operated and maintained in accordance with Requirements.

17.2 **Records and Audit.**

(a) Seller shall provide access to such financial records and personnel required by Buyer in order to facilitate Buyer's compliance with applicable Law and Generally Accepted Accounting Principles.

(b) To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Seller will make all records available to Buyer at its principal place of business during normal working hours.

17.3 **General Audit Right.** Buyer has the right during normal working hours, and after reasonable Notice, to examine Seller's records to the extent reasonably necessary to verify (a) Seller's compliance with this Agreement (including Section 14.4), (b) the accuracy of any statement including the Project Safety Plan or other documents that supplement this Agreement, and (c) any charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy, necessary adjustments shall be made promptly.

17.4 **State Auditor.** In accordance with Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement if the compensation under this Agreement exceeds [REDACTED].

17.5 **Data Request Cooperation.** Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities or Public Records Act requests that are related to or associated with the Portfolio, delivery of Product or this Agreement, subject to the requirements of Article 20.

17.6 **Access Rights.** With respect to multifamily Projects only, Seller agrees, and shall cause each multifamily Customer to agree, to allow Buyer, the Utility Distribution Company, the Commission, and/or the CEC, and the authorized representatives of such entities, reasonable access to Seller's and the Customers' facilities to conduct measurement and evaluation activities related to this Agreement.

Article 18: ASSIGNMENT

18.1 **General Prohibition on Assignments.** Except as provided below, neither Party may directly or indirectly assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Seller Change of Control or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

18.2 **Collateral Assignment.**

(a) Subject to the provisions of this Section 18.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Portfolio.

(b) In connection with any collateral assignment of this Agreement for purposes of the financing or refinancing of the Portfolio by Seller, Buyer agrees to work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral**

Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender.

18.3 **Assignment to Seller Affiliate.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer’s Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller, provided that such assignment shall not release Seller from its obligations under this Agreement unless such Affiliate has financial strength and technical capabilities equal to or greater than that of Seller.

18.4 **Unauthorized Assignment; Costs.**

(a) Any assignment or purported assignment in violation of this Article 18 is void.

(b) No assignment of this Agreement shall be effective unless such assignment is memorialized in a written agreement signed by the assignee and, except in connection with a collateral financing, in which agreement the assignee assumes all of the assignor’s obligations and liabilities under this Agreement.

(c) Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys’ fees.

Article 19: DISPUTE RESOLUTION

19.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States Northern District of California, or the courts of the State of California sitting in the County of Alameda, California.

19.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If

the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 19.2.

Article 20: CONFIDENTIAL INFORMATION

20.1 **Confidential Information**. Throughout the Term, neither Party shall disclose (a) the non-public terms or conditions of this Agreement, (b) information disclosed to such Party by the other Party that is (i) marked or expressly identified as “confidential” and (ii) accompanied by a statutory reference to the applicable section of the Public Records Act pursuant to which such information may be kept confidential or (c) Customer Information (collectively, “**Confidential Information**”) to a third party.

20.2 **Permitted Disclosures**. A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, or equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“**Disclosing Party**”), other than to those entities set forth in subsection (c); or (c) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC.

(a) **Procedure for Permitted Disclosures**. In connection with requests made pursuant to Section 20.2(b) (“**Disclosure Order**”) and disclosures pursuant to Section 20.2(c) (“**Regulatory Disclosure**”) each Party shall, to the extent practicable, use reasonable efforts to: (A) Notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

(b) **Disclosure Requests**. If a Party (“**Receiving Party**”) receives a request from a third party for access to, or inspection, disclosure or copying of, any of the other Party’s (the “**Supplying Party**”) Confidential Information (“**Disclosure Request**”), then the Receiving Party shall provide Notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such Notice, the Supplying Party may provide a Notice to the Receiving Party stating that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request and will seek a protective order or other judicial determination to protect the confidential information, in such case, the Supplying Party will cover all of its own costs and further agrees to indemnify and pay any and all costs incurred by Receiving Party as a result of the Supplying Party’s attempts to protect from disclosure the information. If the Supplying Party does not seek or does not receive a protective order or other judicial determination protecting the Confidential Information, the Receiving Party may disclose the Confidential Information, which disclosure will not be considered a violation of this Agreement. The Parties recognize that Buyer

is a public entity subject to the provisions of the California Public Records Act, and that disclosures made thereunder shall not be considered a violation of this Agreement.

20.3 **Remedies.** Except as provided in Section 20.2 with respect to the Parties' permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

20.4 **Customer Information.** Seller shall comply with all applicable Laws relating to the protection of Customer Information, including California Public Utilities Code Section 8380, *et seq.* and the "Rules Regarding Privacy and Security Protections for Energy Usage Data" adopted by the CPUC.

Article 21: GENERAL PROVISIONS

21.1 **Entire Agreement; Integration; Exhibits.** This Agreement constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Cover Sheet and any exhibit, appendix, or other attachment hereto is an integral part hereof and is made a part of this Agreement by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

21.3 **Survival.** Applicable provisions of this Agreement shall continue in effect after termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. Notwithstanding anything to the contrary in this Agreement, (a) all rights under Sections 15.1 through 15.5 (Indemnities) and any other indemnity rights survive the end of the Term without limit, (b) all audit rights under Sections 17.2 and 17.3 survive the end of the Term for an additional one (1) year, or as required by applicable Law, (c) all rights and obligations under Article 20 (Confidentiality) survive the end of the Term without limit, and (d) all provisions relating to limitations of liability survive without limit.

21.4 **Waivers.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any waiver of a default under this Agreement must appear in a writing signed by the waiving Party.

21.5 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as Product seller and Product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Portfolio, the Product or any business related to the Portfolio. This Agreement shall not impart any rights

enforceable by any third party other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender or indemnitee. In no event shall Buyer's receipt or review of any Seller submission, or Buyer's monitoring of Portfolio data or cooperation in Portfolio operations be construed as an assumption of any responsibility, liability or obligation of Seller for the design, construction or operation of the Portfolio.

21.6 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.7 **Mobile Sierra**. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Mrkt'g, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

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

21.9 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, provided that any digital signatures are in compliance with California Code of Regulations, Title 2, Division 7, Chapter 10, Sections 22000 – 22005.

21.10 **No Recourse to Members of Buyer**. Buyer is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

21.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each

Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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

Article 22: NOTICES

22.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Appendix VIII or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

22.2 **Time of Delivery.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery, United States mail, or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

SIGNATURES

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

[_____]

Silicon Valley Clean ENERGY
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX I

DESCRIPTION OF PORTFOLIO

The following describes the Portfolio to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

A. PORTFOLIO DESCRIPTION

Portfolio name: Santa Clara County Resilient Capacity Resource

Energy storage technology of Projects: Li-ion

Interconnection:

CAISO transmission access charge area (e.g. PG&E): PG&E

B. PORTFOLIO SIZE

Nameplate capacity (aggregate): Minimum: ■ MW; Maximum: ■ MW

APPENDIX II

OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Product (Load Modification and Capacity Attributes) it can provide.

Physical Location and Point of Interconnection

Shall be as set forth in Appendix I-A.

Discharging and Charging

Maximum continuous discharge power (Dmax): ___ MW

Minimum continuous discharge power (Dmin): ___ MW

Maximum discharge duration at constant Dmax : ___ (hours)

Maximum continuous charge power (Cmax): ___ MW

Minimum continuous charge power (Cmin): ___ MW

Maximum charge duration at constant Cmax: ___ (hours)

Amount of Energy released to fully discharge: ___ MWh

Amount of Energy required to fully charge: ___ MWh

Round-trip efficiency: _____ %

Ramp Rates

[Describe ramp rates. If ramp rates vary with loading level, please provide a ramp rate for each segment within the operational range in which it differs. If ramp rates vary based on the operating mode (e.g. regulation), please provide separately.]

Dmin to Dmax: ___ MW/second

Cmin to Cmax: ___ MW/second

Dmax to Dmin: ___ MW/second

Cmax to Cmin: ___ MW/second

System Response Time

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

Idle to Dmax: ___ seconds

Idle to Cmax: ___ seconds

Dmax to Cmax: ___ seconds

Cmax to Dmax: ___ seconds

Dmin to Cmin: ___ seconds

Cmin to Dmin: ___ seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up Time is the amount of time needed to go from non-operation to Dmin (Cmin). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) Provide in seconds if appropriate.]

Discharge Start-up time (from notification to Dmin): ___ seconds

Charge Start-up time (from notification to Cmin): ___ seconds

Discharge Start-up Fuel: ___ MMBtu

Starts and other Run Time Limitations

[Describe start limitations. Include any daily or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s).]

Start limitations: _____

Run hour limitations: _____

[Describe minimum times.]

The minimum run time after a Discharge Start-up is ___ seconds

The minimum run time after a Charge Start-up is ___ seconds

The minimum down time after a shutdown is ___ seconds

Ancillary Services (defined terms below have the meaning found in the CAISO Tariff as of the Execution Date):

At ISO conditions, normal efficiency mode:

Spinning Reserves: Range: ____ MW

Non-Spinning Reserves: Range: ____ MW

Black Start capability (if applicable):

This agreement does not require delivery or measurement of the Ancillary Services specified herein, unless and until mutually agreed upon by Buyer and Seller.

APPENDIX III

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Portfolio description.
3. Indicative site plans representative of Projects to be included in Portfolio. Individual Project site plans for 10% or fewer of total Projects in Portfolio to be provided to SVCE at SVCE's discretion.
4. Description of any material planned changes to the Portfolio or the Site.
5. Schedule showing progress on Portfolio construction generally and achieving each of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Critical Milestones, the Commercial Operation Milestones, and the Initial Delivery Dates.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Indicative pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress of a representative portion of Projects to be

included in Portfolio. Pictures pertaining to 10% or fewer of individual Projects included in Portfolio to be provided to SVCE at SVCE’s discretion.

12. Compliance with workforce and prevailing wage requirements.

13. Any other documentation reasonably requested by Buyer.

SELLER’S PORTFOLIO LIST

as of [_____]

Customer Service Account Number	Customer name	Physical address of Site	Total Project capacity installed as part of the Portfolio	Project capacity installed to meet capacity associated with Operational Characteristics	Project capacity installed in excess of capacity associated with Operational Characteristics	Project manufacturer(s) and model number(s) installed at Site with corresponding Project capacity	Customer type (i.e., residential, commercial, municipal)	Project description (e.g., stand-alone storage, solar + storage, multi-family, disadvantaged community, etc.)	CAISO Resource ID	Sub-LAP

[By submitting this Seller’s Portfolio List to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Projects comprising Seller’s Portfolio List are in compliance with the terms of the Agreement.]

Signature:	
Name:	_____
Title:	_____
Date:	_____

APPENDIX IV
CERTIFICATION
FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following:

- (1) The Portfolio has been completed and commissioned and it became commercially operable on [].
- (2) The Portfolio has been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio has been constructed in accordance with the Project Safety Plan.
- (4) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (5) Seller has designed and built the Portfolio to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (6) The design and construction of the Portfolio was carried out by the original equipment manufacturer or other qualified organization in accordance with the designs and requirements of the original equipment manufacturer.

SELLER:
Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX V

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 290
Sunnyvale, California 94087

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Energy Storage Resource Adequacy Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on _____, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds promptly and no later than the business day immediately following our receipt of a drawing certificate from Beneficiary in the form attached hereto as Exhibit A.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each

anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

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

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

[Bank Name]

[Insert officer name]
[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Resource Adequacy Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because an event for which Beneficiary is entitled to make a drawing under this Letter of Credit pursuant to the Agreement has occurred.
3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

Name and Title of Authorized Representative

Date _____

APPENDIX VI

PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related codes, standards, and regulations (CSR) which govern the design, construction, operation, maintenance of the Portfolio using the proposed technology.

Describe the Seller's and the Seller's Contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

Part Two: Portfolio Design and Description

Describe Seller's safety engineering approach to select equipment and design systems and the Portfolio to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Portfolio. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,
- f) Contractor pre-qualification and management,

- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

APPENDIX VII

MUA DECISION ATTESTATION

This attestation is delivered by _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Portfolio, Seller is following all the rules set forth in Exhibit A of CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

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

Signature: _____
Name: _____
Title: _____

APPENDIX VIII

NOTICES

SELLER	BUYER³
<p>All Notices:</p> <p>Street: City: Attn: Phone: Facsimile: Email:</p>	<p>All Notices:</p> <p>Street: 333 W. El Camino Real, Suite 290 City: Sunnyvale, California Zip: 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: girish@svcleanenergy.org</p> <p>With a copy to: [_____]</p>
<p>Invoices:</p> <p>Attn: Phone: E-mail:</p>	<p>Invoices:</p> <p>Attn: Power Supply Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org</p>
<p>Scheduling:</p> <p>Attn: Phone: Email:</p>	<p>Scheduling:</p> <p>Attn: ZGlobal Phone: (916) 221-4327 Email: eric@zglobal.biz</p>
<p>Payments:</p> <p>Attn: Phone: E-mail:</p>	<p>Payments:</p> <p>Attn: Finance Group Phone: (408) 721-5301 Email: SVCEpowersettlements@svcleanenergy.org</p>
<p>Wire Transfer:</p> <p>BNK: ABA: ACCT:</p>	<p>Wire Transfer:</p> 
<p>Emergency Contact:</p> <p>Attn: Phone: E-mail:</p>	<p>Emergency Contact:</p> <p>Phone: (408) 721-5301 x1009 Email: monica.padilla@svcleanenergy.org</p>

APPENDIX IX

PORTFOLIO MODIFICATION CERTIFICATION

This certification of commercial operation for a Portfolio Modification (“Portfolio Modification Certification”) is delivered by each of _____ (“Seller”) to Silicon Valley Clean Energy Authority (“Buyer”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Portfolio Modification Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller each hereby certifies and represents to Buyer the following, severally and not jointly:

- (1) All parts of the Portfolio affected by the Portfolio Modification became commercially operational on [].
- (2) All parts of the Portfolio affected by the Portfolio Modification have been constructed in accordance with Appendix I of the Agreement.
- (3) The Portfolio is capable of producing and delivering Product in the Contract Amounts, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the parts of the Portfolio affected by the Portfolio Modification to have a design life for the Delivery Term in accordance with Prudent Operating Practices.
- (5) The design and construction of the parts of the Portfolio affected by the Portfolio Modification was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Portfolio as modified under the Portfolio Modification is able to operate in a manner consistent with the Safety Requirements.

SELLER:
Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX X

RESERVED

[]

APPENDIX XI
GO TO MARKET PLAN

Silicon Valley Clean Energy and Sunrun Go to Market Plan

1. Purpose of this GTM Plan

The intent of this GTM Plan is to clearly define the process that Sunrun and SVCE will follow in bringing this offering forward to SVCE customers. Minor adjustments to the GTM process are expected for the duration of the contract, but this GTM Plan reflects the initial understanding and outlines key milestones, requirements and assumptions on the part of Sunrun and SVCE. Substantive changes to the GTM process outlined in this GTM Plan will need to be made through an additional contract exhibit.

While Sunrun’s customer portfolio commitments are enumerated in Section 5.4c of the Load Modification Agreement, Sunrun’s goal for the Contract Amount is to deliver 50% of contract capacity from assets associated with single-family customer accounts and 50% of contract capacity from assets associated with multifamily customer accounts. Sunrun will work with SVCE to attempt to achieve this delivery goal through the activities in this GTM Plan.

2. Teams

SVCE will involve the following staff:

Name	Department	Responsibility
Aimee Bailey	Decarb & Grid Innovation	Program lead
Justin Zagunis	Decarb & Grid Innovation	GTM and EM&V support
Rebecca Fang	Decarb & Grid Innovation	Data analysis lead
Nik Zanutto	Administration	Data analysis support
Zoe Elizabeth	Account Services	Customer contact and marketing support
Pamela Leonard	Communications and Marketing	Marketing lead

Sunrun will involve the following staff:

Name	Department	Responsibility
Nick Smallwood	Business Development	SRUN Sponsor

Michael Norbeck	Business Development	Program lead
Scott Peattie	Business Development	Multifamily segment lead
Nora Hennings	Business Development	Co-marketing & program launch
Nate Henson	Growth Marketing	Go-to-Market planning and execution
Alex Sherman	Energy Services Program Management	Program management

Additional staff may be added with written notice to the other party.

3. Outreach Materials

SVCE will rely on Sunrun to prepare the majority of outreach materials. Some materials repurposed from other, similar projects will also be provided by Sunrun. Materials will include:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
SVCE webpage	Webpage hosted on SVCE's website explaining the program and pointing to Sunrun's lead capture landing webpage	SVCE	Provide sample content for SVCE to use	Implement and host webpage
Program Lead Capture Landing Webpage	Virtual location to host online materials and allow for customer to self-identify	Sunrun	Development; hosting	Review; provide brand guidelines
Direct Mail Invitations	Direct outreach to introduce customers to the program and solicit participation	Sunrun	Copy; images; targeting criteria	Review copy; review targeting and deployment plan
Social Media Posted / Paid Social Targeted	Social media posts to drive engagement with website	Sunrun	Design; copy; images	Review
Display Ads / YouTube Videos	Ad content to drive engagement with website	Sunrun	Design support; copy; images; videos	Review copy; post as mutually agreed-upon

FAQ	Posted to website, support for those interested	Sunrun	Content creation hosting	Review
Case Studies	Posted to website, marketing	Sunrun	Content creation hosting	Review
Multifamily Data Sharing Authorization Form	To allow Sunrun access to necessary data not included in Data Hive; may include aggregated multifamily site energy usage data, whether site has been impacted by PSPS events, and service level (depending on what data SVCE can make available while complying with relevant privacy policies); SVCE and Sunrun will mutually agree on data to be shared, format, and process	Sunrun	Provide draft and final; get signatures for qualified projects	Review; set up internal processes for handling requests; provide relevant data
End-User Contract	Final contract with the end user to confirm project and finalize sale	Sunrun	Provide draft and final	Review

Sunrun will provide all outreach materials for review and approval by appropriate SVCE staff prior to use and will make adjustments as requested by the SVCE staff. SVCE will provide direction on marketing messages that it wishes to incorporate into these materials to support its organizational positions (e.g. futureproofing, decarbonization/electrification).

SVCE does not plan to provide any co-marketing to this program outside of what is articulated herein. Sunrun shall inform SVCE of any marketing efforts (included in the table above, elsewhere in this document, or identified at a later time during program implementation) that Sunrun plans to undertake under this GTM Plan and will allow for SVCE review and approval, at SVCE’s sole and absolute discretion, of the content and/or approach. For strategic marketing elements or other content that does not meet the definition of Co-Marketing Materials (such as a campaign approach proposed by Sunrun), SVCE and Sunrun will work to determine a mutually agreeable timeframe for SVCE review and approval.

Content used by Sunrun for marketing may guide interested customers to the program-specific SVCE or Sunrun webpages.

4. Customer Outreach Process - Single-Family

Most single-family customer recruitment will follow a multi-step process, which includes:

Step	Description	Lead Party	Sunrun Role	SVCE Role
Outreach	Targeted and web/social	Sunrun	Campaign calendar, campaign setup,	Review Campaign calendar, campaign

	campaigns across multiple marketing mediums and target segments.		targeting & launch; Co-branded collateral, messaging, targeting & media strategy	setup, targeting & launch; review messaging
Initial Conversation	Lead qualification for handraisers responding to outreach campaigns via web form or phone call	Sunrun	Lead capture form design & hosting.; Local call in number and inbound call center	Design input on lead form, guidance on desired customer experience
Meetings	Virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appt., then conduct virtual appt	Guidance on script and desired experience
Proposals	Sunrun proposal for recommended product mix	Sunrun	Provide proposal from Sunrun Sales Platform (SPLAT)	Input on proposal contents and possible co-branding
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

Sunrun will also continue to discuss with SVCE possible integration into SVCE’s online Solar Assistant tool offered through pickmysolar. SVCE will provide support as needed if Sunrun, at its discretion, chooses to integrate with SVCE’s online Solar Assistant tool. SVCE may separately provide Sunrun with the opportunity to present to a group of member cities’ staff on the program and general offerings, as mutually agreed upon by Sunrun and SVCE.

To facilitate the identification of priority customers or customer segments (e.g., SGIP Equity Resiliency eligible customers), SVCE has shared some masked customer data with Sunrun. Sunrun may choose to identify a list of priority customers based on the data. At SVCE’s discretion, SVCE may take the masked list of priority customers from Sunrun, internally identify these masked customers, and send targeted outreach to a subset thereof. Data sharing in support of outreach to potential priority customers will follow the process illustrated below:

Tactic	Description	Lead Party	Sunrun Role	SVCE Role
Masked Data Sharing	SVCE provided masked data through a separate non-disclosure agreement	SVCE	Established fields to be shared	Compiled and shared data
Masked Customer Analysis	Data is processed by Sunrun to identify favorable accounts	Sunrun	Lead analysis; create list of masked priority accounts	N/A
SVCE Outreach	Email outreach to targeted customers identified by Sunrun through the masked data	SVCE	Analyze data and provide list to target; Create content	Optional activity, at SVCE's discretion. SVCE may leverage its channels (e.g., direct email marketing) to reach the priority accounts identified through Sunrun's masked data analysis. Sunrun will prepare content to support SVCE's outreach. SVCE refers interested respondents to SVCE program webpage. Maximum number of accounts targeted and channels utilized to be determined jointly by SVCE and Sunrun, with no guarantee of leads generated.

5. Customer Outreach Process - Multifamily

Sunrun's sales process for Multifamily relies on a smaller and more specialized in-house team. Sunrun will lead the process, with support from SVCE, as follows:

Step	Description	Lead Party	Sunrun Role	SVCE Role
Outreach	Predominantly direct inbound and outbound leads, many relationship-based, with	Sunrun	Direct outreach, targeting & media strategy	Review any co-branded or program-related messaging

	some presence in multifamily-specific marketing (conferences, print advertising, social media)			
Initial Conversation	Lead qualification via teleconference meetings	Sunrun	Local call in number and inbound call center	Inform desired customer experience
Meetings	In-person (preferred, if possible) or virtual sales consultation scheduled with qualified leads	Sunrun	Qualify lead and schedule appointment	Inform desired customer experience; sit in at request of customer; SVCE will work with Sunrun to identify planned meetings that SVCE is interested in sitting in on (at least 5 opportunities)
Proposals	Sunrun proposal for recommended product mix	Sunrun	Access all available data through Data Hive; work with SVCE to scope additional data needed and establish data sharing process, including an authorization form; get authorization form signed as needed; usage analysis, initial engineering design, financial pro-forma, proposal creation	Upon receipt of signed authorization form, provide data as mutually agreed upon by SVCE and Sunrun – focus will be on necessary data not available through Data Hive, such as aggregated site-level 12 month meter data (15 min interval if possible), feedback on design
Enrollment	Signed contract approval, schedule site audit, manage system design process	Sunrun	Manage enrollment through SFDC, provide feedback loop on contracts to SVCE CRM	Review enrollment progress and feedback loop; intake data from Sunrun

6. Ongoing Customer Support

Given SVCE’s role in helping acquire customers and market the program, SVCE wants to ensure that all participants have positive experiences throughout the lifetime of the projects. Sunrun shall provide excellent

customer support throughout the customer acquisition process, as well as throughout the duration of the customer contract. Key elements of Sunrun's customer support shall include:

- Regional installation coordinator to ensure timely execution and prioritize issue resolution
- Project coordinator to manage site audit, design, installation, and permission to operate handoffs
- Customer care call center for inbound issue resolution
- Field service staffing to roll trucks to customer should an onsite issue resolution be needed
- Assigned Field Sales Consultant as primary contact for life of relationship with Sunrun

7. Flagship Elements

SVCE supports innovation that can provide better services and benefit its customers. While the contract with Sunrun is for resource adequacy, SVCE is interested in incorporating other "flagship" elements into the offerings for customers to consider. Flagship elements are strategies, approaches, or methods that are innovative, meet with SVCE's mission, and otherwise provide co-benefits to the community. Flagship elements may include:

- Combining the construction of solar and/or storage onsite with one or more other electrical upgrades (e.g. electric vehicle charging or heat pump technologies)
- Sizing new equipment to account for future load impacts (e.g. panel upgrades to accommodate a future electric vehicle)
- Providing customer-beneficial technologies like energy management
- Supporting SVCE priorities in decarbonization and electrification

SVCE and Sunrun will continue to discuss flagship offerings for single-family accounts. One or more flagship offerings may be mutually agreed upon through these conversations. Depending on the flagship offering and target audiences, SVCE and Sunrun may choose to commit to additional incentives, marketing, or program support. Such offerings and corresponding activities would need to be addressed through a separate agreement.

As multifamily accounts are qualified, Sunrun will discuss with SVCE the commercially reasonable opportunities for flagship elements at each site and the potential of developing these projects, potentially to include flagship elements, within a reasonable time frame. Upon agreement between Sunrun and SVCE, Sunrun will approach the customers with the concept. Customers can then decide whether they are interested in pursuing available flagship elements at their site. If flagship elements may eliminate the ability to deliver the capacity within the delivery window, then Sunrun and SVCE will discuss how and whether to move forward or exclude these accounts from the committed capacity and/or the flagship elements.

8. Parallel Efforts

While working through marketing elements, SVCE will continue to support Sunrun in doing the data analysis needed.

Evaluation, measurement and verification (EM&V) is important to SVCE to ensure that its programs are effective in achieving their goals, and to inform future and ongoing efforts. Some level of EM&V may be deemed appropriate by SVCE, such as customer satisfaction and level of impact for effort, and Sunrun will

support SVCE's efforts in connecting with customers or tracking key metrics. SVCE and Sunrun will further discuss and develop an EM&V Plan to guide this work.

To help streamline the installation of projects, SVCE may facilitate one or more meetings between Sunrun and SVCE member cities' building officials and fire officials. The goal would be to reach all authorities having jurisdiction that may receive a project before the permits need to be routed through those cities. Informing relevant officials ahead of time will support the goal of streamlining project installation. SVCE and Sunrun will work to develop the objectives, agenda and scheduling of any meeting(s).

9. Coordination with Other SVCE Programs

SVCE has other ongoing programs that may also be able to support (or draw support from) the work being done by Sunrun. As far as it is beneficial for one or more programs, SVCE will keep Sunrun apprised of opportunities for coordination. Sunrun should plan to coordinate with at least the following programs:

- California Electric Vehicle Infrastructure Project (CALeVIP): This program provides first-come, first-served incentives for level 2 electric vehicle infrastructure. There are stipulations, but multifamily properties are eligible for incentives that can cover up to 75% of project costs. SVCE expects the program to open in Fall 2020.
- Resilience Efforts: Due to COVID-19 impacts in SVCE communities, SVCE recently allocated \$10M to support customer relief and community resilience. For funds deployed towards community resilience, support for energy resilience at critical or city facilities could be a natural fit for Sunrun and may be eligible for additional SVCE funding.
- Multifamily Housing EV Infrastructure Technical Assistance: SVCE is in the process of launching a technical assistance program for multifamily properties to learn about and select electric vehicle charging infrastructure to be deployed on their property. Sunrun may refer people to that program or receive referrals from people by that program, at the interest of the site host.
- Customer Resource Center (online website): SVCE is developing a new set of online resources that will help all customers better understand energy usage and technologies. Solar, storage, heat pumps, electric vehicles, electric vehicle chargers, and smart thermostats are all examples of technologies that will be explained, marketed, and potentially incentivized through this website. Sunrun's offerings shall be incorporated into the broader Customer Resource Center framework as mutually agreed, and ongoing materials and communications should refer customers to SVCE's online resources as applicable.

10. Data Integration

While SVCE and Sunrun have already begun sharing data to facilitate customer identification, there is additional need for data sharing to support ongoing operations. Accordingly, Sunrun will work with SVCE staff to establish integration or regular transfer of data to SVCE databases. This will include SVCE's customer relationship management system and SVCE's overall customer database (DAISY). The data provided by Sunrun to SVCE to add to its databases will be customer specific and include insights developed through customer interactions.

SVCE is seeking relevant information on customer interactions (to include some or all of the following, on a portfolio basis: average installation size, customer costs, and value streams delivered by the program to customers and/or Sunrun); other technical information gathered through the installation process (to include

some or all of the following, at a customer-specific level, for a mutually agreed-upon sample of customer projects: electrical panel size and load, individual customer contact information, and installation specifics); and other data of interest to SVCE in its role as a community provider of carbon-free energy and administrator of decarbonization programs.

Additional requirements regarding sharing of customer project-specific information are discussed in Appendix III of the Load Modification Agreement. It should also be noted that SVCE and Sunrun will mutually determine categories of data to be shared pertaining to program deployment and management, along with the related transfer process from Sunrun to SVCE, as part of EM&V Plan development.

11. GTM Metrics

As a component of SVCE’s oversight of the project, Sunrun shall provide reporting on key performance indicators (KPIs) for the duration of customer engagement and through the end of project lifetimes. Reporting shall start at a 2-week frequency until such point that all customers have signed contracts. At such a point, reporting shall transition to a 2-month frequency. Metrics may include:

- Number of consultations
- Number of signed contracts
- Number of installations
- Capacity of installs
- Capacity interconnected
- Project issues

Sunrun should also provide a brief summary of key lessons that have been learned, takeaways, and adjustments being made to improve the program in each report.

12. Timeline

To establish expectations around when reviews and materials will need to be completed, the following table of milestones will be used. This GTM Plan mostly indicates agreement on certain processes and roles, but additional work must be done to reach agreement on the elements necessary to deliver a successful program. These dates are approximations. Sunrun will provide SVCE sufficient time to respond with feedback/approval and direction for each relevant component as stipulated in this GTM Plan.

Section	Component	Expected Work Timeframe
I. Outreach Materials	SVCE provides direction on additional marketing messages	August/September 2020
	Review Sunrun marketing documents	
	SVCE program webpage complete	

	Finalize list of priority customers	
II. Customer Outreach Process – Single-Family	SVCE shares masked data for determining priority customer lists for possible SVCE targeted outreach	<i>[Completed in advance of contract execution]</i>
	Sunrun determines priority customer lists for possible SVCE targeted outreach	August 2020
	Establish Sunrun campaign approach and materials	August/September 2020
	Launch Sunrun campaign and implement outreach	September 2020
	Execute direct outreach through SVCE channels targeting the priority customer lists <i>[to be completed at SVCE discretion]</i>	September 2020 and ongoing through program deployment term, as required/mutually agreed-upon
	Project installation/customer enrollment	Beginning September 2020, through mutually agreed-upon program deployment term
III. Customer Outreach Process - Multifamily	Establish campaign approach and materials, as relevant/required	August/September 2020
	Launch campaign and implement outreach as relevant/required	September 2020
	Project installation/customer enrollment	Beginning September 2020, through mutually agreed-upon program deployment term
IV. Ongoing Customer Support	Customer support to SVCE customer participants	Beginning September 2020 and ongoing over life of projects
V. Flagship Elements	Determine which, if any, mutually-agreed upon flagship elements to include as part of single-family-customer-facing program presentment	By January 2021

	Integrate relevant flagship elements into single-family-customer-facing program presentment	By February 2021 and ongoing through program deployment term, as mutually agreed-upon
	Discuss opportunities at qualified multifamily properties, offer flagship elements, and support interested sites	Beginning September 2020, through mutually agreed-upon program deployment term
VI. Parallel Efforts	Establishment of data transfer processes from Sunrun to SVCE	August/September 2020 (and ongoing, as needed/mutually agreed-upon)
	Possible meetings with relevant city officials	September 2020
	EM&V Plan complete	By January 2021
VII. Data Integration	Establishment of data transfer processes from Sunrun to SVCE	August/September 2020 (and ongoing, as needed/mutually agreed-upon)
VIII. GTM Metrics	Sharing of KPIs and summary of lessons learned	Beginning September 2020, through mutually agreed-upon program deployment term

13. Customer Program Incentive

A \$1,000 Program Participation Incentive - or alternate incentive payment, as mutually agreed-upon by SVCE and Sunrun - will be paid by Sunrun to each single-family customer enrolled in the program to reflect benefits associated with the SVCE/Sunrun grid services program. This incentive shall be paid to the customer after the customer's system, built pursuant to a Sunrun Customer Agreement, reaches permission to operate with the customer's utility provider. Sunrun and SVCE will further discuss how to present this incentive to the customers (including who sends the incentive, the form it takes, and what language is included to explain the source of the incentive).

Multifamily residential customers will receive free solar credits through Virtual Net Metering and backup for common area loads (only projects located in high fire threat or that experienced two or more PSPS events). Multifamily property owners/managers responsible for paying for the systems will be connected with relevant, available incentives and funding. As mutually agreed upon by SVCE and Sunrun, an incentive payment or alternative financial benefit to reflect benefits associated with the SVCE/Sunrun grid services program will be calculated and paid to each multifamily project.

14. DEFINITIONS

AS USED IN THIS APPENDIX XI, THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH BELOW:

“Co-Marketing Materials” means the messaging and materials, whether print, digital, telephone scripts or otherwise, produced by either Party for the Residential Solar Products, which may include SVCE Trademarks and Sunrun Trademarks.

“Residential Solar Products” means any product offering to a customer in which a photovoltaic system, with or without a battery storage element, is both (i) installed on the residential property of such customer; and (ii) (a) owned by a person other than such customer, including but not limited to contractual arrangements pursuant to which such photovoltaic system is leased to such customer or pursuant to which electricity from such photovoltaic system is sold to such customer under a power purchase agreement; or (b) purchased by such customer or financed by such customer through home equity lines of credit, home equity loans, same-as-cash financing, any municipal financing program(s), or any other direct sale and/or financing mechanism.

“Trademarks” means any trademark, service mark, logo, brand or other product positioning or other distinctive brand element, or any content or other work of authorship, that are provided by for use in connection with this Agreement, in each case relating to a Party or any of its products or services.

15. Approval to Use Co-Marketing Materials

Any Co-Marketing Materials created by the Parties (the “Creating Party”) must first be submitted to other party (the (“Approving Party”) along with a description of the proposed intended use(s) for the Approving Party’s approval, in its sole and absolute discretion prior to any use of such Co-Marketing Materials under this Agreement. The Approving Party shall provide written approval or objection to the proposed use of the Co-Marketing Materials within ten business days of receipt of such submission by the Creating Party, and if the Approving Party does not provide a written response in such ten day period, the Approving Party shall be deemed to have denied the proposed use of the Co-Marketing Materials created by the Creating Party. Sunrun agrees to include a disclaimer of SVCE liability in any communications with customers, as directed by SVCE. Such disclaimer shall be substantially similar to the following, subject to SVCE’s right to revise:

“SVCE does not endorse or guarantee, and makes no warranties or representations regarding, any vendor, contractor, service or product. SVCE shall not be liable for any loss or damage of any kind arising out of or connected to any vendor, contractor, service or product. Any transactions that you enter into with a vendor, contractor or other third party are solely between you and that vendor, contractor or other third party.”

16. EXPENSES

UNLESS OTHERWISE AGREED TO BY THE PARTIES IN WRITING, EACH PARTY SHALL BEAR THEIR OWN COSTS AND EXPENSES IN CONNECTION WITH THIS AGREEMENT.

17. ACKNOWLEDGMENT OF SIMILAR SVCE PROGRAMS

The parties acknowledge that SVCE plans to offer its customers a variety of resources and programs, itself or with other consultants, that may relate to the subject matter of this Agreement. This includes SVCE’s Innovation Onramp pilot programs and SVCE’s online customer-facing resources (the “eHub” or “Customer Resource Center”) which include the pickmysolar tool. The parties acknowledge that SVCE will continue to offer these resources and programs to customers, including the marketing thereof, during this Agreement. SVCE may further choose to offer

customer incentives or other programs to customers, even those relating to the subject matter of this Agreement, without exclusion.

Notwithstanding the preceding paragraph, SVCE will not offer a program comparable to that outlined in this Agreement and GTM Plan prior to the Initial Delivery Date. For a program to be comparable, it would need to include both co-marketing elements to facilitate deployment/installation of projects at customer sites and payments from SVCE for load modification or capacity. Direct customer incentives for solar or storage offered through the eHub, or purchasing capacity from aggregated, primarily existing resources, will not be considered comparable programs.

18. TRADEMARK LICENSE, OWNERSHIP & RESTRICTIONS

(a) Subject to the terms of this Agreement, (i) SVCE grants to Sunrun a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the SVCE Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the creation of the Co-Marketing Materials and the promotion and distribution of Co-Marketing Materials across Sunrun's offline and online marketing channels in connection with this Agreement and (ii) Sunrun grants to SVCE a royalty-free, nonexclusive, nontransferable, non-sublicensable, revocable license to use the Sunrun Trademarks for use in connection with co-offering of the Residential Solar Product during the Term, including, without limitation, the promotion and distribution of Co-Marketing Materials across SVCE's offline and online marketing channels in connection with this Agreement.

(b) SVCE shall own all rights in the SVCE Trademarks and reserves the right to use the SVCE Trademarks and license the SVCE Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to Sunrun or to any Affiliate of Sunrun with respect to any of the SVCE Trademarks or other property of SVCE. Except as expressly provided in this Agreement, Sunrun or any Affiliate of Sunrun will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the SVCE Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the SVCE Trademarks in whole or in part, or (iii) contest, oppose or challenge SVCE's ownership of the SVCE Trademarks or impair SVCE's ownership or rights in the SVCE Trademarks in any way. Sunrun agrees that it shall only use the form of SVCE Trademarks as directed by SVCE in writing.

(c) Sunrun shall own all rights in the Sunrun Trademarks and reserves the right to use the Sunrun Trademarks and license the Sunrun Trademarks to other entities, and no provision of this Agreement shall be construed to effect any present or future transfer of title to SVCE or to any Affiliate of SVCE with respect to any of the Sunrun Trademarks or other property of Sunrun. Except as expressly provided in this Agreement, SVCE or any Affiliate of SVCE will not: (i) transfer, sell, license, sublicense, distribute or commercially exploit the Sunrun Trademarks; (ii) modify, reproduce, create derivative or collective works from, or in any way otherwise exploit the Sunrun Trademarks in whole or in part, or (iii) contest, oppose or challenge Sunrun's ownership of the Sunrun Trademarks or impair Sunrun's ownership or rights in the Sunrun Trademarks in any way.

Notwithstanding anything herein, neither party shall use the Trademarks of the other party without the prior written consent of such Party.

19. TERMINATION OF GTM PLAN

The Parties shall have the right to terminate this GTM Plan with or without cause by giving notice of termination to the other Party. Any such notice shall specify the effective date of termination (“**GTM Termination Date**”), which shall be no sooner than ninety (90) days after the date of the notice to the extent allowable under applicable law. Upon the GTM Termination Date, the Parties shall immediately discontinue all further use of the other Party’s Trademarks, the Co-Marketing Materials, and any mark or marks that be may confusingly similar thereto.

Notwithstanding the preceding paragraph, SVCE shall continue to be able to host a webpage describing the LMA contract, program, and relationship with Sunrun.

Schedule I

Sunrun Trademarks

OWNER	TRADEMARK	COUNTRY	REGISTRATION NO.
Sunrun Inc.	Brightbox	United States of America	87335960, 87335949
Sunrun Inc.	Sunrun	United States of America	85168901, 86403447
Sunrun Inc.		United States of America	85594817
Sunrun Inc.		United States of America	87222682, 85594817
Sunrun Inc.		United States of America	87222682, 85594817

Schedule II

SVCE Trademarks

APPENDIX XII

RA-SPECIFIC CONDITIONS AND TERMS

PART ONE: CAPACITY ATTRIBUTE CONDITIONS PRECEDENT

1. Seller shall have provided to Buyer a certification of Seller, substantially in the form attached hereto as Appendix IV, demonstrating that the Project(s) comprising the Portfolio as set forth in Seller's Portfolio List, can deliver, in aggregate, the Capacity Attributes of Product in the applicable Contract Amounts.
2. Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Capacity Attributes of the Product to Buyer at the Contract Amounts (and including as a Proxy Demand Resource or as a Reliability Demand Response Resource).
3. Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Portfolio successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets, including as a Proxy Demand Resource or Reliability Demand Response Resource, in a manner sufficient to enable delivery of the Contract Amounts of Product to Buyer.
4. Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product, including as a Proxy Demand Resource or as a Reliability Demand Response Resource, (i) resulting in certifications of not less than the Contract Amounts and (ii) so as to ensure the applicable Stage of the Portfolio is fully deliverable such that Seller is able to deliver Product in the Contract Amounts to Buyer for purposes of counting towards Buyer's Compliance Obligations.
5. Seller shall have provided documentation demonstrating Seller's calculations related to and attendant fulfillment of the CAISO NQC criteria, or any revised Resource Adequacy criteria, for the applicable Stage of the Portfolio.
6. Seller shall have submitted, or shall have caused its SC to have submitted, a Notice to Buyer including Seller's proposed Supply Plan for the first Showing Month, and Seller shall have properly submitted, or shall have caused its SC to have properly submitted, a Supply Plan to CAISO.

PART TWO: RA-SPECIFIC PAYMENT TERMS

1. No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to

the CAISO. In the event that Buyer does not Notify Seller of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

2. After following the foregoing procedure, Seller shall submit, or cause to be submitted, a Supply Plan to CAISO, in accordance with the applicable Compliance Showing deadlines for each Showing Month, to identify and confirm the Product to be delivered to Buyer (or, with regard to Resold Product, Buyer's designee) for each day within the applicable Showing Month. For each of the Capacity Attributes of Product that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the Contract Amount of each of the respective Capacity Attributes. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of the respective Capacity Attributes that Seller has delivered for such Showing Month ("Delivered Quantities").

3. For all Capacity Attributes of the Product that Seller delivers during the Delivery Term in accordance with this Agreement, Buyer shall, in accordance with Article 9, pay Seller a monthly payment ("Monthly Payment" or "MP") as follows:

$$MP = (DQ / CA) \times PQ \times CP$$

where,

DQ = The sum of the Delivered Quantities of all RA Attributes, Local RA Attributes, and Flexible Attributes;

CA = The sum of the Contract Amounts of all RA Attributes, Local RA Attributes, and Flexible Attributes; and

CP = The contract price set forth on the Cover Sheet ("Contract Price").

PART THREE: RA-SPECIFIC OPERATIONAL COVENANTS

1. Seller shall have a DRP Agreement in place with the CAISO and is required to satisfy registration requirements and to provide information to SVCE and the CAISO to allow the CAISO to establish performance evaluation methodologies in accordance with the Tariff and the applicable Business Practice Manuals.

2. Seller shall be the SC or shall designate a qualified third party to fulfill such role for the Portfolio in order to deliver Product to Buyer during the Delivery Term in accordance with the terms of this Agreement. Seller shall be solely responsible for all costs associated with the SC. Seller shall take, or cause its SC to take, all necessary steps to qualify itself and the Portfolio in such other manner identified and approved by the CAISO and CPUC that permits Seller to provide Product to Buyer .

3. Seller shall comply, and shall cause SC each Customer, and each Project owner and operator to comply, with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any Bidding of the Portfolio to meet any Must Offer Obligations, in order to deliver the Product to Buyer and allow Buyer to use the Product to satisfy Buyer's Compliance Obligations.

4. Seller shall not accept, and shall cause the Portfolio's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation in a Notice. In addition, Seller shall promptly Notify, or cause the Portfolio's SC to promptly Notify, Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation. During the Delivery Term, Buyer has exclusive right to enter into a RMR Contract with respect to the Product or any component thereof, provided that the RMR Contract would not require the Portfolio to operate beyond the Operational Characteristics or beyond the end of the Delivery Term.

5. Seller shall provide buyer access to the Project's CAISO Portal in order to view market awards or send Buyer a copy of the Project's market awards no later than 16:00 each day the Project is bid in to the CAISO Day-Ahead or Hour-Ahead market.

APPENDIX XIII

FORM OF LOAD MODIFYING RESOURCE DISPATCH PLAN

APPENDIX XIV
PORTFOLIO VALUE SUMMARY

Customer Service Account Number	Customer name	Inverter Power (kW)	Battery Energy (kWh)	Load Modification	Capacity Attributes
				Load Modification Nomination (kW)	Resource Adequacy Nomination (kW)

END OF AGREEMENT



Staff Report – Item 2

Item 2: CEO Update

From: Girish Balachandran, Chief Executive Officer

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 7/29/2020

This item will be addressed in the form of an oral report to the Executive Committee from CEO Girish Balachandran.