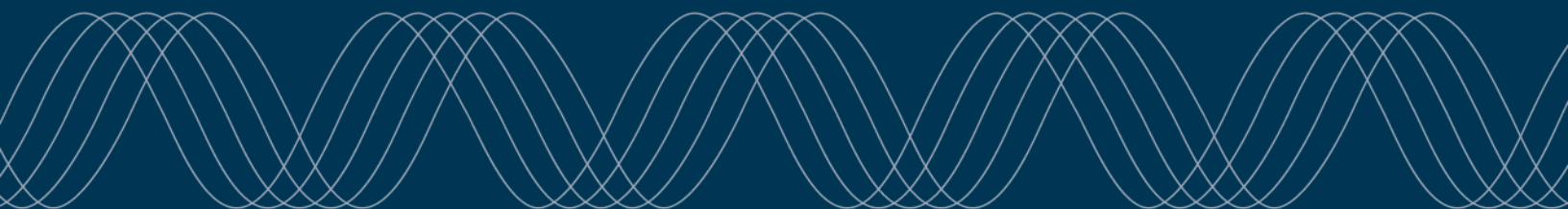


Appendix F

Storage Capacity Form Agreement



2023 All-Source RFP



Storage Capacity Agreement

between

Portland General Electric Company

and

[Seller]

dated as of

[Date]

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EXHIBITS

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Exhibit B	Milestone Schedule
Exhibit C	Description of Site (Parcel Survey)
Exhibit D	Notice Addresses
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STORAGE CAPACITY AGREEMENT

[THE FOLLOWING AGREEMENTS PERTAINS TO AN ON-SYSTEM RESOURCE. CHANGES TO TERMS AND CONDITIONS OR ADDITIONAL TERMS AND CONDITIONS MAY BE NECESSARY FOR AN OFF-SYSTEM RESOURCE]

This Storage Capacity Agreement (this “**Agreement**”), dated as of [Date], 2023 (the “**Effective Date**”), is between Portland General Electric Company, an Oregon corporation (“**Buyer**”), and [Seller], a [Entity Type] (“**Seller**”). Each of Buyer and Seller are referred to in this Agreement as a “**Party**”, and collectively as the “**Parties**”.

1. Seller intends to construct, own, and operate a [Project Size] MW_{AC} grid-connected energy storage system (as more particularly described in Exhibit A) (together with all materials, systems, structures, features, and improvements necessary to store and deliver electricity at such facility, the “**Storage Facility**,” and together with the Site (defined below), and related land rights and interests in land, the “**Project**”); and

2. Seller desires to sell and deliver exclusively for the benefit of Buyer, and Buyer desires to provide the electricity to charge the Storage Facility and purchase and receive, the capacity of the Project, together with the other Products (defined below) from the Project, in each case pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of these recitals and the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Defined Terms

Unless otherwise required by the context in which it appears, terms used in this Agreement have the meanings set forth in this Section 1.1.

“**Abandoned**” means that (i) Seller has permanently relinquished all possession or control of the Project other than pursuant to a transfer permitted under this Agreement; (ii) prior to the Commercial Operation Date, Seller has ceased the development (including customary permitting and development activities), construction planning, construction, and testing of the Project for ninety (90) consecutive days; or (iii) following the Commercial Operation Date, Seller has ceased to operate or perform maintenance at the Project for thirty (30) consecutive days, in each case, unless caused by or attributable to a Force Majeure Event or an Unplanned Outage.

“**Accounting Standards**” has the meaning set forth in Section 15.11.

“**Actual Availability**” means for any Contract Year, the sum of Actual Availability per Settlement Interval divided by the Contract Storage Capacity, as may be adjusted pursuant to this agreement, multiplied by 8,760.

“Actual Availability per Settlement Interval” means for any Settlement Interval, the product of (i) the Contract Storage Capacity *multiplied by* (ii) the Availability Factor.

“Actual Round-Trip Efficiency” has the meaning set forth in Exhibit O.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person.

“AGC” or “Automatic Generation Control” means the equipment and capability of the Storage Facility’s control system to receive Set Point(s) that automatically adjust the amount of Charging Energy, Discharging Energy and Ancillary Services Attributes with respect to the Storage Facility on a real-time basis and such other operating parameters for which Set Points may be transmitted.

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

“A.M. Best” means A.M. Best Company, Inc.

“Ancillary Service Attributes” means the ancillary services, products and other attributes, defined in Section 3 of the Portland General Electric Company Pro Forma Open Access Transmission Tariff as of the Effective Date, if any that may be obtained from or generated by the Storage Facility.

“Applicable Law” means any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority, in each case having jurisdiction over (a) any Person or any of its property, (b) the Storage Facility or (c) the Project.

“AUT Costs” means the net cost, if any, reflected in the Buyer’s relevant year AUT filing for the difference between the total benefit of discharging energy (i.e. discharging MWhs multiplied by relevant market price in those hours), less total cost of charging energy (i.e. charging MWhs multiplied by relevant market price in those hours) in any given day.

“Availability Factor” means, for any Settlement Interval, the ratio, equal to (i) the average available capacity during such Settlement Interval (not to exceed the Contract Storage Capacity) *divided by* (ii) the Contract Storage Capacity; *provided* that, if the Storage Facility is incapable of providing the Contract Storage Capacity during such Settlement Interval due to Seller Excused Hour, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.

“Back-Up Metering” has the meaning set forth in Section 6.1(b)(ii).

“Balancing Authority Area” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time. As of the Effective Date of this Agreement, the Balancing Authority Area for the Storage Facility is Portland General Electric Company.

“Bankrupt” means with respect to a Person (i) such Person consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; (ii) such Person files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws of any jurisdiction, whether now or hereafter in effect, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law of any jurisdiction, whether now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with creditors; (iii) such Person’s assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) such Person is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for Portland, Oregon.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Buyer Delay” means a delay in Seller’s performance of its obligations under this Agreement, or in the development, construction or completion of the Project, caused by Buyer or its Affiliates, including any Buyer Event of Default.

“Capacity Attributes” means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, or accounting construct, associated with the electric charge and discharge capability and capacity of the Project or the Project’s capability and ability to discharge or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Capacity Attributes do not include: (i) any production tax credits, investment tax credits, or any other tax credits, deductions, or tax benefits associated with the Project, or (ii) any state, federal, local, or private cash payments, grants, or costs relating in any way to the Project.

“Cash” means U.S. Dollars.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (i) the adoption or taking effect of any Applicable Law, (ii) any change in any Applicable Law or (iii) any change in application of any Applicable Law.

“Change of Control” means (i) a conveyance, transfer or other disposition, directly or indirectly, of equity interests of Seller or voting rights with respect thereto, whether in one transaction or a series of transactions, as a result of which the Controlling Person of Seller shall cease to Control Seller or (ii) a merger or consolidation as a result of which the Controlling Person of Seller immediately prior to such merger or consolidation shall cease to Control Seller; but excluding any such acquisition or agreement (y) to which Buyer has provided its prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld.

“Charging Energy” means the amount of Energy supplied by Buyer at Buyer’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharged at a later time, as measured by the Metering Facilities, accounting for estimated AC losses (based on methodology agreed to by the Parties in the Operating Procedures) between the Metering Facilities and the Point of Delivery that are not already reflected in the metered data.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions.

“Commercial Operation Conditions” has the meaning set forth in Section 4.5(d).

“Commercial Operation Date” means the date in which the Commercial Operation Conditions have been met, and the Contract Storage Capacity of the Storage Facility is otherwise fully operational, reliable, and available to Buyer at the Point of Delivery.

“Confidential Information” has the meaning set forth in Section 15.2(c).

“Contract Price” means \$[Price] per kW of Contract Storage Capacity.

“Contract Storage Capacity” means [Project Size] MW_{AC}, as may be adjusted pursuant to Section 5.10(a)(v) or Section 4.4(c).

“Contract Year” means each 12-month period commencing on the Commercial Operation Date and after each anniversary thereafter through the Delivery Term.

“Control” means with respect to any Person, the possession, directly or indirectly, of the power either to (i) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise. Instances of “Controls”, “Controlling”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Costs” means, with respect to the Non-Defaulting Party, the commercially reasonable brokerage fees, commissions, and other similar transaction costs and expenses incurred by the

Non-Defaulting Party to a Person in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“Credit Rating” means with respect to a Person, on any date of determination, the respective rating then assigned to such Person's senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch, or Moody's or, in the absence of such a rating, the current corporate family rating or, if applicable, issuer rating then assigned to such Person by S&P or Moody's.

“Credit Support” means Cash or a Letter of Credit.

“Credit Support Amount” means (x) the Pre-COD Credit Support Amount, or (y) the Operating Period Credit Support Amount, whichever is then applicable.

“Default” means an event or condition that would, after giving effect to any applicable notice requirement or grace period, constitute an Event of Default.

“Defaulting Party” means the Party with respect to which an Event of Default has occurred and is continuing.

“Delay Damages” means, for any given day, the product of (a) the Guaranteed Contract Storage Capacity, expressed in kW, multiplied by (b) the quotient of (i) the Contract Price in the first Contract Year (in \$/MW/month) divided by (ii) 30.4.

“Delay Event” has the meaning set forth in Section 4.3.

“Delivery Term” has the meaning set forth in Section 2.1(a).

“Discharging Energy” means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured by the Metering Facilities, adjusted for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties in the Operating Procedures, between the Metering Facilities and the Point of Delivery that are not already reflected in the metered data.

“Disclosing Party” has the meaning set forth in Section 15.2(a).

“Dispute” has the meaning set forth in Section 15.4(a).

“Disputing Party” has the meaning set forth in Section 7.2(c).

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of the Storage Facility that performs tasks essential to the charge, discharge and storage of electricity.

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Emergency Condition” means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC and/or any other Governmental Authority, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“Energy” means all electrical energy discharged by the Storage Facility, stored by the Storage Facility, or flowing into the Storage Facility during charging, measured in kilowatt-hours or megawatt-hours. Energy shall include any energy-based products and services that may be developed by or evolve from the Storage Facility from time to time during the Delivery Term.

“Energy Imbalance Market” or “EIM” means the real-time energy imbalance market currently operated by the Market Operator, or any successor or replacement market.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative or regulatory program, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all Emissions Reduction Credits; and (c) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions. Environmental Attributes do not include any Energy; Ancillary Service Attributes; capacity; reliability or other power attributes from a renewable energy project or any production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation; filed rates; or feed-in tariffs for the storage of Energy.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this Agreement.

“EPC Contract” means the engineering, procurement, and construction agreement (whether styled as a balance of plant; balance of systems; engineering, procurement, and construction; or other agreement) entered into by Seller for the engineering, procurement, and construction of the Project.

“EPC Contractor” means the contractor retained by Seller under the EPC Contract.

“Equivalent Full Cycle” means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharging Energy (in MWh) equivalent to the Contract Storage Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total Discharging Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Contract Storage Capacity times four (4) hours (in MWh) equals one (1).

“ESS” means energy storage system.

“ESS Supplier” means the supplier retained by Seller or its applicable Affiliate to supply energy storage systems for the Storage Facility under the ESS Supply Agreement.

“ESS Supply Agreement” means the agreement entered into by Seller or its applicable Affiliate for the supply and, if applicable, installation of energy storage systems for the Project, as such agreement may be amended, restated, supplemented, or otherwise modified from time to time.

“Event of Default” has the meaning set forth in Section 11.1(b).

“FERC” means the Federal Energy Regulatory Commission.

“Financing Party” means any and all Persons (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project

“Fitch” means Fitch Ratings, Inc., or its successor.

“Force Majeure Event” has the meaning set forth in Section 10.1(b).

“GAAP” has the meaning set forth in Section 15.11.

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory or quasi regulatory autonomous entities (including FERC, NERC, US Department of Energy, and WECC) or taxing authorities or any department, municipality or other political subdivision thereof; provided however, that “Governmental Authority” shall not in any event include either Party.

“Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date, as such date may be extended pursuant to this Agreement.

“Guaranteed Availability” means the Actual Availability is no less than ninety-eight percent (98%).

“Guaranteed Availability Adjustment” has the meaning set forth in Section 5.10(b).

“Guaranteed Round-Trip Efficiency” means the values in Exhibit P in each Contract Year.

“Guaranteed Round-Trip Efficiency Adjustment” has the meaning set forth in Section 5.10(c).

“Guaranteed Contract Storage Capacity” means no less than [Size] MW_{AC} and shall be valid for the Delivery Term of the Agreement with no allowance for degradation.

“Guaranteed Contract Storage Capacity Adjustment” has the meaning set forth in Section 5.10(a)(ii).

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“Interconnection Agreement” means the agreement between Seller and the Transmission Provider to interconnect the Project with the Transmission System, including any local utility distribution system to which the Project is connected.

“Interconnection Facilities” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Interconnection Point” means [Location], as specified in the Interconnection Agreement.

“Interest Rate” means, for any day, the lesser of (x) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) and (y) the

maximum rate permitted by Applicable Law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

“kW” means a kilowatt of electric power.

“kWh” means a kilowatt-hour of Energy.

“Letter of Credit” means an irrevocable standby letter of credit issued by a Qualified Institution substantially in the form attached as Exhibit I or in such other form as may be required by the applicable Qualified Institution, with such modifications thereto as Buyer may in its reasonable discretion require.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of the Letter of Credit ceases to be a Qualified Institution; (ii) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of the Letter of Credit disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, the Letter of Credit; (iv) the Letter of Credit expires, terminates, or otherwise fails or ceases to be in full force and effect at any time while required to be maintained pursuant to the terms of this Agreement; (v) Seller fails to provide an extended or replacement Letter of Credit prior to thirty (30) days before the Letter of Credit expires or terminates; or (vi) the issuer of the Letter of Credit becomes Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“Licensed Professional Engineer” means a Person proposed by Seller and acceptable to Buyer in its reasonable judgment who (a) to the extent mandated by Law is licensed to practice engineering in the appropriate engineering discipline for the required certification being made, in the United States, and in all states for which the person is providing a certification, evaluation or opinion with respect to matters or Law specific to such state, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Seller or its members or Affiliates, other than with the prior written consent of Buyer, services previously or currently being rendered to Seller or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or seller of any equipment installed in the Facility.

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

“Loss Event” means (i) any property casualty, loss, or other similar event affecting the Project or (ii) any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Project, by any Governmental Authority or otherwise pursuant to Applicable Law.

“Loss Event Buy-Down Amount” has the meaning set forth in Section 9.1(b)(i).

“Losses” has the meaning set forth in Section 13.4(a)(i).

“Major Equipment Supply Agreement” means the supply agreement for the ESS and main power transformer.

“Market Event” has the meaning set forth in Section 5.4(b).

“Market Operator” means the California Independent System Operator or any other entity performing the market operator function for the Energy Imbalance Market or any organized day-ahead or intra-hour market for a region that includes the Transmission System.

“Maximum State of Charge” means, a State of Charge equal to 100%, at which point Buyer cannot schedule and deliver any further Charging Energy to the Storage Facility.

“Meter(s)” means the meters associated with the Project’s Metering Facilities.

“Metering Facilities” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharging Energy at the Interconnection Point and all associated ancillary equipment that are required to measure Charging Energy and Discharging Energy at the Interconnection Point.

“Milestone” means each of the events set forth in Exhibit B.

“Milestone Date” means the date by which a Milestone is expected to be achieved, as set forth in Exhibit B.

“Minimum State of Charge” means a State of Charge equal to 0%, at which point Buyer cannot schedule and receive any further Discharging Energy from the Storage Facility.

“Moody’s” means Moody’s Investors Service, Inc.

“Monthly Payment” has the meaning set forth in Section 7.1(a).

“MW” means 1,000 kW, or a megawatt of electric power.

“MWh” means 1,000 kWh, or a megawatt-hour of Energy.

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning set forth in Section 11.2(a).

“O&M Records” has the meaning set forth in Section 9.4(a)(i).

“Operating Period Credit Support Amount” has the meaning set forth in Section 8.1(a)(ii).

“Operating Procedures” means the operating procedures as described in Exhibit Q.

“Operating Restrictions” means the operating restrictions as described in Exhibit M.

“Outage” means an Unplanned Outage or Planned Outage.

“Outage Notice” has the meaning set forth in Section 5.5(c).

“OPUC” means Oregon Public Utility Commission.

“Party” and “Parties” have the meanings set forth in the preamble of this Agreement.

“Permits” means all permits, licenses, approvals, consents, orders, registrations, privileges, franchises, memberships, certificates, entitlements variances, waivers, certificates of occupancy and other authorizations issued by any Governmental Authorities, and any siting, zoning and land use approvals required under Applicable Laws in connection with the development, construction, operation, use and/or maintenance of the Project, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.

“Planned Outage” means a time during which the Storage Facility is shut down or its output reduced to undergo scheduled maintenance in accordance Section 5.5(a), or as otherwise agreed by Seller and Buyer.

“Point of Delivery” means the electric system point at [Location] at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharging Energy to Buyer, and (c) Seller makes the Ancillary Service Attributes available to Buyer.

“PPT” means Pacific Prevailing Time.

“Pre-COD Credit Support Amount” has the meaning set forth in Section 8.1(a)(i).

“Product(s)” means the Contract Storage Capacity, the Capacity Attributes, the Ancillary Service Attributes, and any future Environmental Attributes from time to time available from, or that may be generated by, the Storage Facility.

“Project” means [Project Description], and as described in Exhibit A.

“Promotional Materials” has the meaning set forth in Section 9.3(a).

“Prudent Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry and NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards and recommended by the Facility’s equipment sellers and manufacturers, operational limits and all applicable Laws. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualified Operator” means an entity that has at least two (2) years of experience in the operation and maintenance of similar facilities of comparable size and characteristics to the Storage Facility.

“Qualified Institution” means a major U.S. commercial bank organized under the laws of the United States (or any state or political subdivision thereof), or a U.S. branch office of a major foreign commercial bank, with such bank having shareholder equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A3 by Moody’s.

“Receiving Party” has the meaning set forth in Section 15.2(a).

“Receiving Party’s Representative” has the meaning set forth in Section 15.2(b).

“Recording” has the meaning set forth in Section 15.12.

“Reliability Coordinator” means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC.

“Round-Trip Efficiency” means the ratio, expressed as a percentage, of Discharging Energy output from the Storage Facility to Charging Energy input into the Storage Facility during a Storage Capacity Test.

“S&P” means S&P Global Ratings, a division of S&P Global Inc.

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means [Date].

“SEC” has the meaning set forth in Section 15.11.

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

“Seller Excused Hour” means an hour in which the Storage Facility is unavailable due to (a) Planned Outage (b) an external condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC or WECC, (c) a Force Majeure Event, (d) any failure by Buyer to perform a material obligation under the Agreement (other than due to a breach by Seller of its obligations under the Agreement), (e) inspection of operations, or other interference, imposed by a Governmental Authority, Reliability Coordinator, Buyer, Balancing Area Authority, or Transmission Provider (in each case, other than resulting from Seller’s acts or omissions).

“Seller Interconnection Facilities” means [description of facilities] and is conceptually depicted in the one-line diagram in Exhibit E to this Agreement.

“Set Point(s)” means the control signal updated every four (4) seconds sent to the Storage Facility by Buyer, the Transmission Provider or the Market Operator with respect to the Storage Facility operations using AGC.

“Settlement Interval” means any one hourly time interval beginning on any hour and ending on the next hour.

“Site” means the parcel or parcels of real property on which the Storage Facility will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Storage Facility. Such property for the Project is more specifically described in Exhibit C to this Agreement.

“SQMD” has the meaning set forth in Section 6.1(b)(iv).

“State of Charge” means a percentage value between and inclusive of 0% and 100% provided by the battery management system to the Buyer indicating the amount of stored energy in the ESS.

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

“Storage Capacity” means the rate of Energy in alternating current (electric power), expressed in kW or MW, that the Storage Facility is capable of producing at the Point of Delivery for four (4) consecutive hours.

“Storage Capacity Test” has the meaning set forth in Section 5.9(a)(i).

“Storage Facility” has the meaning set forth in the Recitals.

“System Control Center” means Buyer’s representative(s) responsible for dispatch of the Storage Facility, including but not limited to, the Transmission System Operators, the Balancing Authority Operators, and the Distribution System Operators.

“Storage Ramp Rate” means the rate (measured in MW/minute) at which the Storage Facility can change power output.

“Tax Equity Investor” means an investor in the Seller who through a transaction or series of transactions is seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without leverage)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass through lease).

“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added,

alternative, minimum, estimated or similar tax, levy or assessment and any related interest or penalty.

“Term” has the meaning set forth in Section 2.1(a).

“Termination Payment” has the meaning set forth in Section 11.2(c).

“Test Energy” means all Charging Energy and Discharging Energy required to perform the Storage Capacity Test.

“Test Period” means the time between the Storage Facility’s energization date as defined in the Interconnection Agreement and Commercial Operation Date where testing and commissioning occurs.

“Transmission Provider” means [Entity Name].

“Transmission Provider Interconnection Facilities” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Interconnection Point, including [description of facilities].

“Transmission System” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection Point.

“Unplanned Outage” means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharging Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

“WECC” shall mean Western Electricity Coordinating Council.

“WECC Pre-Scheduling Day” means the day prior to the delivery day or day(s) as defined by the most recent WECC Pre-Schedule calendar.

1.2 **Rules of Interpretation**

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. For purposes of this Agreement:

(a) A reference to an Exhibit, Schedule, Article, Section or other provision shall be, unless otherwise specified, to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.

(b) Any reference in this Agreement to another agreement or document shall be construed as a reference to that other agreement or document as the same may have been, or may from time to time be, varied, amended, supplemented, substituted, novated, assigned or otherwise transferred.

(c) Any reference in this Agreement to “this Agreement,” “herein,” “hereof” or “hereunder” shall be deemed to be a reference to this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to this Agreement as varied, amended, supplemented, substituted, novated, assigned or otherwise transferred from time to time.

(d) References to any Party shall, where applicable, include any successors, transferees and permitted assigns of the Party.

(e) References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

(f) Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders.

(g) If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

(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) References to any amount of money shall mean a reference to the amount in United States Dollars.

ARTICLE 2

TERM; CONDITIONS PRECEDENT AND SURVIVAL OF OBLIGATIONS

2.1 Term; Conditions Precedent

(a) Term. This Agreement is effective on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement or by written agreement of the Parties, will remain in effect through the [__th] anniversary of the Commercial Operation Date (as may be extended by mutual agreement of the Parties, the “**Term**”). The delivery term under this Agreement (the “**Delivery Term**”) includes the period from and including the Commercial Operation Date and continuing through the end of the Term. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

(b) Conditions Precedent. The obligations of the Parties under this Agreement are subject to satisfaction of the following conditions precedent, subject to and in accordance with this Section 2.1, by no later than [Date] :

(i) Buyer shall provide notice to Seller when all authorizations, approvals and consents, including Buyer's executive management and board of directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received; and

(ii) [List of Seller's conditions precedent]

(c) Conditions Precedent Satisfaction Certificate. As soon as reasonably practicable after satisfaction, or waiver by Buyer in the case of Section 2(b)(i) or Seller in the case of Section 2(b)(ii), of the conditions precedent, the applicable Party shall execute and deliver to the other Party a Conditions Precedent Satisfaction Certificate in the form of Exhibit N. For the avoidance of doubt, the conditions precedent is not considered satisfied until the execution and delivery of the Conditions Precedent Satisfaction Certificate.

2.2 Effect of Termination - Survival of Obligations

(a) Generally. Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.

(b) Survival of Obligations. In addition to any other provisions of this Agreement that, by their terms, survive the termination of this Agreement, the following rights, obligations, and provisions survive the termination of this Agreement:

(i) the provisions of this Section 2.2;

(ii) all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement;

(iii) the payment related provisions set forth in Section 7.2;

(iv) limitation of liability provisions set forth in Article 12, and the warranty limitations set forth in Section 13.3;

(v) the indemnifications specified in this Agreement; and

(vi) the provisions of Article 15.

ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale

(a) Generally. In accordance with the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and accept from Seller,

all of the Products associated with or otherwise available from the Project in accordance with the terms of this Agreement.

(b) Monthly Payment. Buyer shall pay Seller on a monthly basis in accordance with Article 7.

(c) No Other Payments. The Monthly Payment constitutes the full compensation due to Seller for the Products associated with the Project.

(d) Sales to Third Parties. One hundred percent (100%) of the Product from the Project shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect and no Buyer Event of Default exists. When an undisputed Buyer Event of Default has occurred and has not been satisfied by the applicable cure period, and is continuing, Seller may sell, divert, grant, transfer or assign Product to any Person and divert, redirect or make available the Project or any resource therefrom to any Person, and Seller shall receive and be entitled to all revenue therefrom. Buyer shall retain the right to Discharging Energy that is already within the Project at the time the Event of Default arises (if any). Seller shall retain the right to discharge energy that is already within the Project at the time the Event of Default is resolved (if any), for which Seller has paid for the Charging Energy.

3.2 Title and Risk of Loss

(a) Allocation of Costs and Risks. Other than as expressly provided for in this Agreement, Seller is responsible for all costs and charges imposed on or associated with the Products (excluding, for the avoidance of doubt, costs or charges associated with Charging Energy as established herein) up to the Point of Delivery, or its receipt, at the Point of Delivery.

(b) Title and Risk of Loss. Title to, and risk of loss for all Products delivered to Buyer transfers from Seller to Buyer upon Delivery at the Point of Delivery. Buyer shall have title to Charging Energy, Energy stored in the Storage Facility, and Discharging Energy. Risk of loss for Buyer's deliveries of Charging Energy for storage by Seller shall pass from Buyer to Seller at the Interconnection Point. Risk of loss for Seller's deliveries of Discharging Energy to Buyer shall pass from Seller to Buyer at the Point of Delivery.

(c) Exclusive Rights to all Products. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis, the Products associated with or otherwise available from the Project, in each case during the Delivery Term to any Person other than Buyer.

3.3 Environmental Attributes

(a) Future Environmental Attributes. The Parties acknowledge that Buyer shall be entitled to receive (without any increase in any amount due from Buyer hereunder) and Seller shall at the direction of Buyer obtain and transfer to Buyer any future Environmental Attributes generated by or with respect to the Project; *provided* that Buyer shall bear all documented and reasonable third party costs associated with the transfer, qualification, verification, registration, and ongoing compliance for such future Environmental Attributes. Upon Seller's receipt of notice from Buyer of Buyer's intent to claim such future

Environmental Attributes, Buyer and Seller shall determine the necessary actions and additional costs to be reimbursed by Buyer associated with such future Environmental Attributes. Seller shall have no obligation to alter the Project unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration required to be reimbursed as described above. If Buyer elects to receive future Environmental Attributes pursuant to this Section 3.3(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs in accordance with the above; provided, that Buyer and Seller each acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

(b) No Assignment. Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of, whether on a spot or forward basis or otherwise, any portion of any future Environmental Attributes associated with the Project during the Delivery Term to any Person other than Buyer.

3.4 Tax Credits

Except as expressly stated herein, all current or future tax credits, deductions, cash grants, or other benefits or financial incentives applicable to the Project are retained by Seller, the owners of the Site, or both, as applicable.

ARTICLE 4 CONSTRUCTION

4.1 Construction

(a) Generally. Seller shall design, develop, finance, construct, own, operate, and maintain the Project in accordance with this Agreement, the Interconnection Agreement, Applicable Law, Permits, and Prudent Utility Practices.

(b) Project Design and Location. Exhibit A includes (i) a detailed description of the Project, including but not limited to, Project layout drawings, including all major equipment and balance of plant equipment, and (ii) a map of the Site that depicts the Project location and the location of ancillary facilities, including the Interconnection Point, for which Seller will provide notice to Buyer of the final proposed location of the Storage Facility at the Site no later than thirty (30) days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. This Agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld. Seller may not modify the Project design as set forth in Exhibit A unless such modification could not reasonably be expected to (x) have a material and adverse effect on either Party's ability to perform its obligations under this Agreement; (y) materially move the Project's location or the

Interconnection Point; or (z) materially affect the Guaranteed Contract Storage Capacity, the Guaranteed Round-Trip Efficiency, or the Guaranteed Availability during each Contract Year. If a proposed modification could reasonably be expected to have a consequence specified in clause (x), (y) or (z) of this Section 4.1(b), then Seller shall not implement such modification without Buyer's prior written consent, which may be withheld by Buyer in its sole discretion. Seller shall deliver to Buyer an updated version of Exhibit A promptly following completion of any modification that changes the Project's design as set forth in Exhibit A.

(c) The Storage Facility shall at all times during the Delivery Term:

- (i) have the required panel space DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;
- (ii) be integrated with Buyer's AGC equipment and capable of AGC by Buyer;
- (iii) use communication circuits from the Project to the System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;
- (iv) deliver Discharging Energy in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;
- (v) be capable of receiving Charging Energy from Buyer and delivering Discharging Energy to Buyer, each at the frequency specified by Buyer;
- (vi) be capable of immediate disconnection remotely by the System Control Center (via AGC set point to zero);
- (vii) meet voltage and reactive/active power control performance requirements as specified in the Interconnection Agreement;
- (viii) meet the normal and abnormal performance category requirements as specified in the Interconnection Agreement; and
- (ix) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery.

(d) Project Documents. During the development of the Project, Seller shall provide Buyer with the documents listed below within a reasonable time (but no longer than ten (10) Business Days) after they become available, including any amendments thereto. The Parties shall include such documents as updates to Exhibit E. Seller shall notify Buyer within thirty (30) days after the occurrence of any material change in any of the documents listed, including any amendments thereto; provided, however, the documents and any subsequent changes to or replacement thereof shall be subject to and consistent with the Seller's obligations set forth in this Agreement.

Project. (i) A list of Permits required for the construction and operation of the

(ii) An electrical one-line diagram for the Project.

(iii) Interconnection Agreement

(iv) Site specific safety and response plan for site operations

(e) Permits. Seller shall, in its own name and at its own cost and expense obtain, maintain, comply with, renew and modify, as necessary, all Permits and other authorizations required by Applicable Law or by any Governmental Authority for Seller to satisfy its obligations under this Agreement.

(f) Financing. Seller shall obtain any and all financing or funding necessary to construct and operate the Project during the Term on a schedule consistent with the requirements of this Agreement.

(g) Interconnection. Seller shall, at its cost, obtain all necessary interconnection rights as set forth in this Agreement, all in compliance with the Permits, the Interconnection Agreement, any other agreements with any Transmission Provider, and Prudent Utility Practice. On and after the execution of the Interconnection Agreement, Seller shall provide copies to Buyer of any material amendments to the Interconnection Agreement.

(h) Compliance. Seller shall (a) design, construct, test, own, operate, repair and maintain the Project in compliance with all Permits and in accordance with the Project Documents and Prudent Utility Practice, including with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Project, and (b) ensure the continuous ability of the Project to satisfy the Seller's obligations to Buyer under this Agreement. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

(i) Disclosure. Seller shall provide Buyer with all information concerning permitting, engineering, construction, maintenance, and operations of the Project that Buyer may reasonably request unless Seller reasonably demonstrates to Buyer that Seller is prohibited from providing such information due to confidentiality, disclosure, or use restrictions binding on Seller.

(j) Oregon House Bill 2021 Compliant Labor. Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable. The labor group that is responsible for construction and maintenance of the Storage Facility must have policies in place that are designed to limit or prevent workplace harassment and discrimination. In addition, such labor group must have policies in place that are designed to promote workplace diversity, equity and inclusion of communities who have been traditionally underrepresented in the renewable energy sector including, but not limited to, women, veterans and black, indigenous and people of color, with an aspirational goal of having at least fifteen (15) percent of the total work hours performed by individuals from those communities.

(k) Buyer's Access and Inspection Rights. Buyer may have its representatives present at the Site to monitor the construction, commissioning, and testing of the Project and its systems. Seller shall provide Buyer with notice, pursuant to Section 4.5, of all commissioning and testing of the Project and its systems. Seller shall permit physical inspections of the Project upon the reasonable request of Buyer at any point during or after construction. Buyer shall ensure that all persons visiting the Project on behalf of Buyer comply with all the applicable safety and health rules and requirements of Seller that are provided to such persons. Buyer's inspection of the Project or technical reviews shall not to be construed as an endorsement of the Project design or as any warranty of safety, durability, or reliability.

4.2 Project Milestones

(a) Generally. Seller shall use commercially reasonable efforts to (i) cause each Milestone set forth in Exhibit B to be achieved by the corresponding Milestone Date, and (ii) cause the Commercial Operation Date to occur on or before the Scheduled Commercial Operation Date. Further, Seller shall, at its own cost and expense, negotiate, enter into, and perform its obligations under, the Interconnection Agreement.

(b) Milestones.

(i) When Seller achieves a Milestone, Seller shall provide to Buyer reasonably detailed documentation demonstrating completion of the Milestone. Seller shall provide such documentation to Buyer within thirty (30) days of such completion.

(ii) Seller shall notify Buyer promptly (and in any event within ten (10) Business Days) after Seller becomes aware of information that leads to a reasonable conclusion that a Milestone will not be met. Seller shall convene a meeting with Buyer to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information, if requested by Buyer or Seller.

(iii) If any Milestone is not completed on or before the deadline specified for that Milestone in Exhibit B, Seller shall (i) inform Buyer of a revised projected date for the achievement of the Milestone, (ii) inform Buyer of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide Buyer with a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone deadline and describing the remedial actions that Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Guaranteed Commercial Operation Date.

(iv) For the avoidance of doubt, the delay or failure to achieve any Milestone, other than Scheduled Commercial Operation Date and Guaranteed Commercial Operation Date, do not result in Delay Damages or Event of Default.

(v) Notification and support for any of the items (i) through (iii) above may be provided in the monthly progress reports.

(c) Monthly Progress Reports. Seller shall deliver to Buyer a monthly progress report by no later than the 10th Business Day of each month until Commercial

Operation is achieved, which reports will be in a form reasonably acceptable to Buyer and must include an updated schedule, a description of progress toward the achievement of each of the Milestones (or any missed Milestones, including the cause of the delay) and the anticipated Commercial Operation Date. Each report must (A) include such information as Buyer may reasonably request in advance, and must contain reasonable detail and supporting documentation, and (B) information related to:

- (i) a detailed description of corrective actions to address any missed Milestones and all subsequent Milestones prior to the Guaranteed Commercial Operation Date,
- (ii) status of permitting and other required approvals,
- (iii) financing for construction and operation of the Project,
- (iv) status of major supply equipment,
- (v) interconnection matters,
- (vi) labor and contracting matters, and
- (vii) environmental, health, safety, and security matters.

4.3 **Extension of Scheduled Commercial Operation Date.**

The Scheduled Commercial Operation Date and related damages provisions under Section 4.4 shall be extended on a day-for-day basis by a number of days, up to a maximum of one hundred twenty (120) days, or longer period agreed to by the Parties, equal to the duration of any Buyer Delay or Change in Law (each and together a “**Delay Event**”), in any case that delays commencement of operation of the Project. Seller shall give written notice to Buyer describing any such Delay Event within five (5) Business Days after the occurrence of the Delay Event. The number of days of such extension shall be calculated from the date on which the Delay Event begins. If a Delay Event will delay the Commercial Operation Date for more than one hundred fifty (150) days, then Buyer will have the right to terminate this Agreement without liability of either Party other than obligations already incurred. For clarity, the Scheduled Commercial Operation Date and related damages provisions under Section 4.4 shall also be extended on a day-for-day basis for Force Majeure Events in accordance with Article 10 of this Agreement.

4.4 **Delay Damages**

- (a) Failure to Timely Achieve Commercial Operation.
 - (i) If the Commercial Operation Date has not occurred by the Scheduled Commercial Operation Date, as such date may be extended pursuant to Section 4.3, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay Delay Damages to Buyer for each day after the Scheduled Commercial Operation Date until the earlier of (a) the Commercial Operation Date and (b) the Guaranteed Commercial Operation Date.

(ii) If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date, then Buyer will thereafter have the right, until the Commercial Operation Date has occurred, to terminate this Agreement pursuant to Section 11.2 by providing written notice of termination to Seller.

(b) Exclusive Remedies. Unless this Agreement is terminated by Buyer in accordance with Section 4.4(a)(ii), receipt of Delay Damages is Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

4.5 Procedures to Achieve Commercial Operation

(a) Commissioning Tests. Seller shall give Buyer at least thirty (30) days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("Commissioning Tests") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order for Buyer to arrange for its respective representatives to attend.

(b) Test Period. Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently deliver such Charging Energy to Buyer at the Point of Delivery as Discharging Energy during the Test Period. In accordance with Section 3.2(b), Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer, to the extent practicable, thirty (30) days prior to commencement of such Test Period.

(c) Notice of Commercial Operation. Not less than sixty (60) days prior to the date upon which Seller expects to achieve Commercial Operation, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than one hundred eighty (180) days prior to the Scheduled Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied. Seller shall not unreasonably withhold providing such notice once all requirement described in Section 4.5(d) have been met. Buyer shall, within five (5) Business Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Buyer shall specifically identify any defects or deficiencies, Seller shall either promptly correct any defects or deficiencies identified by Buyer and resubmit the notice, or initiate dispute resolution in accordance with Section 15.4 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation or fails to reject Seller's notice within five (5) Business Days of receipt, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Scheduled Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date;

provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Commercial Operation Date.

(d) Commercial Operation Conditions. Commercial Operation will occur once all of the following conditions (the “**Commercial Operation Conditions**”) are satisfied by Seller or waived by Buyer in its sole and absolute discretion:

(i) The Storage Facility has been fully installed, connected to and synchronized with the interconnected high voltage transmission facilities that are a part of the Transmission System to which the Project connects in accordance with the Interconnection Agreement, and is fully capable of charging, storing, and discharging Energy the Contract Storage Capacity, as confirmed by a Storage Capacity Test, in accordance with the requirements of all Applicable Law and this Agreement.

(ii) Buyer has received and reviewed a copy of the initial Storage Capacity Test confirming (1) the Contract Storage Capacity, and (2) the Storage Facility meets the Guaranteed Round-Trip Efficiency.

(iii) Seller has obtained all Permits necessary for Seller to perform its obligations under this Agreement in compliance with Applicable Law, this Agreement, and Prudent Utility Practices, and all such Permits are in final form and in full force and effect.

(iv) Seller has delivered to Buyer a certificate of a Licensed Professional Engineer acceptable to Buyer in its reasonable discretion certifying that, as of the Commercial Operation Date:

(A) the Project is complete in all material respects (other than punch list items that will not materially and adversely affect the safe operation, performance, or maintenance of the Project), and

(B) the Project has (i) all AGC equipment installed and operational in accordance with the requirements of this Agreement; and (ii) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement.

(v) Seller has delivered to Buyer notice consistent with Exhibit J in accordance with Section 4.4(c).

(vi) Seller has installed and commissioned the Metering Facilities and AGC system equipment, data circuits, and other communication systems necessary to allow for remote monitoring of the Project.

(vii) Seller has transferred Credit Support to Buyer having a value equal to the Operating Period Credit Support Amount.

ARTICLE 5
OPERATIONS; PERFORMANCE GUARANTEES

5.1 Station Service

(a) This Agreement does not provide for the supply of retail electric power to the Project, for any purpose (“**Station Service**”). For the avoidance of doubt, Station Service includes auxiliary loads during periods in which the Storage Facility is in an idle or standby mode but excludes auxiliary load self-supplied by the Storage Facility during charging and discharging that originated as Charging Energy. Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of Station Service consistent with requirements of the Interconnection Agreement.

(b) Seller’s arrangements for the supply of Station Service to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary Station Service for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this Agreement are not binding upon the Local Provider. For purposes of this Agreement, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(c) Notwithstanding any other provision in this Agreement, nothing in Seller’s arrangements for the supply of Station Service to the Project shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Buyer in Buyer’s capacity as the Local Provider.

(d) Station Service shall be real time measured by a dedicated Meter register within the Metering Facilities and shall not be delivered by Seller to Buyer under this Agreement.

(e) Notwithstanding the foregoing or anything to the contrary herein, Seller may power the Project’s HVAC and thermal management systems with auxiliary power subject to the terms and conditions of this Agreement.

5.2 Automatic Generation Control (AGC)

(a) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer’s Set Point(s) margin of error. Seller shall ensure that the Project’s AGC Remote/Local status is in “Remote” set-point control during normal operations.

(b) Beginning on the Commercial Operation Date and throughout the Delivery Term, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability subject to Section 5.9.

(c) For each day during the Delivery Term, (i) Buyer shall be responsible for, if it chooses, to register the Project in the Western Energy Imbalance Market (EIM) at its sole cost and expense and shall schedule and discharge the Project in accordance with the EIM's rules, procedures and regulations, including those contained in the EIM OATT, and any applicable Buyer business practices and (ii) Buyer shall communicate directly to the Project in real time to dispatch the charging and discharging of the ESS for the control modes identified in Exhibit L. This Section 5.2(c) will apply in the event the EIM is replaced, or any other market participation elected by Buyer in accordance with Section 5.4(b).

(d) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including NERC holidays) using Energy from any source; provided that Buyer shall pay for all such Energy.

5.3 Delivery Arrangements

(a) Seller shall take all actions required in accordance with the terms and conditions of this Agreement to accept the Charging Energy at and from the Point of Delivery, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the ESS. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this Agreement. Seller shall secure the interconnection service necessary (i) to deliver the Discharging Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(b) Seller shall be responsible for the costs of interconnection (excluding such costs for which Transmission Provider is responsible) and costs required to receive Charging Energy and deliver Discharging Energy at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this Agreement, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharging Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(c) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharging Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(d) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) receive Discharging Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery.

5.4 **Obligation to Schedule**

(a) Buyer shall arrange all scheduling services necessary to ensure compliance with NERC operating policies and criteria, Transmission Provider OATT requirements, including Western EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharging Energy and Charging Energy in accordance with NERC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharging Energy or Charging Energy during Unplanned Outages, Planned Outages, and Force Majeure Events.

(b) If at any point during the Delivery Term, an alternative market design is implemented in which the Buyer, at its sole discretion, elects to participate the Project in an energy market or no longer participate in an energy market (a “**Market Event**”) and such Market Event materially changes the interconnection and delivery requirements in this Agreement, the Parties shall cooperate in good faith to facilitate the delivery of Energy from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this Agreement to the extent possible; provided that if implementing a Market Event increases Seller’s costs above those costs reasonably anticipated as of the Effective Date Buyer shall compensate Seller for the increased costs in either a lump sum or an increase in the Contract Price.

(c) Seller shall communicate to Buyer’s Pre-schedule Desk the Project’s hourly availability for the Pre-Scheduling Day(s) by 06:00a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Term.

(d) Seller shall communicate to Buyer’s Real-time Desk any changes to the Project’s hourly availability, Unplanned Outages and any reduced Operating Restrictions as a result of an Unplanned Outage. Format and content of the daily report shall be subject to review and approval by Buyer.

(e) Unless otherwise specified by superseding policies or procedures of the System Control Center, Seller shall, by 06:00 a.m. PPT on each day, submit a good faith estimate of the hourly ESS availability for the next seven (7) days. If, at any time following submission of a good faith estimate, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

5.5 **Outages**

(a) **Planned Outages.** Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and

otherwise in accordance with this Agreement. At least sixty (60) days before the Commercial Operation Date, Seller will provide Buyer a notice of Planned Outages for the Project for the first Contract Year within the Term. Thereafter, no later than September 1 of each Contract Year, Seller shall provide Buyer with a non-binding notice of the annual Planned Outages for the following Contract Year and a notice of estimated long-term Planned Outages for the next four (4) Contract Years. Each notice of Planned Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each annual Planned Outage for the Contract Year will be subject to approval by Buyer, unless (i) maintenance is required to avoid an emergency or damage one or more of the Project, the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities; (ii) maintenance has been deferred at the request of the Buyer, the Transmission Provider, Reliability Coordinator, or a Governmental Authority; (iii) maintenance is required to maintain equipment warranties or as otherwise required by the equipment manufacturer; (iv) maintenance is required by Applicable Laws, Transmission Provider, Reliability Coordinator, or a Governmental Authority. Buyer may, within fifteen (15) days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any non-emergency maintenance that reduces the Project charging or discharging capability by more than ten percent (10%) during June 1st through September 30th unless (i) such outage is required to avoid significant and material damage to the Project, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through August, (iii) such outage is required in accordance with Prudent Utility Practices, or (iv) the Parties agree otherwise in writing. Each annual Planned Outage for a Contract Year shall not exceed two hundred forty (240) hours. Buyer may request Seller to defer or reschedule any Planned Outage up to forty-eight (48) hours before commencement of the outage unless the maintenance is addressed by clauses (i) through (iv) of this Section 5.5(a). Seller must give Buyer no less than sixty (60) days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for AUT Costs incurred by Buyer as a result of such change. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval.

(b) Seller shall use commercially reasonable efforts to minimize the impact of any Outage, including by scheduling or completing, as applicable, such Outage during hours other than during peak electric load hours for the Transmission System and by minimizing the portion of Contract Storage Capacity subject to an Outage at any time.

(c) Unplanned Outage. Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours, as applicable, or an Unplanned Outage. Buyer or Seller (as appropriate) shall promptly, or within five (5) minutes, provide the other Party notice ("**Outage Notice**") of the declaration of the existence of Seller Excused Hours or an Unplanned Outage. Seller shall provide such notice, compliant with the then-current Buyer Reliability Coordinator outage reporting timing requirements, via telephone to the Buyer's Balancing Authority Area Operator and Power Operations Real-Time Desk, such that the Buyer can comply with the Reliability Coordinator reporting requirements. Seller shall confirm in writing any notice of an Unplanned Outage as soon as practicable following such Outage Notice. An Outage Notice provided by either Party shall contain information regarding the nature of the event, the

beginning date and time of the event, the expected end date and time of such event, and the expected available Contract Storage Capacity, if any, that would be available at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event.

(d) Outage Report. Within five (5) Business Days after the end of the month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Planned Outages, Unplanned Outages, and deratings that occurred during the month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

5.6 Operating Procedures

Not later than one hundred and twenty (120) days before the Test Period, Seller shall provide Buyer a draft of all Operating Procedures. Not later than sixty (60) days before the Test Period, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system and shall be included as Exhibit Q to the Agreement. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharging Energy reports; unit operations log; Seller Unplanned Outage and Planned Outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the Agreement, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

5.7 Operating Restrictions

(a) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the Operating Restrictions ("Operating Restrictions") as detailed in Exhibit M, subject only to Emergency Conditions and Force Majeure Events; provided that, during the Term of this Agreement, Seller shall: (i) (subject to Buyer's dispatching of the ESS and the following clause (ii)) have the sole responsibility to, and shall

at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this Agreement; and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Restrictions, Seller agrees to operate the Project in such a manner that Discharging Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Service Attributes and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this Agreement. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(b) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet the requirements of the Interconnection Agreement and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) day written notice of planned testing and/or calibration.

5.8 **Buyer Dispatch Outside of Operating Restrictions**

If notwithstanding anything to the contrary in this Agreement, in the event that Buyer dispatches the ESS outside of the Operating Restrictions in response to an Emergency Condition and remedies for such dispatch are not otherwise defined within this Agreement, the Guaranteed Availability and Guaranteed Round-Trip Efficiency, may be adjusted to account for the effects, which may include degradation, of such dispatching. Any such adjustments shall be consistent with what would be required by a majority of the lithium-ion battery energy storage industry equipment suppliers for the dispatch and design outlined within this Agreement and shall consider operation of the Project to-date, including periods of time in which the Project was operated well within the Operating Restrictions. In the event the Parties cannot agree on appropriate and equitable adjustments, such matter shall be subject to the dispute resolution provisions set forth in Section 15.4. Except for Buyer's negligence or willful misconduct, the event of a Buyer dispatch of the ESS outside of the Operating Restrictions shall not be deemed a Buyer Event of Default.

5.9 **Storage Capacity Testing**

(a) Storage Capacity Testing and Setting of Contract Storage Capacity.

(i) Prior to the Commercial Operation Date, Seller shall schedule with at least ten (10) Business Days' notice to Buyer and complete a storage capacity test of the Storage Facility in accordance with the testing procedures, requirements and protocols set forth in Exhibit O (a "**Storage Capacity Test**"). Thereafter, once per Contract Year, Buyer shall schedule with at least sixty (60) days' notice to Seller and Seller shall complete a Storage Capacity Test in accordance with Exhibit O. Buyer may reasonably require up to three additional Storage Capacity Tests at any time during each Contract Year if operational data from the Storage Facility indicates a potential underperformance of any of the Performance Guarantees in Section 5.10. All tests must be performed in compliance with manufacturer's testing requirements.

(ii) The Parties shall coordinate all Storage Capacity Tests in good faith to minimize the burden to each of the Parties. Buyer may witness all Storage Capacity Tests of the Storage Facility. Buyer shall schedule any visit to the Project in advance with Seller, shall comply with Seller's reasonable written health, safety and security requirements provided to Buyer, and shall not interfere with Seller's construction, installation, start-up, testing, commissioning, operation or maintenance of the Project.

(iii) Buyer shall schedule, deliver, and receive Test Energy in accordance with the scheduling procedures outlined in Section 5.4 in order to complete any Storage Capacity Test. Buyer is responsible for all costs of Test Energy for the first Storage Capacity Test in each Contract Year and any Buyer-directed Storage Capacity Tests (described in Section 5.9(a)(iv)) prior to Commercial Operation or during any Contract Year. Seller is responsible for all costs of Test Energy for any Seller-directed Storage Capacity Test (described in Section 5.9(a)(iv)) and the first Storage Capacity Test prior to Commercial Operation. Test Energy shall be at wholesale electricity prices inclusive of capacity or reserves costs and any Seller incurred Test Energy costs shall be deducted from the Monthly Payment.

(iv) Following each Storage Capacity Test, Seller shall submit a test report to Buyer within ten (10) Business Days in accordance with Exhibit O, together with reasonable supporting data. Within twenty (20) Business Days after submission of a test report, Buyer shall have the right to require (Buyer-directed) and Seller shall have the right to schedule (Seller-directed) a retest of the Storage Capacity Test in accordance with Exhibit O.

(v) If the actual capacity determined pursuant to a Storage Capacity Test is less than the then-current Contract Storage Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Contract Storage Capacity effective from the date of the Storage Capacity Test for all purposes under this Agreement.

5.10 **Performance Guarantees**

(a) **Guaranteed Contract Storage Capacity**.

(i) During the Delivery Term, Seller shall maintain the Storage Facility with a Contract Storage Capacity of not less than the Guaranteed Contract Storage Capacity.

(ii) If the Contract Storage Capacity for the Storage Facility is determined during a Storage Capacity Test to be less than the Guaranteed Contract Storage Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by *multiplying* (i) the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (ii) the Contract Price (adjusted to \$/MW/month (*multiplied by* 1,000), *multiplied by* 125% by (iii) the difference between the Guaranteed Contract Storage Capacity and the Storage Capacity as determined during the most recent Storage Capacity Test (“**Guaranteed Contract Storage Capacity Adjustment**”) until such deficiency is cured.

(iii) Payment of Guaranteed Contract Storage Capacity Adjustment is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Contract Storage Capacity being less than the Guaranteed Contract Storage Capacity for any single Contract Year. This Section 5.10(a)(iii) doesn’t limit Buyer’s right to declare an event of default under Section 11.1(b)(vii).

(b) Availability. Seller shall ensure that the Storage Facility has an Actual Availability for each Contract Year during the Delivery Term of no less than the Guaranteed Availability. If the Storage Facility has Actual Availability in a Contract Year less than the Guaranteed Availability, then Seller shall pay Buyer liquidated damages in the amount equal to the product of (a) the positive difference between the Guaranteed Availability and the Actual Availability, multiplied by (b) the Contract Storage Capacity during the Contract Year, multiplied by (c) the Contract Price (adjusted to \$/MW/month), multiplied by (d) twelve (12) months (the “**Guaranteed Availability Adjustment**”). No later than the thirtieth (30th) day of such Contract Year (or thirty (30) days after the end of the last Contract Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of Actual Availability for the previous Contract Year and the Guaranteed Availability Adjustment, if any, due to Buyer (the “**Availability Report**”). Such Availability Report shall include the total amount of the Guaranteed Availability Adjustment. Amounts due and owing will be subject to Article 7.

(c) Round-Trip Efficiency. During the Delivery Term, Seller shall maintain the Storage Facility with an Actual Round-Trip Efficiency greater than the Guaranteed Round-Trip Efficiency values set forth in Exhibit P. Actual Round-Trip Efficiency does not include Station Service. If the Actual Round-Trip Efficiency is below the Guaranteed Round-Trip Efficiency, Seller will pay to Buyer an amount equal to (i) the Charging Energy for the months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed), multiplied by (ii) the percentage amount by which the Actual Round-Trip Efficiency is less than the Guaranteed Round-Trip Efficiency, multiplied by (iii) the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices, weighted by the count of hours in each index during which Charging Energy was supplied by Buyer to the Point of Delivery (the “**Guaranteed Round-Trip Efficiency Adjustment**”).

ARTICLE 6 METERING

6.1 Metering Requirements

(a) Seller shall install Metering Facilities and Back-Up Metering, each in an arrangement consistent with the configuration depicted in the one-line diagram in Exhibit E, or as otherwise agreed between the Parties and in compliance with the Interconnection Agreement.

(b) The following provisions of this Section shall govern Metering Facilities except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(i) All Metering Facilities used to measure the Charging Energy and Discharging Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this Agreement. The design of the Metering Facilities shall be subject to Buyer approval prior to commencement of construction of the Project. Buyer shall have the right, at its own expense, to inspect and test the Metering Facilities upon installation and at least annually thereafter and shall provide all test results to Seller upon request within a reasonable timeframe. Metering Facilities shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive Energy, if supplied by either the grid or ESS. Metering Facilities shall be programmed such that meter readings will reflect losses between the Meter and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Metering Facilities, including arranging with the Transmission Provider to provide Buyer reasonable access to all Metering Facilities. Seller, at its sole expense, shall also have the right to conduct its own tests of the Metering Facilities in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer, and shall provide all test results to Buyer upon request within a reasonable timeframe. Either Party shall have the reasonable opportunity to be present at any time when such Metering Facilities are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(ii) In addition to the Metering Facilities, either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up

Metering, provided, however, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(iii) If any Metering Facilities, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

(iv) SQMD Plan. Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with Buyer in Buyer's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") plan for the Storage Facility. The SQMD plan will detail the metering equipment and any calculation or data validation performed as a part of the data submission process to the Market Operator, consistent with the Market Operator's requirements in the then-current version of the "Business Practice Manual for Metering."

(v) Other Equipment and Remote Access by Buyer. Without limiting the foregoing obligation, Buyer has the right, at its cost and expense, to install any updates or upgrades to the Meters, as well as to install and maintain check meters and related measuring equipment necessary to permit an accurate determination of the quantities of Charging Energy or Discharging Energy delivered under this Agreement, in each case subject to the condition that such updates, upgrades, or other equipment will not interfere with Seller's Meters or the Project and are not prohibited by the Interconnection Agreement. Seller shall upon reasonable advance notice permit Buyer or Buyer's representatives access to the Project and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. Buyer shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

6.2 Meter Inaccuracies and Retroactive Adjustments

(a) If any inspections or tests of the Metering Facilities or Back-up Metering disclose an error exceeding one-half percent (0.5%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Metering Facilities rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the Metering Facilities or Back-up Metering were in service since last tested, but not exceeding six (6) months, in the amount the Metering Facilities shall have been shown to be in error by such test. Any correction in billings or

payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered.

(b) The amount of inaccuracy shall be determined in the following manner:

If the Metering Facilities are found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharging Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Metering Facilities registered accurately. The adjustment shall be made for the period as determined pursuant to Section 6.2(a).

ARTICLE 7 BILLING AND PAYMENT

7.1 Billing

(a) The total amount due from Buyer to Seller each month during the Delivery Period (the “Monthly Payment”) shall be calculated as follows:

- (i) the Contract Price multiplied by the Contract Storage Capacity, *less*
- (ii) the Guaranteed Availability Adjustment for such year, if any, *less*
- (iii) the Guaranteed Round-Trip Efficiency Adjustment for such year, if any, *less*
- (iv) the Guaranteed Contract Storage Capacity Adjustment, if any, *less*
- (v) Test Energy costs that Seller is responsible for pursuant to Section 5.9(a)(iii), if any.
- (vi) And subject to Section 5.10(b)(i)

(b) Seller shall read or have read on its behalf the Metering Facilities at the Point(s) of Delivery at 11:59 p.m. PPT on the last day of each month, unless otherwise mutually agreed by the Parties.

(c) On or before the tenth (10th) day following the end of each month included in the Delivery Term, Seller shall provide to Buyer an invoice. Each such invoice provided by Seller must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice, and if applicable, a statement of any transfers of future Environmental Attributes made during the ended month. Seller shall deliver each invoice in accordance with the notice requirements of Section 15.1.

(d) If banks in the State of Oregon are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

7.2 Payments

(a) Generally. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Subject to Section 7.2(c), Seller shall pay all amounts due to Buyer under this Agreement, including any liquidated damages, or otherwise in respect of any Seller indemnities, within ten (10) Business Days following receipt of Buyer's invoice for such amount. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments.

(b) Late Payments and Interest Rate. Except where payment is the subject of a bona fide dispute, any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) Disputes and Adjustments of Invoices. Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Metering Facilities and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 15.4. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be). All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Interest Rate from the day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

(d) Invoice Errors. If either Party becomes aware of any error in any invoice, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

7.3 Netting and Setoff

In addition to other legal remedies available to Buyer under Applicable Laws, Buyer reserves the right to net any amounts that would otherwise be due to Seller hereunder against any amount Seller owes to Buyer under this Agreement.

ARTICLE 8 CREDIT REQUIREMENTS

8.1 Seller Credit Support

(a) Credit Support Amount.

(i) Within ten (10) Business Days following execution of Conditions Precedent Satisfaction Certificate, Seller shall transfer Credit Support to Buyer having an aggregate value equal to (A) \$200 *multiplied by* (B) the Contract Storage Capacity, expressed in kW (the “**Pre-COD Credit Support Amount**”). The Pre-COD Credit Support Amount will apply with respect to Seller until the Commercial Operation Date.

(ii) By no later than the Commercial Operation Date, Seller shall transfer Credit Support to Buyer in substitution of the Credit Support delivered pursuant to Section 8.1(a)(i) having an aggregate value equal to (A) \$100 *multiplied by* (B) the Contract Storage Capacity, expressed in kW (the “**Operating Period Credit Support Amount**”).

(b) Maintenance of Seller Credit Support. Seller shall maintain Credit Support for the benefit of Buyer having an aggregate value at least equal to the Credit Support Amount then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller’s obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Buyer has not made a claim). If the resolution of any disputed amount may result in a payment due from Seller, Seller’s payment obligations under this Agreement will not be deemed to have been satisfied until such Dispute is resolved and the amount, if any, payable by Seller upon such resolution has been paid in full. If following the Commercial Operation Date any portion of the Credit Support provided by Seller is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement, then Seller shall within ten (10) Business Days following Buyer’s written demand replenish such Credit Support so that the amount of Credit Support outstanding in favor of Buyer is not less than the Operating Period Credit Support Amount; provided that Seller’s obligation to replenish Credit Support following the Commercial Operation Date is limited to an aggregate amount of replenishment equal to the Operating Period Credit Support Amount. For the avoidance of doubt, Seller has no obligation to replenish Credit Support prior to the Commercial Operation Date.

8.2 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.

(i) Seller pledges to Buyer, as security for its obligations under this Agreement, and grants to Buyer a first priority continuing security interest in, lien on and

right of set-off against all Credit Support in the form of Cash transferred to or received by Buyer under this Agreement. Upon the transfer by Buyer to Seller of Cash held by Buyer as Credit Support, the security interest and lien granted hereunder on that Cash will be released immediately, and to the extent possible, without any further action by either Party.

(ii) Buyer shall maintain all Credit Support in the form of Cash transferred to or received by Buyer with a Qualified Institution for the purpose of holding Credit Support provided to Buyer by Seller.

(iii) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by Buyer), Credit Support in the form of Cash will accrue interest on a daily basis at the Interest Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by Buyer with respect to a month in the invoice provided with respect to such month pursuant to Section 7.1. Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 8.2(a)(i).

(iv) For purposes of this Agreement, the value of Credit Support in the form of Cash is equal to the sum of the amount of such Cash plus any interest accrued with respect to such Cash held by Buyer as Credit Support.

(b) Credit Support in the form of a Letter of Credit.

(i) Each Letter of Credit must provide that Buyer may, and Buyer has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the certificates or other documentation required by the terms of the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by Seller (including any amounts due in connection with the termination of this Agreement) in the case of clause (A) below, or up to the entire amount available to be drawn thereunder in the case of clause (B) below:

(A) Either (x) an Event of Default has occurred and is continuing with respect to Seller or (y) this Agreement has terminated or an early termination date in respect of this Agreement has been designated in connection with the occurrence of an Event of Default with respect to Seller.

(B) A Letter of Credit Default has occurred with respect to the Letter of Credit or sixty (60) or fewer days remain until the expiration date of the Letter of Credit and Seller has failed to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), establish one or more additional Letters of Credit, or otherwise transfer sufficient Credit Support to Buyer as required by this Agreement.

(ii) With respect to each outstanding Letter of Credit, Seller shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least sixty (60) days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, Seller shall within

five (5) Business Days following receipt of Buyer's notice of the Letter of Credit Default, as applicable, transfer to Buyer substitute Credit Support. For purposes of this clause (ii), the aggregate value of substitute Credit Support that Seller is required to transfer to Buyer must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated excluding the value of (x) the expiring Letter of Credit, or (y) the Letter of Credit to which the Letter of Credit Default applies, as applicable, to be at least equal to the Credit Support Amount then applicable to Seller.

(iii) Upon the occurrence of a Letter of Credit Default of the type described in clauses (ii), (iii), or (vi) of the definition thereof, the issuer of the affected Letter of Credit will no longer be a Qualified Institution for purposes of the definition of the term "Letter of Credit" unless otherwise agreed by Buyer.

(iv) Proceeds received by Buyer from any draw on a Letter of Credit will, to the extent not applied to the outstanding obligations of Seller under this Agreement, constitute Credit Support in the form of Cash.

(v) For purposes of this Agreement the value of Credit Support in the form of Letter of Credit is equal to the amount available to be drawn by Buyer under such Letter of Credit.

(vi) All costs and expenses associated with establishing, maintaining, renewing, substituting, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of Seller.

(c) Reserved.

(d) Substitution and Return.

(i) Upon notice to Buyer specifying the items of Credit Support to be exchanged, Seller may on any Business Day transfer to Buyer substitute Credit Support, and so long as no Event of Default with respect to Seller has occurred and is continuing, Buyer shall return to Seller the items of Credit Support identified by Seller in its notice by not later than the fifth (5th) Business Day following the date on which Buyer receives the substitute Credit Support, except that Buyer will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.

(ii) Upon (A) the reduction of the Credit Support Amount applicable to Seller and (B) the later to occur of (x) the end of the Delivery Term and (y) the satisfaction in full of all of Seller's obligations under this Agreement (other than contingent obligations with respect to which Buyer has not made a claim), Buyer shall, within five (5) Business Days following receipt of Seller's demand, return to Seller in the case of clause (A) of this Section, the applicable portion of the Credit Support of the Seller then outstanding in favor of Buyer in the amount of the reduction, and in the case of clause (B) of this Section all Credit Support of Seller then outstanding in favor of Buyer. In connection with any such return, Buyer shall at Seller's expense take such actions as may be reasonably requested by Seller to evidence the release and termination of the applicable Credit Support.

(e) Grant of Security Interest/Remedies.

(i) To secure its obligations under this Agreement and to the extent Seller delivers Credit Support, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(ii) Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting the Seller, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Credit Support, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against any and all property of the Seller in the possession of Buyer or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Credit Support then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 9 ADDITIONAL OBLIGATIONS

9.1 Loss Events

(a) Generally. Seller will promptly provide written notice to Buyer of any Loss Event, specifying in reasonable detail its cause, any Contract Storage Capacity affected thereby, the steps Seller plans to take to repair and restore the Project and the time required to complete such repair and restoration. Seller will promptly provide Buyer with such additional information as Buyer may reasonably request in connection with such Loss Event and updates relating to any significant changes in the information previously delivered. Buyer will not be required to make any payment to Seller as a result of any Loss Event.

(b) Loss Event Affecting Contract Storage Capacity.

(i) If Seller is unable to restore any Contract Storage Capacity affected by a Loss Event, then Seller shall (A) continue to deliver the Products to Buyer to the extent possible from as much of the unaffected Contract Storage Capacity as is possible, and (ii) for any portion of the Project impacted by the Loss Event and from which Seller cannot deliver Products to Buyer, for the applicable Products that are not expected to be delivered as a result of the Loss Event from the date of the Loss Event through the end of the Delivery Term, Seller will buy-down the portion of Seller's obligation to provide Products that

Buyer cannot supply from the Project at a price equal to the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under a replacement agreement to obtain such undelivered Products, at a price determined based on then prevailing market prices for such Products, *minus* (y) the present value of the payments Buyer would be required to make under this Agreement for such undelivered Products, as determined by Buyer in a commercially reasonable manner (the “**Loss Event Buy-Down Amount**”);

(ii) Seller will have ninety (90) days following any Loss Event to elect to either restore the portion of Contract Storage Capacity affected by the Loss Event or determine that it is unable or unwilling to do so. If during such ninety (90) day period, Seller elects to restore the portion of Contract Storage Capacity affected by the Loss Event, then Seller will be afforded a period of one hundred (180) days following the occurrence of the Loss Event in which to complete such restoration before the Section 9.1(b)(i) buy-down is required. If prior to the end of such one hundred (180) day period, Seller delivers to Buyer a certificate of an independent engineer reasonably acceptable to Buyer certifying that any remaining restoration of the Project can be completed within an additional one hundred eighty (180) days, then the period for restoration shall be three hundred sixty (360) days before the Section 9.1(b)(i) buy-down will be required; and

(iii) Upon payment of any Loss Event Buy-Down Amount, or if the calculation of the Loss Event Buy-Down Amount does not result in an amount owing from Seller, Seller’s obligation to deliver applicable Products under this Agreement shall be reduced to the extent bought down by the Loss-Event Buy Down Amount and will enter into an amendment to this Agreement, revising the Product quantities deliverable under this Agreement pursuant to this Section.

9.2 **Insurance**

(a) Evidence of Insurance. Seller shall on or before each Contract Year, provide Buyer with one (1) copy of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Section 9.2 along with endorsements required below in Section 9.2(c), and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VIII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller’s liability under this Agreement shall not be limited to the amount of insurance coverage required herein.

(b) Term and Modification of Insurance.

(i) All liability insurance required under this Agreement shall cover occurrences during the Term of this Agreement on an “occurrence” basis. In the event that any insurance as required herein is commercially available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the Effective Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) calendar years after the Term.

(ii) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) days.

(c) Endorsements and Other Requirements.

(i) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(ii) Seller shall provide endorsements providing that the insurance required under this Agreement is primary and non-contributory with respect to other insurance carried by Buyer.

(iii) With the exception of Workers' Compensation and Employer's Liability, Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C), (D), and (E) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (E) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured. To the fullest extent permitted by law, Seller shall cause its insurer(s) to waive all rights to recover any payments made by Buyer to the liability insurance required pursuant to paragraphs (B), (C), and (E) of Exhibit G.

9.3 Marketing and Publicity

(a) Marketing. Upon receiving consent from the other Party, in each instance, each Party shall have the right to advertise, market, and promote to the general public the benefits of the Project or this Agreement, including, but not limited to, the right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from the Project or this Agreement (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(b) Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Project that mentions the Project or Buyer, Seller shall first provide a copy thereof to Buyer for its review and approval.

9.4 Records and Audit Rights.

(a) Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this Agreement as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Authority. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharging Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and O&M Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this Agreement. Seller shall provide Buyer copies of O&M Records upon Buyer's request.

(i) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, dispatch and scheduled Discharging Energy delivered, Charging Energy received, and Station Service consumption; changes in operating status; outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("O&M Records").

(ii) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 7 and grant the other Party reasonable access to those records.

(iii) Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

(b) Examination of Records. Buyer may review operating procedures, equipment manuals, O&M Records and data kept by Seller relating to this Agreement, at any

time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this Agreement, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this Agreement.

9.5 **Compliance with Reliability Standards.**

To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by NERC, FERC, or OPUC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

ARTICLE 10 FORCE MAJEURE EVENTS

10.1 **Force Majeure Events**

“Force Majeure” means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

- (a) arises after the Effective Date,
- (b) was not caused by and is unforeseeable and beyond the reasonable control of the Party claiming the Force Majeure Event,
- (c) is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event, and
- (d) either (i) as with respect to PGE as the impacted Party, has an impact which will actually, demonstrably and adversely affect PGE’s ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement or (ii) as with respect to Seller as the impacted Party, has an impact which will actually, demonstrably and adversely affect Seller’s ability to perform its obligations (other than payment obligations) in accordance with the terms of the Agreement.

10.2 **Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Facility caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes, and actions of a**

Governmental Authority (other than in respect of or in relation to or resulting from Seller's non-compliance with Laws). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work completed by a subcontractor of Seller on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Governmental Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Laws; (ix) any failure by Seller to obtain and maintain any Permit it is required to obtain or maintain hereunder; (x) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xi) loss of PGE's markets; (xii) PGE's inability economically to use or resell the Product purchased under this Agreement; (xiii) the loss or failure of Seller's fuel supply or equipment; (xiv) either Party's inability to pay when due any amounts owed under this Agreement; or (xv) Seller's ability to sell the Product at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of capacity from the Facility based on any of the following: (i) routine or scheduled maintenance of the Facility; (ii) any unscheduled outage undertaken to address normal wear and tear of the Facility during the Term; (iii) any outage caused by Seller's failure to design, construct, operate or maintain the Facility consistent with Prudent Electric Industry Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Facility's generation output but without causing a Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (ix) strikes or labor disturbances involving the employees of Seller or any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Facility. Claims; Resolution

(a) Claims of Force Majeure. In addition to the conditions set forth in Section 10.1(a) above and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

(i) provides prompt notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement and, if applicable, the construction and operation of the Project;

(ii) provides weekly updates during the continuance of the Force Majeure Event that (A) summarize the measures taken by the affected Party and that the affected Party plans to take in order to mitigate the impact of such Force Majeure Event and (B) provide an estimate of the expected duration of the period during which the performance by the affected Party of its material obligations under this Agreement will be prevented or the construction or operation of the Project, as applicable, will be adversely affected due to the Force Majeure Event;

(iii) exercises all commercially reasonable efforts to continue to perform its obligations under this Agreement and to mitigate or limit damages to the other Party; and

(iv) expeditiously, and at its sole cost and expense, takes all commercially reasonable actions necessary to correct or cure the Force Majeure Event or impact thereof so that any suspension of performance or adverse impact on the construction or operation of the Project, as applicable, is no greater in scope and no longer in duration than is necessary based on the Force Majeure Event.

(b) Resumption of Performance. The affected Party shall provide prompt notice to the other Party once it is able to resume performance of its obligations following the occurrence of a Force Majeure Event or the impact on the construction or operation of the Project resulting from such Force Majeure Event is resolved, as applicable.

10.3 Termination Due To Force Majeure Event

If a Party is prevented from performing its material obligations under this Agreement for a period of (a) one hundred eighty (180) consecutive days or more, or (b) two hundred forty (240) aggregate days or more during the Term, due to a Force Majeure Event, the unaffected Party may terminate this Agreement early by providing written notice of termination to the affected Party. Other than for obligations that arose prior to termination and any payment of the Loss Event Buy-Down Amount owing by Seller pursuant to Section 9.1, if applicable, neither Party will be liable to the other Party in connection with the termination of this Agreement pursuant to this Section 10.3. Notwithstanding the forgoing, this Section 10.3 does not apply in connection with a Force Majeure Event that results in the occurrence of a Loss Event, and the rights and obligations of the Parties with respect to the buy-down or, if applicable, termination of this Agreement in connection with such Loss Event will be as set forth in Section 9.1(b).

ARTICLE 11 EVENTS OF DEFAULT, TERMINATION

11.1 Events of Default

(a) Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party:

(i) The failure of such Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the failing Party's receipt of written notice of such failure.

(ii) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such failure, if capable of being remedied, is not remedied within thirty (30) days after such Party's receipt of written notice thereof.

(iii) The failure to perform any material covenant or obligation set forth in this Agreement for which an exclusive remedy is not provided in this Agreement and which is not addressed in any other Event of Default, if the failure is not cured within thirty (30) days after the Non-Defaulting Party gives the Defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the Defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the Defaulting Party provides the Non-Defaulting Party a remediation plan, the Non-Defaulting party approves such remediation plan, and the Defaulting Party promptly commences and diligently pursues the remediation plan.

(iv) Such Party becomes Bankrupt.

(v) Such Party fails to perform any of its obligations under Article 8, if the failure is not cured within ten (10) Business Days after the Non-Defaulting Party gives the Defaulting Party notice of the default.

(vi) Assignment of this Agreement, except as permitted in accordance with Section 15.3.

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an event of default with respect to such Seller (the events and conditions set forth in Section 11.1(a) and this Section 11.1(b), each an "**Event of Default**):

(i) The Project is Abandoned.

(ii) Seller's dissolution or liquidation.

(iii) Seller fails to maintain in effect (A) the Interconnection Agreement or (B) any other agreement or any Permit required to receive Charging Energy at the Interconnection Point and deliver Discharging Energy to the Point of Delivery in accordance with Applicable Law, and in either case such failure continues for fifteen (15) days after Seller's receipt of written notice or discovery of such failure.

(iv) Seller sells to a Person other than Buyer or diverts for the use of any Person other than Buyer, any of the Product during the Delivery Term (unless there is a then existing Buyer Event of Default).

(v) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Commercial Operation Date.

(vi) If, after the Commercial Operation Date, the Actual Availability for [____] or more months within a rolling [____] month period during the Delivery Term is less than [percentage].

(vii) If, after the Commercial Operation Date, the Storage Capacity, is less than the Guaranteed Contract Storage Capacity which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test.

(viii) If, after the Commercial Operation Date, the Actual Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [•] days after Seller's receipt of written notice or discovery of such failure.

11.2 **Termination for Default**

(a) **Termination for Default.** If an Event of Default occurs with respect to a Defaulting Party and is continuing, the other Party (the "**Non-Defaulting Party**") may, subject to Article 12, (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date not earlier than the effective date of such notice as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Termination Date.** Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, no earlier than the date such notice is given and no later than twenty (20) days after the notice thereof, upon which this Agreement shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this Agreement. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this Agreement or by mutual consent. Upon termination of this Agreement under this Section 11.2 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Article 12.

(c) **Termination Payment.** Upon termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate, in a commercially reasonable manner without the obligation of either Party to enter into any replacement transaction in order to determine any losses, the termination payment due to such Party (each a "**Termination Payment**") in accordance with this Section 11.2(c).

(i) If the termination of this Agreement due to a Seller Event of Default occurs before the Commercial Operation Date, then the Termination Payment shall be owed to Buyer and shall be equal to the amount of the Pre-COD Credit Support Amount,

less any Delay Damages paid, provided that receipt of the Termination Payment shall be Buyer's sole and exclusive remedy for such termination.

(ii) If the termination of this Agreement due to a Seller Event of Default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Buyer and shall be equal to (i) all amounts due and owing to Buyer as of the termination of this Agreement *plus* (ii) the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under transactions replacing this Agreement minus (y) the present value of the payments Buyer would be required to make for Product under this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a commercially reasonable manner *plus* (iii) Buyer's Costs *less* (iv) all amounts due to the Seller under this Agreement.

(iii) If termination of this Agreement due to a Buyer Event of Default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Seller and shall equal (i) all amounts due and owing to Seller as of the termination of this Agreement (ii) the positive amount, if any, equal to (x) the present value of the payments Seller would receive under this Agreement for Product *less* (y) the present value of the payments Seller would receive for Product under transactions replacing this Agreement, in each case for the period from the early termination date through the scheduled end of Delivery Term and determined by Seller in a commercially reasonable manner *plus* (iii) Seller's Costs *less* (iv) all amounts due to the Buyer under this Agreement as of the date of such termination.

(d) Notice of Termination Payment. As soon as practicable after a termination date is declared, the Non-Defaulting Party shall provide notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If Buyer is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the Transmission Provider, any other Governmental Authority, then Buyer may estimate the amount of those penalties and fines and include them in the Termination Payment amount. The Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within five (5) Business Days after the Notice is provided.

(e) Effect of Termination. Termination of this Agreement shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.

11.3 **Right of First Offer.**

(a) If Buyer terminates this Agreement due to a Seller Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Project to a party other than Buyer for a period of two (2) years if Seller Event of Default is prior to the Commercial Operation Date or six (6) months if Seller Event of Default is after the Commercial Operation Date following the termination date of this Agreement, unless before selling, marketing or delivering such Products, or entering

into an agreement to sell, market or deliver such Products, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Products on terms and conditions materially similar to the terms and conditions contained in this Agreement (excluding price, which may be adjusted to include updated costs, including, but not limited to, materials, labor and costs of capital).

(i) If Buyer fails to accept an offer made by Seller pursuant to Section 11.3(a) within forty-five (45) days of Buyer's receipt thereof, Seller and its Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Project to any third party and on any terms in its sole discretion. Buyer's acceptance of such an offer within forty-five (45) days of Buyer's receipt thereof may be conditioned on Buyer obtaining approval from Buyer's Board of Directors or the Oregon Public Utility Commission.

(ii) Neither Seller nor Seller's Affiliates may sell or transfer the Storage Facility, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 11.3 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 11.3.

(iii) Subject to Section 11.4 Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.3. This provision shall survive the termination of this Agreement.

11.4 **Duty to Mitigate.**

Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE 12 LIMITATIONS

12.1 **General Limitations**

(a) Essential Purposes. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES OF THIS AGREEMENT.

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

(c) Direct Damages. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL

BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

(d) No Consequential Damages. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

(e) Causes Disregarded. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS AGREEMENT 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.

(f) Liquidated Damages. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

12.2 Pre-COD Limitation.

PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR DAMAGES IS LIMITED TO THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER, EXCEPT THAT SUCH LIMITATION WILL NOT APPLY TO THE EXTENT THAT SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER OR BY THE INTENTIONAL BREACH BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

13.1 Seller Representations and Warranties

(a) General Representations. Seller represents and warrants to Buyer as of the Effective Date and throughout the Delivery Term that:

(i) Seller is a [entity type] duly organized, validly existing and in good standing under the laws of the State of [State]. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(ii) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:

(A) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(B) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(C) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(D) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Financing Party or as otherwise may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(iii) The obligations of Seller under this Agreement are valid and binding obligations of Seller.

(iv) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(v) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business during the Term, all Governmental Approvals necessary for Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

(vi) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(vii) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or

the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(viii) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(ix) To Seller's knowledge, Seller has and/or will have good and marketable title to future Environmental Attributes immediately prior to delivery to Buyer.

(x) Seller has not sold, delivered or transferred future Environmental Attributes to any other Person, in whole or in part.

(xi) All right, title and interest in and to future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(xii) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Seller's ability to perform its obligations under this Agreement.

(xiii) There are no proceedings under applicable bankruptcy or insolvency law contemplated by Seller or, to Seller's knowledge, threatened against it.

13.2 **Buyer Representations and Warranties**

(a) **General Representations.** Buyer represents and warrants to Seller as of the Effective Date and throughout the Delivery Term that:

(i) Buyer is duly organized and validly existing as a corporation under the laws of the State of Oregon, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement.

(ii) Buyer, subject to obtaining the approvals provided for in Section 2.1(b)(i), has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.

(iii) This Agreement has been duly and validly executed and delivered by Buyer, constitutes the legal, valid, and binding obligations of Buyer, and is enforceable against Buyer in accordance with its terms (except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity).

(iv) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Buyer's ability to perform its obligations under this Agreement.

(v) The execution, delivery and performance of this Agreement by Buyer does not conflict with: its governing documents; any Applicable Laws; or any material covenant, agreement, understanding, decree, or order to which Buyer is a party or by which it is bound or affected.

(vi) There are no proceedings under applicable bankruptcy or insolvency law contemplated by Buyer or, to Buyer's knowledge, threatened against it.

13.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY ARISING FROM ANY COURSE OF DEALING, PERFORMANCE, OR USAGE OF TRADE.

13.4 **Indemnification**

(a) **Indemnification.**

(i) Subject to the provisions of this Article 13, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 12.1(d) shall not apply with respect to claims made by third parties.

(ii) Subject to the provisions of this Article 13, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 12.1(d) shall not apply with respect to claims made by third parties.

(b) Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 13 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents' material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; provided that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) day period set forth in this Section 13.4(b), or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 13.4(b), the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; provided that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 9, as applicable, as to which it has assured the defense; provided, however, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

ARTICLE 14
GOVERNMENTAL CHARGES

14.1 **Cooperation.**

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

14.2 **Non-Sale Related Governmental Charges and Taxes.**

Seller shall pay or cause to be paid all charges or taxes imposed by any Governmental Authority (“**Governmental Charges**”) on or with respect to the Product arising prior to the Point of Delivery. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Point of Delivery (other than ad valorem, franchise or income Taxes that are related to the sale of the Product, which are the responsibility of Seller). In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may invoice Seller for the amount of any such Governmental Charges or, in its sole discretion, deduct the amount of any such Governmental Charges from the sums due to Seller under Article 7 of this Agreement. Nothing in this Agreement shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

14.3 **Sale-related Governmental Charges and Taxes.**

In addition to all other payments required under this Agreement, Seller shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Product to the Point of Delivery.

14.4 **Indemnification.**

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Product sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article.

ARTICLE 15
MISCELLANEOUS

15.1 **Notices**

(a) Notices in Writing. Notices required by this Agreement shall be addressed to the other Party at the addresses noted in Exhibit D. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party

to the other Party shall be in writing. Certain matters as identified in Exhibit D are required to be either hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party, in addition to email notification. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section.

(b) Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this Agreement. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

(c) Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this Agreement.

15.2 Confidentiality

(a) For purposes of this Section 15.2, "**Disclosing Party**" refers to the Party disclosing information to the other Party, and the term "**Receiving Party**" refers to the Party receiving information from the other Party.

(b) Other than in connection with this Agreement, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Financing Parties, potential Financing Parties, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this Agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care).

(c) As used in this Section 15.2, "**Confidential Information**" means all information that is furnished in connection with this Agreement to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this Agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by Buyer or on Buyer's behalf)), or which concerns this Agreement, the Disclosing Party or the Disclosing Party's affiliates or subsidiaries, or their respective

officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this Agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement:

(i) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or Receiving Party's Representatives;

(ii) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(iii) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(d) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this Agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this Agreement, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, excluding any archived documents, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this Agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this Agreement that relates solely to this Agreement shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this Agreement, provided that such information remains Confidential Information and shall be treated as such.

(e) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking

such protective order or similar procedure). Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

15.3 Assignment

(a) Consent Required. Except as permitted in this Section 15.3, neither Party shall sell, transfer, or assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Section 15.3. Any Seller Change of Control (whether voluntary or by operation of law) require prior written consent of Buyer, which consent shall not be unreasonably withheld, delayed or conditioned so long as Seller or any proposed assignee or transferee, as applicable, satisfies the conditions set forth in this Section 15.3.

(b) Permitted Assignment.

(c) Buyer may, without the consent of Seller, assign this Agreement to an Affiliate of Buyer, so long as such assignee has assumed in writing all of the obligations of Buyer under this Agreement and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment. Conditions on Transfers. If the rights and interests of a Party in this Agreement shall be sold, transferred or assigned in accordance with this Agreement, upon satisfaction of the conditions set forth in this Section 15.3, and upon the assignee's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this Agreement or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this Agreement with the assignee as if such Person had been named under this Agreement; provided, however, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

(d) Transfer Without Consent Is Null and Void. Any sale, transfer, or assignment of any interest in the Project or in this Agreement made without fulfilling the requirements of this Agreement shall be null and void and shall constitute an Event of Default pursuant to Article 11.

(e) Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer; provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of Oregon or licensed in accordance with Oregon law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, and satisfactory performance of the subcontractors or unsatisfactory performance.

(f) Assignment to Financing Party.

(i) Cooperation. In connection with any assignment of this Agreement by Seller to its Financing Parties, as soon as reasonably practicable after reasonable request from Seller or any Financing Party, Buyer will cooperate reasonably with Seller and Financing Party to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Financing Parties to cure any monetary Event of Default of Seller within ten (10) days of the expiration of the cure period provided therefor in Article 11, and cure any non-monetary Event of Default of Seller within thirty (30) days of the expiration of the cure period provided therefor in Article 11, prior to Buyer terminating this Agreement; (ii) Buyer providing written notice to Financing Parties of any Events of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this Agreement or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 15.3 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default. Seller shall reimburse Buyer for any reasonable third-party costs incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Project.

(ii) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this Agreement or the revenues or proceeds therefrom in connection with any financing, provided that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this Agreement; and further provided that Seller shall not be relieved of any of its obligations or liability under this Agreement and that the Financing Party in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Financing Party, collateral agent or trustee, as applicable, to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

15.4 Dispute Resolution Process

(a) Referral to Senior Management. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement ("**Dispute**"), either Party may notify the other of the existence of the Dispute. Upon receipt of a notice of Dispute, the Parties' representatives will first attempt to resolve the Dispute informally through

negotiation and consultation. If they are unable to do so within ten (10) Business Days after the date on the notice of Dispute was given, then within a further thirty (30) Business Day period following an additional written request by either Party, (i) each Party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt to resolve the Dispute quickly, informally and inexpensively.

(b) Legal Action. If the Parties are unable to resolve their differences pursuant to Section 15.4(a) within thirty (30) days after the date on which notice of the Dispute was originally given, then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in the United States District Court for the District of Oregon or, if such court is jurisdictionally unavailable, then in any of the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by Law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by Law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Exhibit A, or at such other address of which the Parties have been notified. The dispute resolution process contemplated by this Agreement shall not prevent a Party from seeking temporary or preliminary equitable relief to prevent irreparable damage to that Party or to preserve the status quo pending resolution of a Dispute, and this Section 15.4(b) shall apply with respect to any application for such relief.

(c) Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(d) Attorneys' Fees. If either Party institutes any legal suit, action or proceeding against the other party arising out of or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing party in the suit, action or proceeding will be entitled to receive, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, whether incurred before suit, during suit, or at the appellate level, including reasonable attorneys' fees and expenses, court costs and other legal expenses such as expert witness fees, and all fees, Taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings.

(e) Survival. The provisions set forth in this Section 15.4 shall survive the termination or expiration of this Agreement.

15.5 **Governing Law**

THE LAWS OF THE STATE OF OREGON (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE, AND ENFORCEMENT.

15.6 **Mobile-Sierra Doctrine**

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

15.7 **Governmental Approvals.**

Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and shall timely and properly pay its respective charges and fees in connection therewith.

15.8 **Compliance Information.**

Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

15.9 **Waiver of Rights**

Failure by a Party to exercise any of its rights or remedies under this Agreement does not constitute a waiver of such rights or remedies. Neither Party will be deemed to have waived any right or remedy to which it may be entitled, any provision of this Agreement, or any failure of default of the other Party unless it has made such waiver specifically in writing.

15.10 **No Third-Party Beneficiary**

This Agreement is for the sole and exclusive benefit of the Parties and is not intended to create a contractual relationship with, or cause of action or other rights in favor of, any Person other than the Parties.

15.11 Accounting Matters

(a) The Parties agree that Generally Accepted Accounting Principles in the United States of America (“**GAAP**”) and the rules of the United States Securities and Exchange Commission (“**SEC**”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this Agreement (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 840 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the Agreement, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(i) Within thirty (30) days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules, in each case, of Seller. If audited financial statements are deemed necessary by Buyer’s external auditors to complete an audit of Buyer’s consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) days before the end of the calendar year, and Seller agrees to provide annual audited financial statements within ninety (90) days of each calendar year end thereafter.

(ii) The financial statements to be delivered by Seller in accordance with Section 15.11(A) (“Seller’s Financial Statements”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 15.11(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(iii) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller’s records and personnel, so that Buyer and Buyer’s independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller’s normal operating expenses shall be borne by Buyer.

(iv) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(v) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 15.2 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 15.2; (iii) not disclose any of Seller's financial information provided under the terms of this Section 15.11 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 15.11 to that information that reflects Seller's operations of the Project; provided, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 15.11 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

15.12 **Telephone Recording.**

Each Party to this Agreement acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling, dispatch issues, real time operations and System Control Center, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

15.13 **Forward Contract**

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (Title 11, United States Code).

15.14 **Nature of Relationship**

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. This Agreement will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Neither Party has any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

15.15 **Severability**

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement will not be affected and will continue in full force and effect. The Parties shall, however, in good faith attempt to agree on the replacement of the void, illegal, or unenforceable provision with a legally acceptable clause that corresponds as closely as possible to the sense and purpose of the affected provision.

15.16 **Change in Law**

The Contract Price will not be affected by any change in any Applicable Law that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Project, or the value of the Product, including any Environmental Attributes, delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement.

15.17 **Counterparts**

This Agreement may be executed in one or more counterparts and by different Parties in separate counterparts, each of which will be deemed an original and all of which when taken together constitute a single agreement. The delivery of an executed counterpart to this Agreement by electronic means is effective for all purposes as the delivery of a manually-executed counterpart. This Agreement may be stored by the Parties electronically and the reproduction in tangible form of an electronically stored version of this Agreement will be deemed to be an "original" for all purposes.

15.18 **Section Headings**

The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.

15.19 **Exhibits**

Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. All other exhibits may only be changed by the mutual written consent of both Parties.

15.20 **Entire Agreement; Amendments**

The terms and provisions contained in this Agreement constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this Agreement, if required, this Agreement may be amended, changed, modified, or altered, provided that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and provided, further, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 15.19.

[signature page follows]

The Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

BUYER:

**PORTLAND GENERAL ELECTRIC
COMPANY**

By: _____

Name: _____

Title: _____

SELLER:

[SELLER]

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP

Project Name	
Seller	
Seller's Parent	
Ultimate Parent	
Location	
Coordinates	
Point of Interconnection	
Storage Capacity at Point of Delivery	
Energy at Point of Delivery	
Technology	
Battery Technology	
ESS Equipment Manufacturer	
ESS Equipment Model	
Inverter Model	
GSU Transformer Model	
Main Power Transformer Model	
Control House Manufacturer	

Site map as separate attachment following this page.

EXHIBIT B

MILESTONE SCHEDULE

Milestones	Date
LGIA Execution	
Seller Post Pre-COD Credit Support Amount	
Major Equipment Supply Agreements Executed	
Discretionary Permits	
Construction Permits	
Start of Project Construction	
First Major Equipment Delivered to Site	
All Major Equipment delivered to Site	
Interconnection In-Service Date	
Commissioning Start Date	
Seller Post Operating Period Credit Support Amount	
Scheduled Commercial Operation Date	
Guaranteed Commercial Operation Date	

EXHIBIT C

DESCRIPTION OF SITE

As a separate attachment following this page.

EXHIBIT D

NOTICES

Notices	[Seller]	Portland General Electric Company
All Notices:		Contract Administrator, 3WTCBR06 Delivery Address: 121 SW Salmon Street Portland, OR 97204 Phone: (503) 464-8931 Facsimile: (503) 464-2605 Email: pgecontracts@pgn.com
All Invoices:		Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: Energyinvoicing Facsimile: (503) 464-8933 Email: Energyinvoicing@pgn.com
Payments: <i>this Agreement is not to contain either party's banking information for security reasons</i>		Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: Energyinvoicing Facsimile: (503) 464-8933 Email: Energyinvoicing@pgn.com
Credit and Collections:		Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: Credit Manager Phone: (503) 464-7816 Facsimile: (503) 464-2605

Notices	[Seller]	Portland General Electric Company
Notices of an Event of Default or Potential Event of Default, Termination or potential Termination: <i>ALL OF WHICH MUST ALSO BE PROVIDED IN WRITING VIA CERTIFIED MAIL</i>	[Seller]	Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: General Counsel Phone: (503) 464-7822 Facsimile: (503) 464-2200

EXHIBIT E

PROJECT DOCUMENTS

1. **Permits**
 - i) [List]
2. **An electrical one-line diagram for the Project**
Attached as a separate document following this page.
3. **Interconnection Agreement**
Attached as a separate document following item 2.

Seller must update Buyer with the latest Project Documents throughout the Term of this Agreement as the documents are updated or new ones become required. Final actual permit requirements may vary from the above listings due to Code and Regulatory requirements as needed for project completion, as is customary for commercial scale energy storage facilities. This list is considered inclusive as of the Effective Date.

Electrical One-Line Diagram

EXHIBIT F

COMMISSIONING TESTS

[EXAMPLE ONLY – TO BE NEGOTIATED FOR PROJECT DETAILS]

Commissioning Tests

- A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
- B. SCADA Functionality Test (or equivalent)
- C. Owner Control and Data Link Functionality Tests
- D. Storage Capacity Test (See Exhibit O)

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System (“EMS”) shall be configured to follow a predefined, agreed-upon active power profile.

Procedure:

1. Record the ESS active power level at the Meter.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

A. SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 days prior to the Scheduled Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate

the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

B. Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 days prior to the Scheduled Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation. This test primarily confirms the transmission and receipt of control points between the System Control Center and the Power Plant Controller, and functionality, bandwidth, latency, and security protocols for the data pathways (primary and backup).

EXHIBIT G

INSURANCE COVERAGE

Seller shall obtain and maintain the following insurance coverages, at a minimum:

- A. **Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.
- B. **Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.
- C. **Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.
- D. **[Intentionally Omitted.]**
- E. **Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Ten Million dollars (\$10,000,000) written on a per occurrence basis during the period prior to commencement of construction of the Project and with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis beginning at the commencement of construction and through the Term.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C), (D) and (E) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

- F. **All Risk Equipment Insurance**. Seller shall provide and maintain All Risk insurance coverage all risk of physical loss of damage to Seller Equipment; providing that Seller has the right to self-insure this exposure through the Project Substantial Completion Date; and
- G. **Builders Risk Insurance**. Seller shall provide and maintain, at its sole cost and expense, from the date of mobilization at the Project Site or start of construction and until closing under the BTA, an All-Risk Installation or Builder's Risk

Insurance policy (the “Builder’s Risk Policy”). The Builder’s Risk Policy shall be in an amount equal to the probable maximum loss value of the Project. A copy of the Builder’s Risk Policy shall be furnished to Buyer for review within sixty (60) Days prior to Contractor’s mobilization at the Project Site, that may be insured pursuant to a Builder’s Risk Policy. The All Risk Equipment insurance and Builder’s Risk Policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines, and otherwise be reasonably acceptable to Buyer. Buyer and Seller agree to waive all rights of recovery against each other for damages covered by the All Risk Equipment insurance and/or Builder’s Risk Policy. Seller shall cause the underwriter of the Builder’s Risk Policy to waive all rights of subrogation against Buyer. Buyer shall be named as an additional insured under the Builder’s Risk Policy; provided, however, as of the BTA Closing, Buyer shall provide and maintain All Risk Property insurance as required in Section XXX.

EXHIBIT H

AVAILABILITY GUARANTEE

FOR ILLUSTRATIVE PURPOSES ONLY

Section 1. Calculation of Storage Availability

Capitalized terms below are incorporated for illustrative purposes only from Section 1.1 of the Agreement.

	A	B	C = B/A	D = A*C
	Storage Contract Capacity	Available Capacity	Availability Factor	Actual Availability per Settlement Interval
Hour 1	200	180	0.90	180
Hour 2	200	175	0.88	175
Hour 3	200	190	0.95	190
Hour 4	200	200	1.00	200
Hour 5	200	190	0.95	190
Hour 6	200	150	0.75	150
Hour 7	200	175	0.88	175
Hour 8	200	-	1.00	200 **Seller Excused Hour
Hour 9	200	190	0.95	190
Hour 10	200	200	1.00	200
.....Sum Hours 11-8760*	1,750,000	1,680,000	0.96	1,680,000
	Sum of A	1,752,000 E	Sum of D	1,681,850 F

*Calculation would be done for all hours individually, summing here for simplicity of example

Actual Availability per Contract Year = 96% F/E

Where:

“Actual Availability” means for any Contract Year, the sum of Actual Availability per Settlement Interval divided by the Contract Storage Capacity, as may be adjusted pursuant to this agreement, multiplied by 8,760.

“Actual Availability per Settlement Interval” means for any Settlement Interval, the product of (i) the Contract Storage Capacity *multiplied by* (ii) the Availability Factor.

“Availability Factor” means, for any Settlement Interval, the ratio, equal to (i) the average available capacity during such Settlement Interval (not to exceed the Contract Storage Capacity) *divided by* (ii) the Contract Storage Capacity; *provided* that, if the Storage Facility is incapable of providing the Contract Storage Capacity during such Settlement Interval due to Seller Excused Hour, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.

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

“Seller Excused Hour” means an hour in which the Storage Facility is unavailable due to (a) Planned Outage (b) an external condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the

Reliability Coordinator and/or NERC/WECC, (c) a Force Majeure Event, (d) any failure by Buyer to perform a material obligation under the Agreement (other than due to a breach by Seller of its obligations under the Agreement), (e) inspection of operations, or other interference, imposed by a Governmental Authority, Reliability Coordinator, Buyer, Balancing Area Authority, or Transmission Provider (in each case, other than resulting from Seller’s acts or omissions).

“Settlement Interval” means any one hourly time interval beginning on any hour and ending on the next hour.

Section 2: Calculation of Guaranteed Annual Availability Adjustment

The product of:

- (a) the positive difference between the Guaranteed Annual Availability and the Actual Availability per Contract Year, *multiplied by*
- (b) the Storage Capacity during the Contract Year, *multiplied by*
- (c) the Contract Price (adjusted to \$/MW), *multiplied by*
- (d) twelve (12) months (or a prorated amount for the first Contract Year based on the Commercial Operation Date)

Guaranteed Annual Availability	98%	A
Actual Availability per Contract Year	96%	B
Availability and the Actual Availability per Contract Year	2%	C = A-B

The product of:

Availability and the Actual Availability per Contract Year	2%	C
Storage Capacity during the Commercial Operation Year	200	MW
Contract Price (adjusted to \$/MW)	\$ 15,350	
Twelve (12) months	12	
Total Guaranteed Annual Availability Adjustment	\$ 738,272	

EXHIBIT J

FORM OF COMMERCIAL OPERATION CERTIFICATION

This certification (“Certification”) of Commercial Operation is delivered by [Seller] (“Seller”) to Portland General Electric Company (“Buyer”) in accordance with the terms of that certain Storage Capacity Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) An energy storage system with a designed power output capability of [] ([]) MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharging Energy on a sustained basis (in accordance with the ESS manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharging Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) The Project has been completed in all material respects (except for Delayed Storage Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

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

[Seller]

Signature: _____
Name: _____
Title: _____

EXHIBIT K

OPERATING PARAMETERS

[EXAMPLE ONLY – PROJECT DEPENDENT]

The following Storage Facility operating parameters are provided for *informational purposes only* and are not considered restrictions of the ESS. There are three (3) tables containing lists of parameters Seller must provide and update throughout the Term of this Agreement: (a) Specifications; (b) Day Ahead PCI Table Inputs; and (c) Real Time SCADA Points.

Part 1: Specifications

Operating Parameter	Values	Notes
Charging Source		This is for main power. Station Service to feed auxiliary loads to come from the same source. However, Station Service will be accounted for in a separate meter register within the Metering Facilities.
Minimum CP-rate for Charging the Storage Facility Maximum CP-rate for Charging the Storage Facility		Maximum rate in MW at which energy can be charged. Measured at the Storage Facility Metering Point Provide Constant Power charge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in <u>Exhibit A</u>)
Minimum CP-rate for Discharging the Storage Facility Maximum CP-rate for Discharging the Storage Facility		Maximum rate in MW at which energy can be discharged. Measured at the Storage Facility Metering Point. Provide Constant Power discharge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in <u>Exhibit A</u>)
Storage Ramp Rate		Maximum ramp rate setpoint
Rated Apparent Power		The real or reactive power (leading/lagging) that the Storage Facility can provide at the Point of Delivery continuously without exceeding the operating limits of the Storage Facility
Rated Discharging Energy		Total Discharging Energy the fully-charged Storage Facility can deliver to the Point of Delivery at the rated

		continuous discharge power without recharging
Rest Period		Between full discharge and charge Between charge and full discharge
Operational SoC Limits		
Operating Mode		List operating modes Storage Facility is designed and capable of and any limitations, for example Standby Mode
Additional operating limitations e.g. thermal or seasonal limits		Min/Max ambient temperatures for example

Part 2: Day Ahead Inputs

Day Ahead Inputs	Values	Notes
Min. Charge (MWh)		The minimum physical storage limit (non-negative) of energy the Storage Facility can hold
Max SoC Max. Charge (MWh)		The maximum physical storage limit (non-negative) of energy the Storage Facility can hold
Round-Trip Efficiency (%)		The measure of in/out loses of the Storage Facility during a charge/discharge cycle as measured at the Metering Facilities

Part 3: Real Time SCADA POINTS

[TO BE DETERMINED]

EXHIBIT L

CONTROL MODES

Control Modes

The following sections describe the control/operational modes and sources of commands for the Project. Seller shall work with the Buyer to ensure that the appropriate command and source hierarchy are enforced by the power plant controller or EMS, and these modes may be modified with the consent of Buyer and Seller and adjusted to conform to the ESS manufacturer's protocols and to the Operating Parameters.

Offline Mode

The power plant controller should open the inverter AC output breaker/contactors, storage media breaker/contactors, and de-energize non-critical power supplies. It should physically isolate the inverter output from the grid, not just provide a zero output, to prevent interaction with the grid (nominal auxiliary load contactors may continue to serve these loads). This mode includes both normal shutdown and system trips requiring reset. The control system shall initiate the offline mode under the following conditions and remain in the offline state until a reset signal, either local or remote, is initiated:

- Emergency trip operation
- AC circuit breaker trips that isolate the Project from the grid
- Smoke/fire alarm and thermal runaway mitigation operation
- Control logic trouble alarm

Standby Mode

The power plant controller should close the inverter AC output contactor after synching, but neither charge nor discharge, and only draw necessary auxiliary load. When the power plant controller is in Frequency Response or Contingency Reserve modes, it may spend long amounts of time in standby mode. The Project is expected to maintain a state of charge as provided from the System Control Center and be prepared to respond to a signal for discharge within the specified time. The power plant controller will maintain a requested SOC within +/-1% if such stand-by time is less than six (6) hours.

Contingency Reserve (Spinning and Non-Spinning) Mode

The power plant controller must respond from an idle state to a request for contingency reserve within twenty seconds of receiving the command. From that time, the battery output must ramp up at a rate specified by the System Control Center to achieve the MW output specified by the System Control Center. The MW output shall be maintained until a ramp-down and stop command is issued. If the ESS would be depleted of charge prior to receiving the ramp-down and stop

command, the system will go into standby mode. It will not recharge until the request for non-spinning reserve is de-asserted.

When ramp-down and stop is received, within two seconds the Project will ramp down at the rate specified by the System Control Center until the MW output is less than or equal to 10% of its then available Contract Storage Capacity at which point it will cease to discharge and go to Standby Mode. At such point, the Storage Facility will be capable of recharging at any power setpoint given by the System Control Center until a user defined SOC setpoint is achieved. The control for this service will reside in the System Control Center.

Frequency Response Mode

The Storage Facility shall charge or discharge in response to an analog signal received from the System Control Center and the power plant controller will return a projected State of Charge value from a forecasted set of charge or discharge signals. The Storage Facility must respond from a Standby Mode to a request for frequency response within twenty seconds of receiving the command. From that time, the Storage Facility output must ramp up at a rate specified by the System Control Center to achieve the MW output specified by the System Control Center and the MW output shall be maintained until a ramp-down and stop command is issued. If the Storage Facility would be depleted of charge prior to receiving the ramp-down and stop command, the system will go into Standby Mode. It will not recharge until the request for non-spinning reserve is de-asserted. When ramp-down and stop is received, within two seconds the Storage Facility will ramp down at a rate specified by the System Control Center until the MW output is less than or equal to 10% of its then available Contract Storage Capacity at which point it will cease to discharge and go to standby mode. At such point, the Storage Facility will be capable of recharging at any power setpoint given by the System Control Center until the State of Charge setpoint is achieved. The control for this service will reside in the System Control Center. The power plant controller must respond to a setpoint for MW and requested ramp rate.

Active Power Regulation Mode

The Storage Facility shall charge or discharge in response to an analog signal, received from the System Control Center to mitigate load swings on the connected utility grid. When load is quickly increased or decreased, the Storage Facility should work in the opposite direction to counteract the rate of change in order to smooth the net output. The Storage Facility must be capable of performing regulation according to Area Control Error (ACE) signals. The control for this service will originate from the System Control Center. The Storage Facility must be able to respond to these MW signals within four seconds or less. Response is defined as the time from the power plant controller receiving a MW setpoint until that steady-state MW output is achieved. The Storage Facility shall be capable of both positive (supplying) and negative (absorbing) MW setpoints, which may be of any magnitude up to 100% of the Storage Facility's then available Contract Storage Capacity. Over time, these MW setpoints are intended to be energy neutral (no net gain or loss in energy). Under active power regulation, the allowable SOC range shall be kept between a target range as specified by the System Control Center. In the event the State of Charge is at a level where the requested setpoint (either positive or negative MWs) cannot be met, the Storage Facility shall respond only to MW setpoints for the polarity it can achieve. The Storage

Facility will resume responding to MW setpoints of both polarities once the State of Charge has returned to the target range.

Reactive Power Regulation Mode

The Storage Facility will respond to kVAR setpoint requests from the System Control Center within four seconds. Setpoints may be constant or variable kVAR outputs in order to maintain voltage using closed-loop proportional integral control. The Storage Facility must be able to regulate kVAR to within +/- 3% from 1000 kVAR up to its then available maximum reactive power rating. The kVAR controller will reside within the System Control Center. Setpoints for kVAR output will originate from the System Control Center. Depending on the service(s) being requested at any given time, the Storage Facility may be asked to provide reactive power regulation while simultaneously being in Standby Mode for another mode such as Frequency Response or Spinning Reserve. Reactive power regulation should be operable simultaneously with other services, provided that the MVA rating of the system is not exceeded. The only limitation for providing this service must be the overall MVA rating of the Storage Facility.

Voltage Regulation Mode

The Storage Facility shall provide capacitive or inductive VARs at varying levels according to an analog or digital control signal, received from the System Control Center to maintain a defined voltage level. Voltage deviation should be controlled within +/- 3% of the received setpoint value. The Storage Facility shall also provide for closed loop proportional integral voltage control. Under this service, the power plant controller will act as the closed loop controller. The power plant controller will receive kVAR setpoints from the System Control Center.

Automatic Generation Control Mode

The Storage Facility shall be capable of Automatic Generation Control (AGC) similar to that of rotating machinery. The Storage Facility output will be controlled by a digital signal from the System Control Center. The Storage Facility voltage and frequency controls shall regulate the output based on appropriate Buyer selectable droop settings. Operation in AGC mode shall be limited by the Seller specified discharge limit for the storage media. Following operation in AGC mode, the Storage Facility shall ramp-down linearly to zero output at a Buyer selectable rate. The Storage Facility shall also be tasked with charging and discharging according to requests from the System Control Center. These commands (setpoints) will come to the power plant controller from the System Control Center. The charge or discharge setpoints should be assumed to be constant at up to the full then available Contract Storage Capacity with expected depths of charge/discharge to 100%. Charging and discharging ramp rates shall be Buyer configurable.

Target SOC Mode

The Storage Facility should charge according to its optimum method considering available power limits to reach a defined State of Charge. If the State of Charge falls below the target State of Charge, the system shall charge to reach the desired set point. The Seller shall design the charging system to ramp up from zero to the maximum demand at a Buyer selectable ramp rate to avoid shocking the system and to allow generation to easily follow load. The Seller shall provide a curve showing how demand from the Buyer system varies with time throughout the charging cycle. The

Storage Facility control system shall allow the Buyer dispatcher to remotely initiate this mode. The maximum demand required by the charging cycle shall be Buyer selectable but shall not exceed the Seller specified charge rate. The Seller shall provide data showing how the recharge period varies as maximum demand decreases. The Seller shall also specify restrictions, if any, on operation of the Storage Facility during any portion of the charge cycle. The Seller shall provide a curve or table and data showing the SOC as a function of time.

Manual/HMI

The Storage Facility shall be capable of being operated manually from an operator HMI. All ESS functionalities shall be available via this HMI including all control modes, Operating Restrictions or setpoints and monitored information/status. This operator HMI shall be capable of disabling other control modes from operating and signals being received from the Buyer's other integrated systems such as Area Control Error (ACE), Energy Management System (EMS) and Automatic Generator Control (AGC) sources.

Integration to Other Buyer Control Systems

The Storage Facility shall be capable of being integrated with other Buyer control systems.

EXHIBIT M

Operating Restrictions

Subject to the terms of this Agreement, the Storage Facility shall be operated in accordance with the following operating restrictions:

Parameter	Value
Maximum Annual Discharging Energy per Contract Year	
Annual Full Cycle Limits per Commercial Operation Year	
Daily Dispatch Limit – Full Charge	
Daily Dispatch Limit – Full Discharge Charge	
Maximum State of Charge	
Minimum State of Charge	
Maximum Annual Average State of Charge	
Maximum Storage Ramp Rate	

EXHIBIT N

FORM OF CONDITION PRECEDENT SATISFACTION CERTIFICATE

Reference is made to the Storage Capacity Agreement (the “**Agreement**”), dated as of [____], by and between Portland General Electric Company (“**Buyer**”) and [Seller] (“**Seller**”), as amended from time to time.

The [Party Name] hereby certifies and agrees that each condition precedent set forth in Section 2.1 of the Agreement has been satisfied or is waived by [Party Name].

[Party Name]

By _____

Name _____

Title _____

EXHIBIT O

STORAGE CAPACITY TEST

[EXAMPLE ONLY]

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the Agreement) throughout the term of the Agreement. The protocols and procedures may be amended by Seller with Buyer's consent not to be unreasonably withheld in accordance with the requirements of this Agreement, appropriate power test code standards for energy storage facilities, and the ESS manufacturer's specifications.

A. Storage Capacity Test

A.1 General

The Storage Capacity Test (“**Storage Capacity Test**” or “**SCT**”) is a test performed to determine the then-current Storage Capacity and Round-Trip Efficiency (RTE). Each Storage Capacity Test (including the initial Storage Capacity Test performed prior to Commercial Operation and each subsequent Storage Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit O. Buyer or its representative may be present for any SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

A.1.2 Requirements Applicable to all Storage Capacity Tests

A. Purpose of Test. Each SCT shall:

- (1) verify compliance with the Guaranteed Contract Storage Capacity or otherwise determine any lower Contract Storage Capacity for the purposes of this Agreement;
- (2) determine the Actual Round-Trip Efficiency (RTE) of the ESS;

B. Parameters. During each SCT, the following parameters shall be continuously measured, recorded, and timestamped simultaneously for the ESS:

- (1) discharge time (minutes);
- (2) Charging Energy measured at the Meter prior to any compensation, in MWh (“ESS Meter Energy In”);
- (3) Discharging Energy measured at the Meter prior to any compensation, in MWh (“ESS Meter Energy Out”);
- (4) Discharging Energy measured at the Meter including the accounting of losses from the Meter to the Point of Delivery, in MWh (“Point of Delivery Energy Out”);

- (5) Charging Energy measured at the Meter accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh (“Point of Delivery Energy In”);
 - (6) State of Charge (%) from the ESS DCS;
 - (7) Charge and discharge setpoint in MW from the ESS DCS;
 - (8) Site ambient air temperature (°C)
- C. Site Conditions. During each SCT, the ambient air temperature (°C) at the site shall be measured and recorded at thirty (30) minute intervals.
- D. Test Elements and Sequence. Each SCT shall include the following tests elements, in this order:
- (1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Contract Storage Capacity or then available Storage Capacity;
 - (2) the determination of the discharging Storage Ramp Rate in MW/min as the maximum discharge setpoint achieved divided by the time elapsed to get to that setpoint from 0 MW;
 - (3) the determination of Point of Delivery Energy Out, as measured by the Meter, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the SCT. The Point of Delivery Energy Out divided by four (4) hours shall determine the Storage Capacity. The Meter shall be programmed to correct for losses between the Meter and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
 - (4) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed Contract Storage Capacity;
 - (5) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Storage Capacity;
 - (6) the determination of the charging Storage Ramp Rate in MW/min as the maximum charge setpoint achieved divided by the time elapsed to get to that setpoint from 0 MW;
 - (7) the determination of Point of Delivery Energy In, as measured by the Meter, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the Storage Capacity Test.

E. Test Conditions.

- (1) General. At all times during an SCT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 50% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the SCT, charged to a 100% State of Charge using Charging Energy on the day of the SCT and maintained at a 100% State of Charge for at least five (5) minutes prior to commencement of the SCT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the SCT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Section A.1.2.F of these Storage Capacity Test Procedures.
- (3) Weather Conditions. Ambient outside dry bulb air temperature not greater than 25°C. Seasonal weather patterns may prevent the occurrence of an SCT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled SCT to determine whether the scheduled SCT is feasible.
- (4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the Agreement.

F. Incomplete Test. If any SCT is not completed in accordance herewith (including as a result of any conditions specified in Section A.1.2.E(2) of this Storage Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the SCT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the SCT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the SCT that was not completed to be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an SCT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within ten (10) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) A record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for the Meter readings as well as each parameter set forth in this Storage Capacity Test Procedure, as applicable, including copies of the raw data taken during the SCT and plant log sheets verifying the operating conditions and output of the ESS;
- (3) The Storage Capacity as determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Section A.1.2.F of this Storage Capacity Test Procedure.

H. Supplementary Storage Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then-current design of the Project (collectively, the "Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O. Future modifications to the Supplementary Storage Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

I. Adjustment to Storage Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any SCT (up to, but not in excess of, the product of (i) the Guaranteed Contract Storage Capacity, as such Guaranteed Contract Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new Contract Storage Capacity to the extent such new Contract Storage Capacity is less than the Guaranteed Contract Storage Capacity. The actual capacity determined pursuant to an SCT, not to exceed the

Contract Storage Capacity, shall become the new Contract Storage Capacity for all purposes under this Agreement pursuant to Section 5.9(a)(v).

- J. Actual Round-Trip Efficiency Test Calculations. The Actual Round-Trip Efficiency shall be calculated as a result of the SCT measurements. The Actual Round-Trip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy - Out (MWh - AC)}}{\text{ESS Meter Energy - In (MWh - AC)}} \times 100\%$$

EXHIBIT P

GUARANTEED ROUND-TRIP EFFICIENCY

Contract Year	Guaranteed Round Trip Efficiency
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT Q

OPERATING PROCEDURES

[To be provided, developed, and agreed to in accordance with Section 5.6].