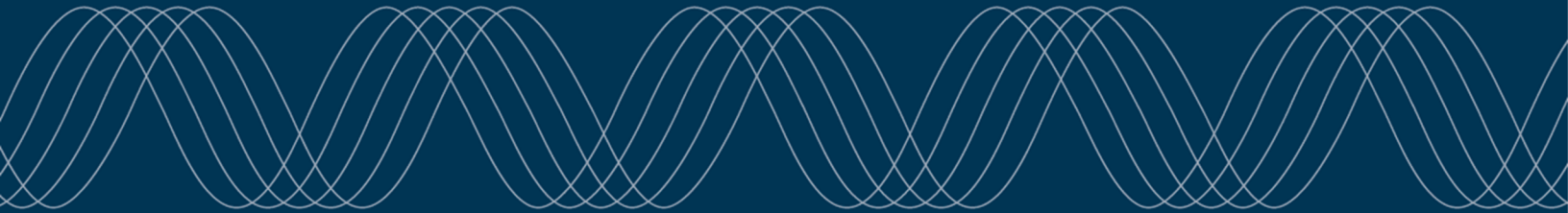


Appendix G

# Renewable Power and Storage Capacity Purchase Form Agreement



2023 All-Source RFP



**WHOLESALE RENEWABLE POWER AND  
STORAGE CAPACITY PURCHASE AGREEMENT**

Between

Portland General Electric Company

And

[*Seller*]

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*[Note to bidders: The following form agreement pertains to an on-system project, whereby PGE will purchase energy and capacity from a generating resource and storage resource, respectively, that will be constructed at the same time and on the same site. Changes to the terms and conditions or additional terms and conditions may be necessary for an off-system project, or if bidder desires to utilize the storage resource, or if the energy and storage resources are not going to be constructed at the same time.]*

This WHOLESALE RENEWABLE POWER AND STORAGE CAPACITY PURCHASE AGREEMENT (“**Agreement**”) is entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), by and between [Seller], a [State] [Entity Type] (“**Seller**”), and Portland General Electric Company, an Oregon corporation (“PGE”). PGE and Seller are also referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 **Definitions.**

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

“AAA Procedures” has the meaning set forth in Section 18.2.

“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 17.3.

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

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

“Affiliate” means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“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” means this Wholesale Renewable Power and Storage Capacity Purchase Agreement entered into between Seller and PGE and all incorporated appendices, exhibits, schedules and attachments to this Agreement, as the same may be amended by the Parties from time to time.

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, energy imbalance services, regulation and frequency response services, reactive supply services, voltage control services, inadvertent energy flow services, operating spinning reserve services, and operating supplemental reserve services.

“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.

“AUT Costs” means the net cost, if any, reflected in the PGE’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 3.4.9(b)(ii).

“Balancing Authority Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generators within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Industry Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice, and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Industry Practice.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a

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

“Bundled REC” means a REC that, subject to the terms and conditions of this Agreement, is generated by the Generating Facility and delivered simultaneously and directly to PGE together with the equivalent quantity of energy generated by the Generating Facility as a single bundled Products, as represented by the lesser of the final e-Tag or the actual Generating Facility Output on an hourly basis.

“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 the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

“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, ancillary service or attribute thereof, or accounting construct, associated with the electric generation capability and capacity of the Generating Facility or the Generating Facility’s capability and ability to produce or curtail energy, including any attribute counted towards any current or future resource adequacy or reserve requirements. Capacity Attributes are measured in MW. Notwithstanding any other provision of this Agreement, “Capacity Attributes” do not include: (i) any PTCs, ITCs, or any other tax credits, deductions, or tax benefits associated with the Generating Facility, or (ii) any state, federal, local, or private cash payments or grants relating in any way to the Generating Facility or the electric power output of the Generating Facility.

“Capacity Shortfall” has the meaning set forth in Section 3.1.21(a).

“Capacity Shortfall Date” has the meaning set forth in Section 3.1.21(b).

“Capacity Shortfall Payment” will be determined at the conclusion of the Capacity Shortfall Date based on the following calculation: [\$ Amount] multiplied by the outstanding MW amount of Capacity Shortfall less Delay Damages paid or payable.

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

“Charging Energy” means the amount of energy supplied by PGE at PGE’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Storage Facility Point of Delivery to be stored at the Storage Facility for the purpose of charging the Storage Facility and discharged at a later time, as measured by the Storage Facility Metering Facilities, accounting for estimated AC losses (based on methodology agreed to by the Parties in the Operating Procedures) between the Storage Facility Metering Facilities and the Storage Facility Point of Delivery that are not already reflected in the metered data. ***[Note to bidders: This form agreement does not distinguish the original source of the Charging Energy, whether from the Generating Facility or otherwise. If the source of the Charging Energy is limited (e.g., only Generating Facility Energy), modifications to the Agreement will be required.]***

“Claiming Party” has the meaning set forth in Section 4.2(a).

“Commercial Operation” means the Generating Facility and Storage Facility are fully interconnected, fully integrated, and synchronized with the Transmission System. Without limiting Seller’s other obligations under this Agreement, Commercial Operation occurs when all of the following events (a) have occurred, and (b) remain simultaneously true and accurate as of the time at which Seller gives PGE notice that Commercial Operation has occurred:

(i) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Nameplate Capacity of the Generating Facility is able to generate electric power reliably in amounts and quality expected by this Agreement and in accordance with all other terms and conditions hereof;

(ii) PGE has received a certificate addressed to the PGE from a Licensed Professional Engineer stating that 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 Law and this Agreement.

(iii) Start-Up Testing of the Generating Facility shall have been completed;

(iv) PGE 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.

(v) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, the Storage Facility 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.

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

(vii) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Generating Facility and Storage Facility are physically

interconnected with the applicable Transmission System in conformance with the Interconnection Agreement.

(viii) PGE has received confirmation from the Transmission Provider(s) that (a) the Generating Facility and Storage Facility have successfully achieved interconnected operations, and (b) Seller has paid all amounts due under the interconnection agreement, including, but not limited to required network upgrades.

(ix) PGE has received a certificate addressed to PGE from an authorized officer of Seller stating that Seller has obtained or entered into all Project Documents, and two (2) copies of any Project Documents requested by PGE; provided, however, that Seller may redact or omit confidential or commercial terms from non-public Project Documents.

(x) PGE has received an opinion from a Licensed Professional Engineer, or an attorney, licensed to practice in the state in which the Site is situated stating that Seller has all Permits and all other rights and agreements required to operate the Project as contemplated by this Agreement in accordance with Law.

(xi) PGE shall have received all Performance Assurance required by this Agreement.

Seller shall provide written notice to PGE stating when Seller believes that the Project has achieved Commercial Operation accompanied by the certificates described above. PGE shall have ten (10) days after receipt of Seller's notice either to confirm to Seller that all of the conditions to Commercial Operation have been satisfied or have occurred, or to state with specificity what PGE reasonably believes has not been satisfied. If, within such ten (10) day period, PGE does not respond or notifies Seller confirming that the Project has achieved Commercial Operation, the original date of receipt of Seller's notice shall be the Commercial Operation Date. If PGE notifies Seller within such ten (10) day period that PGE reasonably believes the Project has not achieved Commercial Operation, the Commercial Operation Date shall not occur until Seller has addressed the concerns stated in PGE's notice to the mutual satisfaction of both Parties.

"Commercial Operation Date" means the date on which the Project achieves Commercial Operation.

"Confidential Information" has the meaning set forth in Section 20.1(b).

"Contract Storage Capacity" means [Project Size] MW<sub>AC</sub>.

"Contract Termination Damages" has the meaning set forth in Section ~~3.1.163-1.12~~.

"Contract Year" means the period of consecutive twelve (12) months, commencing on January 1<sup>st</sup> and continuing through December 31<sup>st</sup> of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and continue through

December 31<sup>st</sup> of such year and the last Contract Year shall continue through the day prior to the anniversary of the Commercial Operation Date.

“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 a Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering into or terminating any arrangement pursuant to which it has hedged its obligations.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.

“Critical Milestone” has the meaning set forth in Section 3.1.13(e).

“Daily” means any twenty-four (24) Hour period commencing at 00:00:00 Hours.

“Delay Damages” for any given day are equal to (A) (i) \$150 per MW of Nameplate Capacity of the Generating Facility per day beginning on the first day after the Scheduled Commercial Operation Date through the 30<sup>th</sup> day after the Scheduled Commercial Operation Date, (ii) \$250 per MW of Nameplate Capacity of the Generating Facility per day beginning on the 31<sup>st</sup> day after the Scheduled Commercial Operation Date through the 60<sup>th</sup> day after the Scheduled Commercial Operation Date, and (iii) \$350 per MW of Nameplate Capacity of the Generating Facility per day beginning on the 61<sup>st</sup> day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first, *plus* (B) for each day beginning on the first day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first, the product of (i) the Guaranteed Contract Storage Capacity, expressed in kW, multiplied by (ii) the quotient of (a) the Storage Facility Contract Price in the first Contract Year (in \$/MW/month) divided by (b) 30.4.

“Delivered Energy Quantity” means the sum of the energy generated by the Generating Facility that is delivered to PGE by or on behalf of Seller to the Generating Facility Delivery Point

each hour during the Delivery Period as represented on the final e-Tag. The Delivered Energy Quantity shall not exceed the Generating Facility Net Available Capacity in any given hour.

“Delivery Period” has the meaning set forth in Section 2.2.

“Delivery Period Security” has the meaning set forth in Section 9.1(a)(ii).

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

“Disclosing Party” has the meaning set forth in Section 20.1.

“Dispute” has the meaning set forth in Section 18.1.

“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.

“Early Termination Date” has the meaning set forth in Section 5.2.1.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“EIM” means the western Energy Imbalance Market, of which PGE is a participating entity.

“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.

“Emissions Reduction Credit” is any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency under the Clean Air Act.

“Energy Fixed Price” means [\_\_\_\_\_](\$/MWh).

“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 arising as a result of the generation of electricity from the Generating Facility, 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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 (3) the reporting rights to these avoided emissions, such as the carbon content of the energy generated by the Generating Facility and REC Reporting Rights. Environmental Attributes do not include (i) investment tax credits or production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation, (ii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

“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.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

“Storage Facility” means energy storage system.

“EWG” means an “exempt wholesale generator,” as defined under Public Utility Holding Company Act of 1935.

“Event of Default” has the meaning set forth in Section 5.1.

“Excess Energy” means Delivered Energy Quantity in excess of [105%] of the Specified Amount.

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

“FIN 46” has the meaning set forth in Section 19.11.

“Forecasting Agent” shall have the meaning set forth in Section 3.9.1.



“Force Majeure” is defined in Section 4.1.

“GAAP” has the meaning set forth in Section 17.3(a).

“Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

“Generating Facility” means the *[describe renewable energy technology]* facility more fully described in Exhibit D, and includes all generators, equipment, devices and associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of Products associated with such facility to PGE in accordance with this Agreement (including the Interconnection Facilities).

“Generating Facility Delivery Point” means PGE’s scheduling point for the Generating Facility [BPAT.PGE point of delivery on the BPA side of the BPA-PGE interface or PGE BA].

“Generating Facility Energy” means all electric energy, expressed in MWh, generated by the Facility.

“Generating Facility Meter” means the Generating Facility metering equipment designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Interconnection Agreement.

“Generating Facility Nameplate Capacity” means [ ] *[solar: MW<sub>DC</sub>]* *[other resources: MW<sub>AC</sub>]*, which is the full (maximum) gross power capability of the Generating Facility’s electric power production equipment under optimal conditions designated by the manufacturer and described on Exhibit M; provided, however, that the Generating Nameplate Capacity MW<sub>AC</sub> value shall be reduced by the Capacity Shortfall measured as of the Capacity Shortfall Date pursuant to Section 3.1.21(c), if applicable, whereupon such revised value shall be the operable Nameplate Capacity for all purposes under this Agreement. ***[Note to bidders: the optimal conditions based on manufacturer designation and the equipment used by the Generating Facility to be agreed upon and included in Exhibit M]***

“Generating Facility Net Available Capacity” means the full (maximum) net energy the Generating Facility is capable of delivering to the interconnecting Balancing Authority Area continuously for at least sixty (60) minutes; which is equivalent to the Generating Facility Nameplate Capacity Rating of the Generating Facility’s generating unit less station service (parasitic power and electrical losses) and inverter limitations, expressed in MW<sub>AC</sub>.

“Generating Facility Output” means all electric energy, produced by the Generating Facility, less station service (parasitic power and electrical losses), if any, all as measured at the Generating Facility Meter.

“Generating Facility Test Energy” means electric energy generated by the Generating Facility during periods before the Commercial Operation Date, and all RECs, Environmental Attributes and Generating Facility Capacity Attributes associated with such electric energy.

“Generation Forecast” shall have the meaning given to that term in Section 3.6.13-6.1.

“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 bodies, autonomous or quasi-autonomous entities 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.

“Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Products contemplated by this Agreement, or any component of the Products, either directly or indirectly.

“Guaranteed Commercial Operation Date” means the date that is 120-180 days after the Scheduled Commercial Operation Date.

“Guaranteed Availability” means the Actual Availability of the Storage Facility that is no less than ninety-~~eight-five~~ percent (95%).

“Guaranteed Availability Adjustment” has the meaning set forth in Section 1.1.1(a)(iii)6.3(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 1.1.1(c)6.3(e).

“Guaranteed Contract Storage Capacity” means no less than [Size] MW<sub>AC</sub> 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 1.1.1(a)6.3(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.*

“Imbalance Energy” means energy, measured in MWh, that (i) was not generated by the Generating Facility but is delivered to PGE as a result of Ancillary Services provided by a Balancing Authority Area or Transmission Provider, or other entity, as applicable, and (ii) is generated by the Generating Facility in excess of Generating Facility Output and delivered to a balancing authority or Transmission Provider or other entity, as applicable.

“Initial Specified Amounts” means the Specified Amounts set forth on Exhibit C as of the Effective Date.

“Interconnection Agreement” means the generator interconnection agreement between Seller and *[identify applicable Transmission Provider]* *[if already executed: dated [\_\_\_\_\_, 20\_\_].]*

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be 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), or (b) the maximum rate permitted by Law. Notwithstanding the foregoing, in no case shall the Interest Rate be less than zero (0).

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Generating Facility and the Storage Facility to the Transmission System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“kW” means a kilowatt of electric power.

“Law” means any act, statute, law, regulation, permit (including applicable Permits), 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 with jurisdiction over Seller, PGE, the Site, the Generating Facility, the Storage Facility or the performance of the obligations under the Agreement, and includes any of the same as they may be amended or imposed from time to time.

“Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to PGE. The costs of a Letter of Credit shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank

having shareholders' equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within fifteen (15) Business Days of expiration or termination, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

"Licensed Professional Engineer" means a Person proposed by Seller and acceptable to PGE 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 PGE, 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 Project, or of a manufacturer or seller of any equipment installed in the Project.

"Limited Press Release" has the meaning set forth in Section 20.4.

"Local Provider" has the meaning set forth in Section 3.2.1(a).

"Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (inclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

"Market Event" has the meaning set forth in Section 3.4.4(b).

"Market Index Settlement Price(s)" means the production-weighted sum of the Market Index Price for each hour during the delivery month. Exhibit I sets forth an accurate and indicative example of a Market Index Settlement Price calculation under certain stated assumptions.

"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.

"Material Adverse Change" means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Seller, Seller shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Seller is rated by only one

service, a Material Adverse Change shall occur if the rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

“Merger Event” means, with respect to a Party or an Affiliate of a Party that such Party or Affiliate consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or Affiliate under this Agreement or under any Letter of Credit or other Performance Assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Letter of Credit or other Performance Assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations under this Agreement, or (iii) the Credit Rating (from any of S&P or Moody’s) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or Affiliate immediately prior to such consolidation, amalgamation, merger, or transfer.

“Storage Facility 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” and “Milestones” have the meaning assigned to those terms in [Section 3.1.13\(a\)](#).

“Month” means a calendar month commencing at hour ending 01:00:00 PPT on the first day of such month through hour ending 24:00:00 PPT on the last day of such month.

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means megawatt.

“MWh” means megawatt hour.

“Negative Price Event” shall have the meaning given to that term in [Section 3.6.43-6.4](#).

“NERC” means the North American Electric Reliability Corporation.

“Non-Defaulting Party” has the meaning set forth in [Section 5.2.1](#).

“O&M Records” has the meaning set forth in [Section 17.1\(i\)](#).

“Off-Peak” shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

“On-Peak” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

“Operating Period Security” has the meaning set forth in Section 9.1.

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

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

“Oregon Renewable Portfolio Standard” means the renewable portfolio standard contemplated by ORS Chapter 469A, and its implementing regulations, in each case as amended from time to time.

“Outage” means an Unplanned Outage or Planned Outage.

“Outage Notice” has the meaning set forth in Section 3.2.3(c).

“Party” or “Parties” are defined in the preamble of this Agreement.

“Performance Assurance” means collateral in the form of cash or Letter(s) of Credit from a Qualified Institution.

“Permits” shall mean 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 Law in connection with the development, construction, operation, occupancy, use and/or maintenance of the Site or Project, including those specified in Exhibit E, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“Planned Outage” means a time during which the Project is shut down or its output reduced to undergo scheduled maintenance in accordance Section 3.2.3(a), or as otherwise agreed by Seller and PGE.

“PGE Representatives” has the meaning set forth in Section 3.12.

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

“PPT” means Pacific Prevailing Time (i.e., prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone).

“Pre-COD Security” has the meaning set forth in Section 9.1(a)(i).

“Pre-Scheduled Energy” has the meaning set forth in Section 3.9.2.

“Products” means (a) with respect to the Generating Facility, energy scheduled, delivered and sold by Seller and received and purchased by PGE pursuant to this Agreement, together with all associated Environmental Attributes (including Bundled RECs) and Capacity Attributes, and (b) with respect to the Storage Facility, 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, collectively, the Generating Facility, the Storage Facility, and the Site.

“Project Documents” means the Permits and other written authorizations, rights and agreements now or hereafter necessary for construction, ownership, operation, and maintenance of the Project in accordance with Prudent Electric Industry Practices. Generating Facility Documents include the Permits and other written authorizations, rights and agreements listed in Exhibit E; provided, however, that nothing set forth in Exhibit E limits the obligations of Seller to obtain all Generating Facility Documents required to enable Seller to perform its obligations under this Agreement in accordance with its terms.

“Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, 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 good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Project’s equipment sellers and manufacturers, operational limits, and all Laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

“PURPA” means the Public Utility Regulatory Policies Act of 1978.

“QF” means “Qualifying Facility,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

“PTCs” means production tax credits under Section 45 of the Internal Revenue Code, as such law may be amended or superseded.

“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank which is acceptable to PGE, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholders’ equity of at least \$10 billion (U.S. Dollars) and a Credit Rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of \$2 billion or greater, an A.M. Best financial strength rating of an A or greater and authorized to issue surety bonds in the state in which the Project is located.

“Qualifying Replacement RECs” means environmental attributes (including renewable energy credits and renewable energy credit reporting rights) that are delivered to PGE bundled

with energy produced simultaneously by a generating source that (A) is an Oregon Renewable Portfolio Standard eligible renewable energy resource, (B) produces environmental attributes (including renewable energy credits and renewable energy credit reporting rights) of the same type and quality as Environmental Attributes (including Bundled RECs and REC Reporting Rights), (C) is located in [Oregon or Washington], and (D) achieves commercial operation after the Commercial Operation Date.

“Qualifying Replacement REC Price” means the price for Qualifying Replacement RECs as determined by taking the lower of two dealer quotes representing a live offer to sell Qualifying Replacement RECs for the entire quantity of Bundled RECs that are being replaced and subtracting the value of the energy component of such quantity (as specified in the applicable dealer quotes) of such Qualifying Replacement RECs.

“REC” means the Environmental Attributes and the REC Reporting Rights associated with Generating Facility Output, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Certified,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Generating Facility Output, as represented by the lesser of the final e-Tag or the actual metered Generating Facility Output on an hourly basis. All RECs delivered to PGE under this Agreement must comply with the Oregon Renewable Portfolio Standard.

“REC Reporting Rights” are the right of a PGE to report the ownership of accumulated RECs in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at such PGE's discretion, and include without limitation those REC Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

“Recording” has the meaning set forth in Section 19.14.

“Receiving Party” has the meaning set forth in Section 20.1.

“Receiving Party's Representatives” has the meaning set forth in Section 20.1(a).

“Regulatory Event” has the meaning given to that term in Section 19.6.

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

“Reliability Entity” may include, without limitation, NERC, WECC, the Balancing Authority, Transmission Provider, regional transmission organization, independent system operator, reliability coordinator or any other entity that has, or that may have in the future, (i) responsibility over the reliability of the bulk power system and (ii) by virtue of such responsibility the legal authority to affect the operations of the Generating Facility, the Storage Facility or delivery of the Products.

“Remedial Action Scheme” means an automatic protection system designed to detect abnormal or predetermined system conditions, and take corrective actions other than or in addition to the isolation of faulted components to maintain system reliability. Such action may include



changes in demand, generation (MW and Mvar), or system configuration to maintain system stability, acceptable voltage, or power flows.

“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 the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

“Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Products not accepted by PGE in breach of PGE’s obligations under this Agreement, deducting from such proceeds any (i) Costs reasonably incurred by Seller in reselling such Products and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Products to the third-party purchasers. “Costs” shall not include any negative price amounts for the Products, penalties, ratcheted demand or similar charges. In no event shall the Sales Price be less than zero dollars (\$0.00).

“SCADA” means supervisory control and data acquisition.

“Schedule,” “Scheduled” or “Scheduling” means the actions of Seller, PGE, a Transmission Provider and all other impacted entities, or their representatives, of notifying, requesting, and confirming/implementing the quantity and type of Products, transmission arrangements, and timing of delivery, subject to the prevailing Western EIM, NAESB, WECC and NERC scheduling requirements.

“Scheduled Commercial Operation Date” means [\_\_\_\_, 20\_\_].

“Scheduling Agent” has the meaning set forth in Section 3.9.1.

“Seller” is defined 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 PGE 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, PGE, Balancing Area Authority, or Transmission Provider (in each case, other than resulting from Seller’s acts or omissions).

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

“Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Article 5. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owed to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.

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

“Settlement Period” has the meaning set forth in Section 5.2.2.

“Settlement Energy” has the meaning set forth in Section 5.2.2.

“Site” means the real property on which the Project is or will be located, as more fully described on Exhibit F.

“Specified Amounts” means the amount of Generating Facility Output generated by the Generating Facility that Seller is expected to deliver to PGE at the Generating Facility Delivery Point for each monthly period during the Delivery Period. The Specified Amounts for each Month during the following calendar year shall be established by Seller pursuant to Section 3.3.

“Start-Up Testing” means the start-up tests for the Generating Facility as set forth in Exhibit G.

“SQMD” has the meaning set forth in Section 3.4.9(b)(iv).

“Station Service” has the meaning set forth in Section 3.2.1(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 Storage Facility Point of Delivery for four (4) consecutive hours.

“Storage Capacity Test” has the meaning set forth in Section 1.1.1(a)(i)~~3.4.8(a)(i)~~.

“Storage Facility” means that certain [Project Size] MW<sub>AC</sub> grid-connected energy storage system as more particularly described in Exhibit B, together with all materials, systems, structures, features, and improvements necessary to store and deliver electricity at such facility.

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

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

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

“System Control Center” means PGE’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.

“Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

“Term” means the period of time referenced in Section 2.1.1.

“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 of the Storage Facility occurs.

“Termination Payment” has the meaning set forth in Section 5.3.

“Transmission Provider(s)” means [Entity Name].

“Transmission System(s)” 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 receipts or deliveries to or from the Project, not associated with Seller Excused Hours.

“USD” means United States Dollars.

“WECC” means the Western Electricity Coordinating Council or any successor thereto.

“Western Interconnection” means the network of subsystems of generators, transmission lines, transformers, switching stations, and substations owned or operated by members of the WECC, to the extent located in the continental United States.

“WREGIS” means the Western Renewable Energy Generation Information System.

## 1.2 **Rules of Interpretation.**

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to ARTICLE 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 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.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography, email and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

### 1.3 **Technical Meanings.**

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in this Agreement in accordance with such recognized meanings.

## **ARTICLE 2**

### **CONTRACT TERM; DELIVERY PERIOD; PRICE; SALE OF FACILITY**

#### 2.1 **Term; Conditions Precedent.**

2.1.1 Term. The term of this Agreement shall begin on the Effective Date and shall continue through the [XX] anniversary of the Commercial Operation Date (the "**Term**"), unless earlier terminated in accordance with its terms; provided, however, that (a) such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination, and (b) the terms and conditions of this Agreement and any other documents executed and delivered under this Agreement shall continue to govern with respect to obligations arising before termination until such obligations are fully discharged.

2.1.2 PGE's Conditions Precedent. PGE's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by PGE in its sole discretion:

- (a) [Project Specific Conditions: TBD]; and
- (b) All authorizations, approvals and consents of all Persons, including PGE's Board of Directors, that are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and
- (c) Approval of the final shortlist and all other required regulatory approvals have been made and obtained.

If these conditions precedent have not been satisfied or waived by PGE on or before [\_\_\_\_\_, 20\_\_], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

2.1.3 Seller's Conditions Precedent. Seller's obligations under this Agreement are subject to the following conditions precedent, each of which may be waived by Seller in its sole discretion: *[Note to bidders: conditions precedent, if any, to Seller's obligations under the PPA should be set out here]*

If these conditions precedent have not been satisfied or waived by Seller on or before [\_\_\_\_\_, 20\_\_], either Party shall have the right to terminate this Agreement by giving five (5) Business Days' prior notice of termination to the other Party. Neither Party shall have any liability for such a termination.

## 2.2 Delivery Period

Starting on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Period**"), Seller shall Schedule and deliver all of the Generating Facility Output at the Generating Facility Delivery Point and PGE shall confirm and receive all of the Generating Facility Output delivered to the Generating Facility Delivery Point). Additionally, during the Delivery Period, Seller shall sell and deliver, and PGE shall purchase and accept from Seller, all Products associated with or otherwise available from the Storage Facility.

## 2.3 Price and Adjustments

2.3.1 For each calendar month during the Delivery Period, and except as otherwise provided in this Agreement, PGE shall pay Seller for the Generating Facility Output delivered to the Generating Facility Delivery Point in the sum of the following:

- (a) hourly Generating Facility Output, each up to [105%] of the Specified Amount for such month, multiplied by the Energy Fixed Price; plus
- (b) hourly Excess Energy multiplied by the lesser of (i) [93%] of the Market Index Price, or (ii) [75%] of the Energy Fixed Price; plus

- (c) for each hour that the Market Index Price is negative, the hourly Delivered Energy Quantity multiplied by [107%] of the Market Index Price.

2.3.2 For each calendar month during the Delivery Period, and except as otherwise provided in this Agreement, the total amount due from PGE to Seller for Storage Capacity shall be calculated as follows:

- (a) the Storage Facility Contract Price multiplied by the Contract Storage Capacity, *less*
- (b) the Guaranteed Availability Adjustment for such year, if any, *less*
- (c) the Guaranteed Round-Trip Efficiency Adjustment for such year, if any, *less*
- (d) the Guaranteed Contract Storage Capacity Adjustment, if any, *less*
- (e) Storage Facility Test Energy costs that Seller is responsible for pursuant to Section 1.1.1(a)(iii)~~3.4.8(a)(iii)~~, if any.

An indicative example illustrating the determination of payment due under this Section 2.3 is set forth in Exhibit I.

2.4 **Sales to Third Parties.** One hundred percent (100%) of the Products from the Project shall be dedicated exclusively to PGE for so long as this Agreement is in force and effect and no PGE Event of Default exists. When an undisputed PGE 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 Products 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. PGE shall retain the right to Discharging Energy that is already within the Storage Facility at the time the Event of Default arises (if any). Seller shall retain the right to discharge energy that is already within the Storage Facility at the time the Event of Default is resolved (if any), for which Seller has paid for the Charging Energy.

2.5 **Notice of Sale of Project.** If Seller or an Affiliate of Seller desire to sell the Project during the Term, either by a sale of the Project's assets or by a direct or indirect transfer of the membership interest(s) in Seller, Seller shall first, before it or its Affiliate enters into any substantive discussions with other parties, notify PGE of its desire to sell the Project. PGE agrees to notify Seller if it is interested in acquiring the Project within twenty (20) days following receipt of Seller's notice. If PGE so notifies Seller, the Parties shall engage in exclusive good faith negotiations to reach agreement with respect to such a transaction for a period of ninety (90) days thereafter. If during this period the Parties execute a letter of intent, or other document similarly confirming the Parties' intent to enter into a transaction for the purchase and sale of the Project, then such exclusive negotiation period shall be automatically extended for an additional ninety (90) day period, during which time the Parties may execute a purchase and sale agreement for the Project. Any purchase and sale agreement executed within the time frame stated in this Section 2.5 shall remain subject to regulatory approval beyond such time frame, as applicable. Seller may pursue any transaction for the sale of the Project with one or more third parties at any time and from time to time and

shall have no obligation to PGE under this Section 2.5 following an occurrence of any of the following: (i) PGE expressly declines interest in acquiring the Project after receipt of Seller's notice provided pursuant to the first sentence of this Section 2.5, (ii) PGE fails to respond to Seller's notice pursuant to the first sentence of this Section 2.5, within twenty (20) days after receipt thereof; (iii) PGE and Seller fail to execute a letter of intent or other similar document with respect to the sale of the Project within ninety (90) days after PGE's receipt of notice from Seller provided pursuant to the first sentence of this Section 2.5; or (iv) PGE and Seller fail to execute a purchase and sale agreement for the Project within one hundred eighty (180) days after PGE's receipt of notice from Seller provided pursuant to the first sentence of this Section 2.5; provided, however, that with respect to clause (iv), if Seller rejects a firm price delivered by PGE in the course of such negotiations, any sale of the Project to a third party during the subsequent two (2)-year period must be at a price higher than such rejected price or Seller shall be required to re-engage in negotiations with PGE as otherwise set forth in this Section 2.5 for the sale of the Project.

## 2.6 **Option to Purchase/Option to Extend Term.**

*[Note to bidders: if a Bidder wishes to propose an end of Term or during Term option for PGE to purchase the Project, or an option for PGE to extend the Term of the PPA, it should include its proposal here in its mark up of the Agreement.]*

## ARTICLE 3 PROJECT DEVELOPMENT, CONSTRUCTION AND OPERATION

### 3.1 **Development and Construction of Project.**

3.1.1 Project Documents. Seller shall provide PGE with the documents listed below. To the extent they are available on the Effective Date, such documents have been attached to this Agreement as Exhibit E. With respect to any of the listed Project Documents that become available or are reasonably required to be modified after the Effective Date, Seller shall provide such documents to PGE within ten (10) days after receiving them. Seller may not materially modify such documents or amend Exhibit E after the Effective Date without PGE's prior written consent, which PGE may not unreasonably withhold, condition or delay.

- (a) Seller's proposed Level 1 schedule, including significant Project activities, milestones and deliverables.
- (b) A list of permits and approvals required for the construction and operation of the Project.
- (c) Project layout drawings, including all major equipment and balance of plant equipment.
- (d) An electrical single-line diagram for the Project.
- (e) 12x24 net energy profile and, if available, 8760 net energy production estimate.
- (f) Interconnection Agreement.
- (g) Site specific safety and response plan for site operations.

### 3.1.2 Labor Requirements.

Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable. Seller must have, and Seller shall endeavor to cause the construction contractor for the Project and each subcontractor for the Project to have, policies in place that are designed to limit or prevent workplace harassment and discrimination. Additionally, Seller must have, and Seller shall endeavor to cause the construction contractor for the Project and each subcontractor for the Project to 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 percent (15%) of the total work hours performed by individuals from those communities. Pursuant to ORS 757.306 Seller will within 30 days from the date construction begins, provide a copy of the attestation or declaration or executed project labor agreement to the Oregon Department of Energy.

3.1.3 Permitting. Seller shall obtain all Permits necessary to construct, own and operate the Project in accordance with this Agreement.

3.1.4 Financing. Seller shall obtain any and all financing necessary to construct and operate the Facility during the Term on a schedule consistent with the requirements of this Agreement.

3.1.5 Project Design. Exhibit B 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 PGE of the final proposed location of the Generating Facility and 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 PGE 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 PGE approval, not to be unreasonably withheld. Seller may not modify the Project design as set forth in Exhibit B without prior PGE approval, not to be unreasonably withheld. Seller shall be responsible for designing and building the Project in compliance with all Permits and according to Prudent Electric Industry Practice with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Project. Any review by PGE of the design, construction, operation or maintenance of the Project is solely for PGE's information, and PGE shall have no responsibility to Seller or any third party in connection with such review. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability of the Project.

3.1.6 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 PGE under this Agreement. Seller is



solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

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

3.1.8 Construction and Testing; Interconnection. Seller shall, at its cost, construct and test the Project and obtain all necessary interconnection rights, all in compliance with the Permits, the Interconnection Agreement, any other agreements with any Transmission Provider, and Prudent Electric Industry Practice. On and after the execution of the Interconnection Agreement, Seller shall provide copies to PGE of any material amendments to the Interconnection Agreement.

3.1.9 Commissioning Tests for Storage Facility. 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 O. 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.

3.1.10 Monthly Reports. After the Effective Date, Seller shall provide PGE with monthly written reports regarding Seller's progress in completing the construction, testing and interconnection of the Project and shall, at PGE's request, meet with PGE's representatives to discuss such progress. The monthly report shall include the following: (a) description of the progress toward meeting the Milestones, (b) identifies any missed Milestones, including the cause for the delay, and (c) detailed description of Seller's corrective actions to achieve the missed Milestones.

3.1.11 Equipment Supply. Not later than [\_\_\_\_] Seller shall provide PGE with written evidence of Seller's commitment from the parties identified on Exhibit E for the supply of all of the equipment required to construct and interconnect the Project in a timeframe that reasonably would allow Seller to achieve the Commercial Operation Date of the Project on or before the Scheduled Commercial Operation Date.

3.1.12 Buyer's Access and Inspection Rights. PGE may have its representatives present at the Site to monitor the construction, commissioning, and testing of the Project and its systems. Seller shall provide PGE with notice, pursuant to Section 21.1.1, of all commissioning and testing of the Project and its systems. Seller shall permit physical inspections of the Project upon the reasonable request of PGE at any point during or after construction. PGE shall ensure that all persons visiting the Project on behalf of PGE 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.

3.1.13 Milestones.

(a) Seller shall design, construct, own, operate, repair, and maintain the Project in accordance and consistent with the Project Documents and Prudent Electric Industry Practice so as to ensure the continuous ability of the Facility to meet Seller's obligations to PGE under this Agreement. Seller shall exercise its best efforts, consistent with Prudent Electric Industry Practice, to complete development of the Project in accordance with the dates for each Milestones set forth in this Section 3.1.133.1.3 (each, a "**Milestone**" and collectively "**Milestones**"). If Seller fails to meet a Milestone in any material respect by the date on which this Section 3.1.133.1.3 requires such Milestone to be achieved, Seller shall deliver to PGE the following no more than ten (10) Business Days after receiving notice from PGE: (i) further information concerning the status of Project development; (ii) a written report containing Seller's analysis of the reasons behind the failure to meet the original Milestone(s), including a description of the remedial actions that Seller agrees to undertake to complete the Facility by the Commercial Operation Date; and (iii) further assurances that the Project will be completed consistent with the terms of this Agreement.

- (i) Site Control. Seller shall demonstrate site control for the Project as of the Effective Date of this Agreement by ownership or lease of real property sufficient to enable Seller to finance, construct and operate the Project, with any such lease having a term equal to or greater than the Term of this Agreement.
- (ii) Pre-COD Security. On or before the thirtieth (30<sup>th</sup>) day following the Effective Date, Seller shall post the Pre-COD Security in the amount described in Section [Error! Reference source not found.9.1\(a\)](#);
- (iii) Interconnection Agreement. On or before the ninetieth (90<sup>th</sup>) day after the Effective Date, Seller shall provide to PGE a fully executed copy of the Interconnection Agreement confirming that the Project will receive Network Resource Interconnection Service;
- (iv) Permits. On or before the [ ] day after the Effective Date, Seller shall provide to PGE copies of all Permits in final, nonappealable form;
- (v) Delivery Period Security. By the Commercial Operation Date, Seller shall provide Delivery Period Security required under Section 9.1(b);
- (vi) Commercial Operation Date. Seller shall cause the Facility to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

provided, however, that the date for achieving each Milestone (other than the dates for posting Pre-COD Security and Delivery Security) shall be extended on a day for day basis for any delay due solely to (i) PGE's delay in taking, or failure to take, any action required of it hereunder in breach of this Agreement, or (ii) an event of Force Majeure.

(b) When Seller achieves a Milestone, Seller shall provide to PGE documentation reasonably satisfactory to PGE demonstrating completion of the Milestone. Seller shall provide such documentation to PGE within thirty (30) days of such completion but not later than the date specified above for such Milestone. PGE shall acknowledge receipt

of the documentation provided under this Section 3.1.13 and shall provide Seller with written acceptance or denial of each Milestone within fifteen (15) Business Days of receipt of the documentation.

- (c) Seller shall notify PGE 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 PGE to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.
- (d) If any Milestone (other than a Critical Milestone identified in Section 3.1.13(e)~~3.1.13(e)~~) is not completed on or before the deadline specified for that Milestone in this Section 3.1.13, Seller shall (i) inform PGE of a revised projected date for the achievement of the Milestone, (ii) inform PGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide PGE 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 the Seller agrees to undertake to ensure the achievement of the Commercial Operation Date by the Scheduled Commercial Operation Date and in any event no later than the Guaranteed Commercial Operation Date. If (1) Seller fails to submit such a report and remedial action plan within thirty (30) days after a Milestone deadline is missed, or (2) Seller timely submits the required report and remedial action plan but thereafter fails to implement the remedial action plan with diligence, or (3) PGE reasonably concludes based on the report and proposed remedial action plan that the Facility is unlikely to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, a Seller Event of Default shall be deemed to have occurred.
- (e) The Milestones described in Sections 3.1.13(a)(i)~~3.1.13(a)(i)~~, 3.1.13(a)(v)~~3.1.13(a)(v)~~, and 3.1.13(a)(vi)~~3.1.13(a)(vii)~~ are "**Critical Milestones**" that are separately addressed in Section 5.1 (Events of Default) and Section 3.1.16~~3.1.18~~ (Failure to achieve the Guaranteed Commercial Operation Date).

3.1.14 Notice of Commercial Operation. Seller shall notify PGE not less than five (5) Business Days in advance of the anticipated date of Commercial Operation and shall confirm to PGE in writing when Commercial Operation has been achieved.

3.1.15 Delay Damages. If Commercial Operation is not achieved on or before the Scheduled Commercial Operation Date, Seller shall pay Delay Damages to PGE from and after the Scheduled Commercial Operation Date up to, but not including, the earlier date to occur of (a) the Project achieves Commercial Operation, or (b) the Guaranteed Commercial Operation Date.

3.1.16 Contract Termination Damages. If Seller does not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, PGE shall have the right to terminate this Agreement upon ten (10) Days' notice to Seller, and Seller shall pay to PGE, as liquidated damages, Contract Termination Damages equal to \$200 per kW of Generating Facility Nameplate Capacity plus \$200 per kW of Contract Storage Capacity (the "**Contract Termination Damages**") in addition to all Delay Damages paid or payable pursuant to Section 3.1.15.

3.1.17 Damages Invoicing. By the tenth (10<sup>th</sup>) day following the end of the calendar month in which Delay Damages or Capacity Shortfall Damages begin to accrue, as applicable, and continuing on the tenth (10<sup>th</sup>) day of each calendar month during the period in which Delay Damages accrue (and the following months, if applicable), PGE shall deliver to Seller an invoice showing PGE's computation of such damages and any amount due PGE in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice and subject to Section 7.2 and Section 7.3, Seller shall pay to PGE, by wire transfer of immediately available funds to an account specified in writing by PGE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

3.1.18 Failure to Achieve Guaranteed Commercial Operation Date.

(a) PGE's exclusive remedies for the Facility's failure to achieve Commercial Operation by the Scheduled Commercial Operation Date or by the Guaranteed Commercial Operation Date, as applicable, shall be (i) the payment by Seller of Delay Damages and, if applicable, Contract Termination Damages, as provided in Section 3.1.153-1.16 and Section 3.1.163-1.17, (ii) the right of first offer set forth in Section 3.1.19, and/or (iii) the exercise of step in rights under Section [Error! Reference source not found.9.5](#).

(b) PGE's exclusive remedies for the Facility's failure to achieve Commercial Operation of the full Generating Facility Nameplate Capacity of 120MW<sub>AC</sub> on or before the Capacity Shortfall Date, if applicable, shall be the payment by Seller of Capacity Shortfall Damages and, if applicable, the Capacity Shortfall Payment, each as provided in Section 3.1.21(c).

3.1.19 Right of First Offer.

(a) If PGE terminates this Agreement before the Commercial Operation Date 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 Facility to a party other than PGE for a period of two (2) years 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 PGE with a written offer to sell the Products on terms and conditions materially similar to the terms and conditions contained in this Agreement. If PGE terminates this Agreement after the Commercial Operation Date due to a Seller Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any quantity of the Projects associated with or attributable to the Project to a party other than PGE on a long term basis (for three (3) months or longer) for a period of two (2) years 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 PGE with a written offer to sell the Products at the price and on terms and conditions materially similar to the terms and conditions contained in this Agreement.

- (b) If PGE fails to accept an offer made by Seller pursuant to Section 3.1.19(a) within forty-five (45) days of PGE's receipt thereof, Seller and its Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the Facility at the price offered to PGE to any third party and on any terms in its sole discretion; provided that any offer proposed by Seller to a third party at a price less than the price set forth in this Agreement shall be subject to Seller providing a new written offer to sell the Facility Output to PGE pursuant to the requirements contained in this Section 3.1.19. PGE's acceptance of such an offer within forty-five (45) days of PGE's receipt thereof may be conditioned on PGE obtaining approval from PGE's Board of Directors or the Oregon Public Utility Commission.
- (c) Subject to the rights contained in Section 15.1 neither Seller nor Seller's Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 3.1.19 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 3.1.19 pursuant to a written agreement approved by PGE.
- (d) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 3.1.19. This provision shall survive the termination of this Agreement.

3.1.20 Tax Credits. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive PTCs, ITCs or other tax credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

3.1.21 Capacity Shortfall.

(a) If Seller elects to commence Commercial Operation with a Generating Facility size of less than Generating Facility Nameplate Capacity, Seller shall use commercially reasonable efforts to cause the Generating Facility to achieve full Generating Facility Nameplate Capacity of [\_\_\_\_]. The difference, measured in [MW<sub>AC</sub>] [MW<sub>DC</sub>], between the actual facility size and the Generating Facility Nameplate Capacity is referred to as the "Capacity Shortfall".

(b) Beginning on the Commercial Operation Date and ending on the earlier of (i) the date the Seller causes the Generating Facility to achieve full Generating Facility Nameplate Capacity of [\_\_\_\_] or (ii) the date one hundred eighty (180) days after the Commercial Operation Date (such date, the "Capacity Shortfall Date"), Seller shall pay to PGE Capacity Shortfall Damages, which shall be prorated for any partial capacity amounts and time periods.

(c) If Seller fails to cause the Facility to achieve full Generating Facility Nameplate Capacity of [\_\_\_\_] on or before the Capacity Shortfall Date, Seller shall pay to PGE the Capacity Shortfall Payment and the Generating Facility Nameplate Capacity shall be revised to the actual [MW<sub>AC</sub>][MW<sub>DC</sub>] size of the Facility measured as of the Capacity Shortfall Date.

## 3.2 Project Operations.

### 3.2.1 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 PGE 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 PGE in Buyer’s capacity as the Local Provider.

(d) Station Service shall be real time measured by a dedicated meter register and shall not be delivered by Seller to PGE 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.

3.2.2 Site Control. At all times during the Term, Seller shall control the Site through ownership or lease and shall provide PGE with prompt notice of any change in control of the Site.

### 3.2.3 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 PGE 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 PGE 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 Laws, Transmission Provider, Reliability Coordinator, or a Governmental Authority. PGE may, within fifteen (15) days after receipt of the schedule, request reasonable modifications to the schedule. Buyer PGE 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 3.2.3(a)~~3.2.3(a)~~. Seller must give PGE 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 PGE for AUT Costs incurred by PGE as a result of such change. Seller may not make any changes to any annual maintenance schedule approved by PGE 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. PGE 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. PGE 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 PGE 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 PGE 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 Storage Facility Point of

Delivery during such event. PGE 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 PGE 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 PGE and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

### 3.3 **Generating Facility Operations.**

The following provisions in this Section 3.3 shall apply to the operations of the Generating Facility:

3.3.1 Generating Facility Test Energy. Seller shall use its best efforts to schedule and deliver Generating Facility Test Energy to its Transmission Provider, to a third-party or to an organized market (to the extent PGE has consented to Seller participating in such organized market pursuant to Section 3.9.8) via its Transmission Provider's system. Seller shall be entitled to any and all compensation received from its Transmission Provider or any third-party or organized market for such Generating Facility Test Energy. Notwithstanding the forgoing, in the event that it is necessary for Seller to schedule and deliver Generating Facility Test Energy to PGE in order to complete Start-Up Testing for the Generating Facility, Seller shall be entitled to do so pursuant to the Scheduling Procedure set forth in Section 3.9.2 (to the extent applicable). In such case, the Parties shall coordinate in good faith to schedule deliveries of Generating Facility Test Energy to PGE that minimizes the burden to each of the Parties, and PGE shall receive the Generating Facility Test Energy. The price for such Generating Facility Test Energy received by PGE shall be zero dollars (\$0.00) and Seller shall pay any costs or additional expenses that are required for PGE to receive the Generating Facility Test Energy, including but not limited to reimbursement for negative pricing and procurement of any necessary capacity costs or reserves.

3.3.2 Operation and Maintenance. Seller shall operate and maintain the Generating Facility, the Facility Meter and that portion of the Interconnection Facilities and related equipment and systems owned by Seller in accordance with Prudent Electric Industry Practice in a manner that is reasonably likely to: (i) maximize the Facility Output, and (ii) result in an expected useful life for such facilities of not less than thirty (30) years.

3.3.3 Generating Facility Meter Inspection and Correction. PGE shall have the right to periodically inspect, test, repair and replace the Generating Facility Meter, without PGE assuming any obligations under the Interconnection Agreement. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the Generating Facility Meter 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 equipment was in service since last tested, but not exceeding three (3)



months, in the amount the Generating Facility Meter 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. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment.

3.3.4 Inspection and Records. During the Term, Seller shall inspect, maintain and repair the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Electric Industry Practice and shall keep records with respect to inspections, maintenance and repairs thereto consistent with Seller's reasonable business judgment. The records of such activities shall be available for inspection by PGE during Seller's regular business hours upon reasonable notice.

3.3.5 Oregon Renewable Portfolio Standard. Seller shall ensure the Facility obtains Oregon RPS Certification within ninety (90) days after the Commercial Operation Date and shall maintain such certification during the Delivery Period.

### 3.4 Storage Facility Operations.

The following provisions in this Section 3.4 shall apply to the operations of the Storage Facility:

3.4.1 Test Period. Seller and PGE 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 Storage Facility. Seller shall subsequently deliver such Charging Energy to PGE at the Storage Facility Point of Delivery as Discharging Energy during the Test Period. In accordance with Article 14, 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.

#### 3.4.2 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 Storage Facility 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 Storage Facility'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, PGE shall have the right to direct the dispatch of the Storage Facility, via AGC control.

(c) For each day during the Delivery Term, (i) PGE shall be responsible for, if it chooses, to register the Storage Facility in the Western Energy Imbalance Market (EIM) at its sole cost and expense and shall schedule and discharge the Storage Facility in accordance with the EIM's rules, procedures and regulations, including those contained in the EIM OATT,

and any applicable PGE business practices and (ii) PGE shall communicate directly to the Storage Facility in real time to dispatch the charging and discharging of the Storage Facility for the control modes identified in Exhibit L. This Section 3.4.2(c) will apply in the event the EIM is replaced, or any other market participation elected by PGE in accordance with Section 3.4.3(b).

(d) PGE 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 PGE shall pay for all such energy.

### 3.4.3 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 Storage Facility Point of Delivery, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. 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 Storage Facility Point of Delivery, and (ii) receive Charging Energy from the grid at the Storage Facility Point of Delivery to the Storage Facility, 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 Storage Facility Point of Delivery at the required voltage, including the costs of any associated network upgrades. As between PGE 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 Storage Facility Point of Delivery and for Charging Energy after the Storage Facility Point of Delivery.

(c) PGE 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 Storage Facility Point of Delivery. PGE 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 Storage Facility Point of Delivery.

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

### 3.4.4 Obligation to Schedule

(a) PGE 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 Storage Facility of any energy market, to the extent scheduling is required now or in the future, PGE 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 PGE 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 Storage Facility 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 Storage Facility 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 PGE shall compensate Seller for the increased costs in either a lump sum or an increase in the Storage Facility Contract Price.

(c) Seller shall communicate to Buyer’s Pre-schedule Desk the Storage Facility’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 Storage Facility 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 PGE of such change or predicted change.

### 3.4.5 Operating Procedures

Not later than one hundred and twenty (120) days before the Test Period, Seller shall provide PGE a draft of all Operating Procedures. Not later than sixty (60) days before the Test Period, an operating committee consisting of Seller and PGE representatives shall develop mutually agreeable written Operating Procedures for integration of the Storage Facility into Buyer’s system and shall be included as Exhibit Q to the Agreement. PGE 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 Storage Facility at all times consistent with the Operating Procedures, the Agreement, Prudent Utility Practices, 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 Law. Personnel of Seller capable of starting, running, and stopping the Storage Facility must be continuously available, either at the Storage Facility or capable of being at the Storage Facility 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 Storage Facility. PGE will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

#### 3.4.6 Operating Restrictions

(f) Seller shall operate or procure the operation of the Storage Facility in accordance with Prudent Utility Practices and the Operating Restrictions (“**Operating Restrictions**”) as detailed in Exhibit R, 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 Storage Facility and the following clause (ii)) have the sole responsibility to, and shall at its sole expense, operate and maintain the Storage Facility in accordance with all requirements set forth in this Agreement; and (ii) comply with reasonable requirements of PGE regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Restrictions, Seller agrees to operate the Storage Facility 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 PGE with all real time measurement parameters of the Storage Facility including individual inverter and system availability data made available to PGE 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.

(g) Seller shall operate the Storage Facility such that all system protective equipment is in service whenever the Storage Facility 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 Storage Facility’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 Storage Facility's major equipment and shall provide results to PGE in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PGE reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide PGE with a ten (10) day written notice of planned testing and/or calibration.

#### 3.4.7 PGE Dispatch Outside of Operating Restrictions

If notwithstanding anything to the contrary in this Agreement, in the event that PGE dispatches the Storage Facility 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 Storage Facility to-date, including periods of time in which the Storage Facility 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 [Error! Reference source not found.18.1](#). Except for Buyer's negligence or willful misconduct, the event of a PGE dispatch of the Storage Facility outside of the Operating Restrictions shall not be deemed a PGE Event of Default.

#### 3.4.8 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 PGE 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, PGE shall schedule with at least sixty (60) days' notice to Seller and Seller shall complete a Storage Capacity Test in accordance with Exhibit O. PGE 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 6.3. 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. PGE may witness all Storage Capacity Tests of the Storage Facility. PGE shall schedule any visit to the Storage Facility 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 Storage Facility.

(iii) PGE shall schedule, deliver, and receive Storage Facility Test Energy in accordance with the scheduling procedures outlined in Section 3.9.2 in order to complete any Storage Capacity Test. PGE is responsible for all costs of Storage Facility Test Energy for the first Storage Capacity Test in each Contract Year and any Buyer-directed Storage Capacity Tests (described in Section 3.4.8(a)(i)) prior to Commercial Operation or during any Contract Year. Seller is responsible for all costs of Storage Facility Test Energy for any Seller-directed Storage Capacity Test (described in Section 3.4.8(a)(i)) and the first Storage Capacity Test prior to Commercial Operation. Storage Facility Test Energy shall be at wholesale electricity prices inclusive of capacity or reserves costs and any Seller incurred Storage Facility Test Energy costs shall be deducted from the Monthly Payment.

(iv) Following each Storage Capacity Test, Seller shall submit a test report to PGE 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, PGE 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.

### 3.4.9 Metering Requirements

(a) Seller shall install Storage Facility 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 Storage Facility 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 Storage Facility 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 PGE under this Agreement. The design of the Storage Facility Metering Facilities shall be subject to PGE approval prior to commencement of construction of the Project. PGE shall have the right, at its own expense, to inspect and test the Storage Facility Metering Facilities upon installation and at least annually thereafter and shall provide all test results to Seller upon request within a reasonable timeframe. Storage Facility 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 Storage Facility. Storage Facility Metering Facilities shall be programmed such that meter readings will reflect losses between the Meter and the Storage Facility Point of Delivery. Seller shall

provide PGE with all authorizations necessary to have access to the Storage Facility Metering Facilities, including arranging with the Transmission Provider to provide PGE reasonable access to all Storage Facility Metering Facilities. Seller, at its sole expense, shall also have the right to conduct its own tests of the Storage Facility 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 PGE upon request within a reasonable timeframe. Either Party shall have the reasonable opportunity to be present at any time when such Storage Facility 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 Storage Facility 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 Storage Facility 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 PGE 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, PGE 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 PGE or Buyer's representatives access to the Project and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. PGE shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

#### 3.4.10 Meter Inaccuracies and Retroactive Adjustments

(a) If any inspections or tests of the Storage Facility 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 Storage Facility 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 Storage Facility Metering Facilities or Back-up Metering were in service since last tested, but not exceeding six (6) months, in the amount the Storage Facility 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 Storage Facility 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 Storage Facility Point of Delivery and Discharging Energy from the Project to the Storage Facility Point of Delivery, in each case during periods of similar operating conditions when the Storage Facility Metering Facilities registered accurately. The adjustment shall be made for the period as determined pursuant to Section 3.4.10(a).

3.4.11 Planned Maintenance. Seller may not schedule any non-emergency maintenance that reduces the Storage Facility 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 Storage Facility, (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 at the Storage Facility for a Contract Year shall not exceed two hundred forty (240) hours.



3.5 **Specified Amounts.** The Initial Specified Amounts shall apply during the period commencing on the Commercial Operation Date through and including the last day of the second (2<sup>nd</sup>) full calendar year following the Commercial Operation Date. The Initial Specified Amounts for each Month shall be consistent with a generation profile associated with a 50% probability of exceedance forecast using industry standard methodology. On or before September 1<sup>st</sup> of the second (2<sup>nd</sup>) full calendar year following the Commercial Operation Date, Seller shall provide PGE with an updated version of Exhibit C establishing the Specified Amounts for the third (3<sup>rd</sup>) full calendar year following the Commercial Operation Date through the end of the Delivery Period (i.e., the Specified Amounts will be the same for each of the third (3<sup>rd</sup>) through the last day of the Delivery Period), and such designated Specified Amounts for each Month shall be consistent with a generation profile associated with a fifty percent (50%) probability of exceedance forecast using industry standard methodology. In the event Seller elects to commence Commercial Operation with a Facility size of less than Generating Facility Nameplate Capacity pursuant to Section 3.1.21, the Specified Amounts in Exhibit C shall be updated to reflect the values corresponding with the Generating Facility Nameplate Capacity measured as of the Capacity Shortfall Date, provided to PGE in writing, within ten (10) Business Days after the Capacity Shortfall Date.

3.6 **Energy Delivery.** Seller shall schedule and deliver Generating Facility Energy to PGE at the Generating Facility Delivery Point, commencing on the Commercial Operation Date and continuing through the end of the Delivery Period, subject to the terms and conditions herein.

3.6.1 Seller shall provide PGE with (i) a rolling generation forecast, updated hourly, for the next fourteen (14) days, (ii) a rolling generation forecast for five (5) minute and fifteen (15) minute intervals, updated every five (5) and fifteen (15) minutes respectively, for the next twenty four (24) hours, and (iii) an updated hourly generation forecast ninety (90) minutes prior to each delivery hour for the balance of the delivery day (“**Generation Forecast**”). Each Generation Forecast shall be performed by the Forecasting Agent. The Forecasting Agent shall utilize methodology consistent that the requirements set forth in Exhibit L. At PGE’s request, (a) Seller shall provide PGE with all reasonably requested information required to facilitate the Parties’ compliance with Reliability Entity requirements, and (b) Seller will cause the Forecasting Agent to provide PGE with an Application Program Interface from which PGE can access raw forecasting files. The Forecasting Agent and PGE shall have real time access to information and forecasts concerning the Facility’s availability status.

3.6.2 Seller shall schedule the Products in accordance with Section 3.9.2 for delivery to PGE at the Generating Facility Delivery Point in the amount of Generating Facility Energy expected to be generated by the Facility consistent with the Generation Forecast. Seller’s Generating Facility Energy delivery Schedule may not intentionally exceed the Generation Forecast in any hour. Seller and PGE agree that the intent of this Section 3.6.2 is for Seller to schedule and deliver Generating Facility Energy resembling actual production for each hour.

3.6.3 Seller shall provide PGE with a real-time ICCP and EIDE communications link to the Generating Facility metered output.

3.6.4 If Seller or its agent reasonably anticipates that Market Index Prices will be less than zero, and Seller expects to receive little or no net payment for its output (“**Negative Price**”

**Event**”), Seller shall have the right, but not the obligation, to suspend part or all of its deliveries, via a reduction in Facility Output, for the anticipated duration of the Negative Price Event. In the event the Market Index Price is less than zero during the Negative Price Event, Seller’s obligation to deliver Facility Output shall be reduced by one (1) MWh and Seller’s Specified Amount shall be reduced by one (1) MWh.

3.7 **Environmental Attributes Delivery.** Unless excused by Force Majeure, Seller shall convey to PGE all Environmental Attributes, including Bundled RECs, associated with all Facility Output. Seller represents and warrants that Seller will hold good title, free and clear of any liens or encumbrances, to all Environmental Attributes from the Facility, including all Bundled RECs, conveyed to PGE.

3.7.1 Title to all Bundled RECs transferred by Seller to PGE pursuant to this Agreement shall be settled through WREGIS, and Seller shall cause delivery and transfer of the Bundled RECs to PGE’s WREGIS account in accordance with WREGIS rules.

3.7.2 Unless otherwise specified herein or by written notification by PGE, for each month of the Delivery Period after the Commercial Operation Date, Seller shall deliver and convey the Bundled RECs associated with the Facility Output delivered to PGE within ten (10) Business Days after the end of the month in which the WREGIS certificates for such Bundled RECs are created. Seller shall be responsible for attaching, in accordance with all current WREGIS operating rules, all available and applicable NERC e-tags pertaining to the corresponding Bundled REC before such Bundled REC is transferred to PGE in WREGIS.

3.8 **Carbon Emissions.** Seller is responsible for and shall pay for all future costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Delivered Energy Quantity delivered by Seller to the Generating Facility Delivery Point in accordance with this Agreement. Additionally, Seller is responsible for and shall pay for all costs, if any, whether incurred by Seller or PGE, resulting from any carbon emissions generated by or associated with the Imbalance Energy delivered to the Generating Facility Delivery Point. Seller may provide PGE with carbon emissions offsets that are reasonably satisfactory to PGE in lieu of a monetary settlement. Within ten (10) Business Days after PGE’s request, Seller shall provide PGE with the carbon emissions data for the Products that is delivered during the Delivery Period.

3.9 **PGE’s Purchase Obligations.** PGE shall purchase and receive the Generating Facility Energy delivered by Seller to the Generating Facility Delivery Point in an amount not to exceed the Generating Facility Net Available Capacity for each hour during the Delivery Period in accordance with and subject to the terms of this Agreement. PGE shall pay Seller the applicable price for all Generating Facility Energy delivered to the Generating Facility Delivery Point as set forth in Section 2.3. PGE shall be responsible for any costs or charges imposed on or associated with the Generating Facility Energy or its receipt, provided such costs or charges are imposed at or on PGE’s side of the Generating Facility Delivery Point and not the result of Seller’s actions, except any EIM charges resulting from Seller’s scheduling adjustments described in Section 3.9.2.

3.9.1 **Seller to Designate Forecasting and Scheduling Agents.** At least thirty (30) days before it begins to Schedule Generating Facility Test Energy under this Agreement, Seller shall

engage at its expense a third-party Scheduling Agent (the “**Scheduling Agent**”) and a third-party forecasting agent (the “**Forecasting Agent**”), subject in each case to PGE’s prior approval. The Scheduling Agent shall perform Seller’s pre-scheduling and Scheduling obligations under this Section 3.9.1 based exclusively on forecasts supplied by the Forecasting Agent.

3.9.2 Scheduling Procedure. Seller shall comply with the following “**Scheduling Procedure**” during the Delivery Period with respect to Generating Facility Energy:

- (a) “**Pre-Scheduled Energy**” means Generating Facility Energy scheduled under the following conditions for each day during the Delivery Period:
  - (i) Seller shall communicate to PGE’s Pre-schedule Desk, as directed by PGE, the Generating Facility’s Generation Forecast to be delivered at the Generating Facility Delivery Point for the Pre-Scheduling Day(s) by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Period;
  - (ii) Seller shall communicate to PGE’s real time desk via API, or as otherwise directed by PGE, Generating Facility Energy deliveries consistent with the Generation Forecast no later than ninety (90) minutes prior to the flow hour] and
  - (iii) Seller and PGE agree that the intent of these scheduling procedures is for Seller to schedule and deliver Generating Facility Energy that resembles actual generation from the Generating Facility for each hour.]
- (b) Seller shall not schedule any Generating Facility Energy to be delivered to PGE pursuant to this Agreement using a Dynamic or Pseudo-Tie e-Tag as such terms are defined and used by NERC.
- (c) Seller may make adjustments to the Pre-Scheduled Generating Facility Energy scheduled from the Generating Facility each hour in Real-Time (“**Real-time Adjustments**”). If Seller elects to make Real-time Adjustments, Seller will:
  - (i) communicate to PGE’s Real-time Desk, as directed by PGE, its intent to adjust the Pre-Scheduled Generating Facility Energy no later than seventy-five (75) minutes prior to the flow hour; and
  - (ii) submit and receive approval of e-Tag adjustment no later than seventy-five (75) minutes prior to the flow hour. Seller will make all NERC e-Tag adjustments. Seller’s e-tag shall match the adjustment communicated to PGE pursuant to Section 3.9.2(c)(i)~~3.9.2(e)(i)~~. Seller shall be responsible for any costs, charges, or fees associated with deviations to the e-tag after seventy-five (75) minutes prior to the flow hour.
- (d) In the event that the regional market design, Balancing Authority, Area, Reliability Entity or Regulatory Entity (e.g. PGE Transmission, BPA Transmission, WECC, NERC, RC West, FERC) causes PGE’s scheduling practices to change after the Effective Date, PGE shall have the right but not the obligation to update the Scheduling Procedure by giving thirty (30) days prior written notice to Seller of such update. Seller

shall not unreasonably withhold agreement to proposed changes to these Scheduling Procedures.

3.9.3 Authorized Scheduling Representatives. Each Party shall designate by notice to the other Party its authorized representatives responsible for Scheduling. The initial authorized representatives responsible for Scheduling are set forth on Exhibit A.

3.9.4 Maximum Delivery Amounts. Seller shall sell and deliver, and PGE shall buy and receive, the Delivered Energy Quantity delivered pursuant to this Agreement, up to the Generating Facility Net Available Capacity. If Seller, after the Effective Date, increases (i) the Generating Facility's ability to deliver Generating Facility Output, (ii) Generating Facility Nameplate Capacity, or (iii) the Generating Facility Net Available Capacity through any means, including but not limited to replacement or modification of equipment or related infrastructure, such increased output or capacity shall not be considered Delivered Energy Quantity. PGE and Seller may by mutual agreement separately contract for such increased output or capacity under such terms and conditions that the Parties may agree to. For the avoidance of doubt, nothing in this Agreement shall be construed to obligate PGE to purchase such increased output or capacity.

3.9.5 Title to Energy. Title to Generating Facility Energy shall pass to PGE at the Generating Facility Delivery Point.

3.9.6 Reliability Entity Curtailment. PGE shall not be liable to Seller if curtailment of Scheduled or unscheduled Generating Facility Energy is due to the action of a Reliability Entity and such action shall not be considered a Force Majeure ~~or a PGE Curtailment under Section 3.9.7.~~ Seller shall pay PGE the replacement cost for such Generating Facility Energy. The replacement cost during a Reliability Entity curtailment shall be the greater of zero or the amount calculated as: ((Market Index Price – Fixed Price) multiplied by curtailed Generating Facility Energy based on the Generating Facility's potential generation for periods of the Reliability Entity curtailment. The Forecasting Agent shall calculate the potential generation during periods of the Reliability Entity curtailment.

3.9.7 ~~Reserved PGE Curtailment. PGE shall have the right to curtail deliveries of scheduled Generating Facility Energy, up to four hundred (400) hours each Contract Year (or pro rata amount for any partial Contract Year) without compensation to Seller. The Specified Amount will be reduced by the number of MWhs subject to such a curtailment by PGE.~~

3.9.8 Approval for Seller to Join Organized Markets. During the Term of this Agreement, Seller shall not register as a participating resource in any energy imbalance market, independent system operator market or other organized market without prior written consent from PGE, which consent may be granted in PGE's sole discretion.

3.10 Generating Facility Remedial Action Scheme. To the extent the Generating Facility is not otherwise subject to Seller's Transmission Provider's Remedial Action Scheme, PGE shall have the right to utilize the Generating Facility for PGE's Transmission Provider's Remedial Action Scheme. Before the Commercial Operation Date, Seller shall at its expense make necessary arrangements, including installing any required equipment and entering into any

applicable agreements, to enable the Facility to participate in a Remedial Action Scheme for PGE's benefit.

3.11 **Measurement and Transfer of RECs.** Bundled RECs shall be deemed sold and delivered to PGE under this Agreement as they are produced and measured by the Generating Facility Meter. Title to such Bundled RECs shall pass to PGE when generated. PGE shall own or be entitled to claim all Bundled RECs during the Term (including any value in the ownership, use or allocation of Bundled RECs created by legislation or regulation after the Effective Date). The Generating Facility Meter shall serve as the record source for purposes of calculating, certifying, and auditing Generating Facility Output on an hourly basis with respect to Bundled RECs. Seller shall cause the Generating Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Generating Facility and only the Generating Facility. Seller shall cause delivery and transfer of the Bundled RECs to PGE's WREGIS account to be perfected in accordance with WREGIS rules. Seller shall hold the Bundled RECs in trust for PGE until such delivery and transfer is perfected. Each Party shall take such steps and further actions as may be required by WREGIS or Law in order to effect and confirm the sale and delivery of the Bundled RECs to PGE for all purposes.

3.12 **Access.** Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Law relating to workplace health and safety, Seller shall provide PGE and its authorized agents, employees and inspectors ("**PGE Representatives**") with reasonable access to the Project: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Project to customers and other guests of PGE (not more than twelve (12) times per year), (d) for purposes of implementing Section 17.2 (Audit Rights), and (e) for other reasonable purposes at the reasonable request of PGE. PGE shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PGE Representatives in connection with their access to the Project, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller.

3.13 **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 PGE 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 PGE for its share of monetary penalties.

**ARTICLE 4**  
**FORCE MAJEURE**

4.1 **Definition.**

"**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.

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; national labor disputes (including collective bargaining disputes and lockouts) involving Seller or its subcontractor and not directed exclusively at Seller or such subcontractor; a severe inclement weather condition not mentioned above; acts of the public enemy; blockade; acts of terrorism; insurrection, riot or revolution; sabotage or vandalism; embargoes; pandemics, and actions of a Governmental Authority (other than in respect of or in relation to or resulting from Seller's compliance or 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 Products 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 Products at a price greater than the Fixed Price. Seller may not raise a claim of Force Majeure with respect to the unavailability of Generating Facility Energy or Bundled RECs from the Facility based on any of the following: (i) routine or scheduled

maintenance of the Project; (ii) any unscheduled outage undertaken to address normal wear and tear of the Project during the Term; (iii) any outage caused by Seller's failure to design, construct, operate or maintain the Project consistent with Prudent Electric Industry Practice; (iv) changes in climactic conditions; (v) environmental obstructions caused by events or circumstances that may impact the Generating Facility's generation output but without causing a Generating 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 Project; or (x) any reasonably foreseeable inclement weather events, including those caused by, attributable to, or expected to result from climate change.

#### 4.2 **Occurrence and Notice.**

(a) Claims of Force Majeure. To the extent either Party intends to rely on a claim of a Force Majeure Event for purposes of this Agreement, such Party (the "**Claiming Party**") shall:

(i) provide notice and details of the Force Majeure to the other Party as soon as practicable, but in no event later than five (5) Business Days. The notice shall include an estimate of expected duration and the probable impact on the performance of its obligations under this Agreement;

(ii) provide weekly updates during the continuance of the Force Majeure Event that (A) summarize the measures taken by the Claiming Party and that the Claiming 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 Claiming 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 Claiming 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.

(c) Burden of Proof. The burden of proof as to whether a Force Majeure Event has occurred and whether the Force Majeure Event excuses a Party from performance under this Article 4 shall be upon the Claiming Party.

(d) if all conditions set forth in Section 4.2 above are met, then unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations related thereto. The non-Claiming Party shall not be required to perform its obligations to the Claiming Party that correspond to the obligations of the Claiming Party that are excused by Force Majeure.

4.3 **Obligations**. No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

4.4 **Right to Terminate**. If a Force Majeure event prevents a Party from performing its material obligations under this Agreement for a period exceeding one hundred eighty (180) consecutive days before the Commercial Operation Date or, after the Commercial Operation Date, for a period exceeding two hundred forty (240) consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), the unaffected Party, with respect to its obligations under this Agreement, may terminate this Agreement by giving ten (10) days prior written notice of termination to the affected Party. Upon such termination, neither Party will have any liability to the other with respect to periods following the effective date of such termination, except for the right of first offer set forth in Section 3.1.19 and as otherwise expressly provided in this Agreement; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

## ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

### 5.1 **Events of Default**.

An "**Event of Default**" shall mean, with respect to a Party (a "**Defaulting Party**"), the occurrence of any of the following:

5.1.1 in the case of the Seller, the occurrence of a Material Adverse Change with respect to Seller; provided, such Material Adverse Change shall not be considered an Event of Default if Seller establishes, delivers to PGE and maintains for so long as the Material Adverse Change is continuing, Performance Assurance in an amount equivalent to the Termination Payment as determined under Section 5.3;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

5.1.3 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 if such inaccuracy is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of default;

5.1.4 if a Party fails to deliver or receive Generating Facility Energy as required by this Agreement, and such failure occurs for (i) more than five (5) consecutive Days, or (ii) ten (10)



Days out of any Contract Year (it being the intent of the Parties that other failures to deliver or receive Generating Facility Energy in any Contract Year will be governed by Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the occurrence of a Merger Event with respect to such Party that is not cured within ten (10) Business Days of notice by the other Party;

5.1.7 in the case of Seller, Seller's failure to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.8 commencing on the Commercial Operation Date, Seller's failure to deliver fifty percent (50%) of the annual sum of the Specified Amounts to PGE during any two (2) out of three (3) consecutive Contract Years during the Delivery Period;

5.1.9 beginning with the first full calendar year following the Contract Year in which the Commercial Operation Date has occurred, Seller's failure to maintain a minimum Mechanical Availability Percentage for the Generating Facility of ninety-~~seven~~-five percent (9~~57~~5%) for any two (2) out of three (3) Contract Years on a rolling basis. The Mechanical Available Percentage of the Generating Facility shall be determined by Seller by dividing the total Operational Hours for such calendar year *[non-solar resources: by the total number of hours in the calendar year/ solar resources: by the total number of daylight hours in the calendar year.]* On or before January 31<sup>st</sup> of each year, Seller shall provide PGE written documentation, which shall be subject to audit by PGE, to verify or otherwise substantiate Seller's calculation of the Mechanical Available Percentage of the Generating Facility for the prior calendar year. The operational hours for the Facility shall be the hours that the Generating Facility is potentially capable of producing power at Generating Facility Nameplate Capacity regardless of actual weather conditions or season, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the point of interconnection with the Transmission Provider. The methodology for calculating Operational Hours and the resulting Mechanical Availability Percentage is set forth in Exhibit N *[Note to bidders: the Parties would agree to a more detailed methodology consistent with this Section 5.1.9 and attached it as Exhibit N]*;

5.1.10 in the case of Seller, the occurrence of a Letter of Credit Default;

5.1.11 in the case of Seller, the occurrence of an Event of Default under Section 3.1.13(d)~~3.1.13(d)~~;

5.1.12 in the case of Seller, the Project is Abandoned;

5.1.13 in the case of Seller, 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 Storage Facility Point of Delivery in accordance with Law, and in either case such failure continues for fifteen (15) days after Seller's receipt of written notice or discovery of such failure;

5.1.14 in the case of Seller, Seller sells to a Person other than PGE 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 PGE Event of Default);

5.1.15 in the case of Seller, Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Commercial Operation Date;

5.1.16 in the case of Seller, if, after the Commercial Operation Date, the Actual Availability for ~~two [2] out of three [3] consecutive years [ ] or more months within a rolling [ ] month period~~ during the Delivery Term is less than ~~95%[percentage]~~;

5.1.17 in the case of Seller, 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;

5.1.18 in the case of Seller, 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;

5.1.19 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;

5.1.20 Assignment of this of this Agreement, except as permitted in accordance with Section ~~Error! Reference source not found.15.1.~~

## 5.2 **Declaration of an Early Termination Date and Calculation of Settlement Amounts.**

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Term and be continuing, the other Party (the "**Non-Defaulting Party**") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("**Early Termination Date**") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement, and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date. The Non-Defaulting Party shall calculate the Termination Payment payable hereunder in accordance with Section 5.3 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the remaining Term (“**Settlement Period**”). The quantity of Generating Facility Energy in each month of the Settlement Period shall be equal to the Specified Amount for such month determined under this Agreement as of the time the calculation is made (“**Settlement Energy**”). The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant Products, information vendors and other sources of market information. However, it is expressly agreed that (a) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (b) a Party’s Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges or consequential, punitive, exemplary or indirect or business interruption damages. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Termination Payment. The “**Termination Payment**” shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

5.4 Notice of Payment of Termination Payment. As soon as practicable after calculating the Termination Payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) one hundred eighty (180) days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall pay the non-disputed amount of the Termination

Payment as provided in Section 5.4 and transfer, within two (2) Business Days, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

5.6 **Closeout Setoffs.** After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which the Non-Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 **Suspension of Performance.** Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

5.8 **Right of First Offer.**

(a) If PGE 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 PGE 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 PGE 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 PGE fails to accept an offer made by Seller pursuant to Section 1.1.1(a)5.8(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 PGE 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 5.8 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 5.8.

(iii) Subject to Section 5.912.4(a)(i) Seller shall indemnify and hold PGE harmless from all benefits lost and other damages sustained by PGE as a result of any breach by Seller of its covenants contained within this Section 5.8. This provision shall survive the termination of this Agreement.

#### 5.9 **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.

5.10 **Post-Termination PURPA Status.** If this Agreement is terminated because of a default by Seller, and Seller has subsequently remedied the default after such termination, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Site, on whose behalf Seller acts herein as agent, may thereafter require or seek to require PGE to make any purchases from the Facility or any electric generation facility constructed on the Site under PURPA, or any other Law, under terms and conditions different from those set forth in this Agreement (including rates higher than those set forth in this Agreement) for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PGE to do so. On or before the Effective Date, the Parties shall execute and record, in the appropriate real property records of the counties in which the Facility or Site is situated, and any federal agency as applicable, a memorandum in form acceptable to PGE to provide constructive notice to third parties of Seller's agreements under this Section 5.85-10. In no event will PGE be required to make any purchases from the Facility or any electric generation facility constructed on the Site in the event the default that caused the termination is still in effect.

### ARTICLE 6

#### **FAILURE TO DELIVER/RECEIVE GENERATING FACILITY OUTPUT; STORAGE FACILITY PERFORMANCE GUARANTEES**

6.1 **Seller Failure to Deliver Generating Facility Output Energy.** If Seller fails to deliver Generating Facility Output as required by this Agreement or the associated Environmental Attributes, including Bundled RECs, and such failure is not excused by Force Majeure, or by PGE's breach of this Agreement, Seller shall owe PGE an amount as calculated below:

6.1.1 Seller shall owe PGE an amount for such deficiency equal to the positive difference (if any) of the applicable Market Index Settlement Price minus the Energy Fixed Price multiplied by the positive difference (if any) of the Generating Facility Output Seller failed to deliver for the applicable monthly On-Peak and Off-peak period minus the Delivered Energy Quantity delivered during that monthly On-Peak and Off-peak period; and

6.1.2 Seller shall owe PGE any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver Generating Facility Output; and

6.1.3 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Generating Facility Output results in incremental Carbon Emissions costs to PGE, consistent with Section 3.8; and

6.1.4 Seller shall owe PGE an amount for such deficiency should the replacement energy procured by PGE as a result of Seller's failure to deliver the Generating Facility Output results in incremental ancillary services; and

6.1.5 Seller shall be obligated to settle any shortfall in the delivery of Environmental Attributes (including Bundled RECs) as follows:

- (a) Seller shall, within one hundred twenty (120) days after the end of the shortfall month, deliver an equivalent amount of Qualifying Replacement RECs that are generated in the same calendar year; or
- (b) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE elects in its sole discretion to purchase Qualifying Replacement RECs, Seller shall owe PGE the price that PGE actually pays for Qualifying Replacement RECs; or
- (c) If Seller elects not to deliver an equivalent amount of Qualifying Replacement RECs under Section 6.1.5(a) and PGE does not elect, in its sole discretion, to purchase replacement bundled RECs under subpart (b), Seller shall owe PGE the Qualifying Replacement REC Price identified by PGE multiplied by the number of Bundled RECs Seller failed to deliver. PGE shall use commercially reasonable efforts to mitigate the amount owed by Seller under this Section 6.1.5(c).

6.1.6 Any amount owed by the Seller to PGE under this Section 6.1 shall be netted against PGE's payment obligation for the month pursuant to Section 7.4 below.

6.1.7 An example illustrating the calculation of amounts due to PGE under this Section 6.1 under certain stated assumptions is set forth in Exhibit I.

6.2 **PGE's Failure to Accept**. If PGE fails to accept Generating Facility Energy that is scheduled in accordance with Section 3.9.2, and Seller is ready willing and able to deliver Generating Facility Energy to the Generating Facility Delivery Point, and such failure is not excused by a reliability or transmission constraint, Force Majeure or by Seller's failure to perform, then PGE shall owe Seller an amount for such deficiency equal to the positive difference between the applicable purchase price as set forth in Section 2.3.2 for the amount of Generating Facility Energy PGE fails to accept minus the Sales Price associated with the amount of Generating Facility Energy PGE fails to accept. Any such amount owed by PGE to Seller shall be added to the calculation of PGE's payment obligation for the month pursuant to Section 2.3.2. For each MWh of Generating Facility Energy not accepted by PGE pursuant to this Section 6.2, Seller's obligation to deliver the Specified Amount shall be reduced by one (1) MWh. An example illustrating the calculation of amounts due to Seller under this Section 6.2 under certain stated assumptions is set forth in Exhibit I.

6.3 **Storage Facility 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 PGE 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 Storage Facility 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 6.3(a)(iii) doesn’t limit Buyer’s right to declare an event of default under Section 5.1.5.

(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 PGE 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 Storage Facility 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 PGE a calculation showing Seller’s computation of Actual Availability for the previous Contract Year and the Guaranteed Availability Adjustment, if any, due to PGE (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 [Error! Reference source not found.](#)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 PGE 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 PGE to the Storage Facility Point of Delivery (the **“Guaranteed Round-Trip Efficiency Adjustment”**).

6.4 **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.

6.5 **Acknowledgement of the Parties**.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties for the failure of Seller to sell and deliver, and PGE to purchase and receive the Products and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 may be submitted by either Party for resolution in accordance with [ARTICLE 18](#)~~Article 18~~ and with Law.

6.6 **Survival**. The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

## ARTICLE 7 PAYMENT AND NETTING

7.1 **Billing Period**. Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Seller or PGE failure under Sections 6.1 and 6.2 respectively and for termination under Section 5.4). On or before the tenth (10<sup>th</sup>) day of each Month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month. Seller shall read or have read on its behalf the Storage Facility 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.

7.2 **Timeliness of Payment**. 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 (20<sup>th</sup>) day of each Month, or the tenth (10<sup>th</sup>) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 **Disputes and Adjustments of Invoices**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or



adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this [Section 7.3](#) within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by one Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to [ARTICLE 5](#)~~Article 5~~ (unless one of the Parties elects to accelerate payment of such amounts as permitted by [Section 5.2.1](#)), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 **Payment Obligation Absent Netting.** If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to [Article 5](#), interest, and payments or credits, that Party shall pay such sum in full when due.

## ARTICLE 8 LIMITATIONS

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

8.2 **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.

8.3 **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.

8.4 **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.

8.5 **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.

8.6 **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.

## ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

### 9.1 **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 PGE having an aggregate value equal to sum of (A) ~~\$200-125~~ *multiplied by* the Contract Storage Capacity of the Storage Facility, expressed in kW, plus (B) ~~\$200-125~~ *multiplied by* the Nameplate Capacity of the Generating Facility, expressed in kW (the “**Pre-COD Security**”). The Pre-COD Security 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 PGE in substitution of the Credit Support delivered pursuant to ~~Section 9.1(a)(i)~~ ~~8.1(a)(i)~~ having an aggregate value equal to the sum of (A) \$100 *multiplied by* the Contract Storage Capacity of the Storage Facility, expressed in kW, plus (B) the Nameplate Capacity of the Generating Facility, expressed in kW (the “**Delivery Period Security**”).

- (b) **Maintenance of Seller Credit Support.** Seller shall maintain Credit Support for the benefit of PGE 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 PGE 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 PGE to satisfy any outstanding obligations of Seller under this Agreement, then Seller shall within ten (10) Business Days following PGE's written demand replenish such Credit Support so that the amount of Credit Support outstanding in favor of PGE is not less than the Delivery Period Security; 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 Delivery Period Security. For the avoidance of doubt, Seller has no obligation to replenish Credit Support prior to the Commercial Operation Date.

## 9.2 **General Provisions Applicable to Credit Support.**

- (a) Credit Support in the form of Cash.
  - (i) Seller pledges to PGE, as security for its obligations under this Agreement, and grants to PGE 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 PGE under this Agreement. Upon the transfer by PGE to Seller of Cash held by PGE 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) PGE shall maintain all Credit Support in the form of Cash transferred to or received by PGE with a Qualified Institution for the purpose of holding Credit Support provided to PGE 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 PGE), 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 PGE with respect to a month in the invoice provided with respect to such month pursuant to Section [Error! Reference source not found.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 9.3.
  - (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 PGE as Credit Support.

- (b) Credit Support in the form of a Letter of Credit.
- (i) Each Letter of Credit must provide that PGE may, and PGE 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 (A)(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 PGE 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 PGE's notice of the Letter of Credit Default, as applicable, transfer to PGE substitute Credit Support. For purposes of this clause (ii) of this subsection, the aggregate value of substitute Credit Support that Seller is required to transfer to PGE 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 PGE.

- (iv) Proceeds received by PGE 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 PGE 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) Substitution and Return.
- (i) Upon notice to PGE specifying the items of Credit Support to be exchanged, Seller may on any Business Day transfer to PGE substitute Credit Support, and so long as no Event of Default with respect to Seller has occurred and is continuing, PGE shall return to Seller the items of Credit Support identified by Seller in its notice by not later than the fifth (5<sup>th</sup>) Business Day following the date on which PGE receives the substitute Credit Support, except that PGE 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 PGE has not made a claim), PGE shall, within five (5) Business Days following receipt of Seller's demand, return to Seller in the case of clause (A) of this subsection, the applicable portion of the Credit Support of the Seller then outstanding in favor of PGE in the amount of the reduction, and in the case of clause (B) of this subsection all Credit Support of Seller then outstanding in favor of PGE. In connection with any such return, PGE 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.
- (d) 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 PGE 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, PGE, and Seller agrees to take such action as PGE reasonably requires in order to perfect PGE 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, PGE 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 PGE 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 PGE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. PGE 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 PGE after such application), subject to PGE's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
  
- (viii) **Performance Assurance is Not a Limit on Seller's Liability.** The Performance Assurance contemplated by this [ARTICLE 9Article 9](#): (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be PGE's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that PGE draws on any Pre-COD Security or Delivery Period Security, Seller shall replenish or reinstate the Pre-COD Security or Delivery Period Security to the full amount then required under this [ARTICLE 9Article 9](#).

9.3 **Waiver.** This Agreement sets forth the entire agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including this [ARTICLE 9Article 9](#), neither Party:

- (a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
- (b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of [Article 9](#) of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

#### 9.4 **Step-In Rights**

- 9.4.1 **Notice.** At any time after the Facility has achieved Commercial Operation, and if at such time PGE has the right to terminate this Agreement due to an Event of Default, then prior to and in lieu of exercising the termination right

related to such Event of Default, PGE shall have the right, but not the obligation, to assume control of and operate the Facility as agent for Seller under the terms and conditions set forth herein (“**Step-In Rights**”). If PGE contemplates exercising its Step-In Rights under this Section **Error! Reference source not found.**9.5, PGE shall give Seller at least ten (10) Days’ advance notice thereof.

9.4.2 Books and Records. After notice is given and during the relevant notice period, Seller shall collect and have available at a convenient central location at the Facility and shall make available to PGE, at PGE’s request, all documents, contracts, books, manuals, reports, records, plans, tools, equipment, inventories and supplies necessary or convenient to construct, operate and maintain the Facility in accordance with Prudent Electric Industry Practice.

9.4.3 Application of Proceeds. During any period that PGE is in control of and operating the Facility pursuant to exercise of its Step-In Rights, PGE shall perform and comply with all of the obligations of Seller under this Agreement and shall apply the Fixed Price that Seller would otherwise be entitled to receive hereunder in respect of the sale of Products and any other revenues of the Facility received by PGE from any source attributable to the Facility operation as follows:

- (i) first, to reimburse PGE for any and all out-of-pocket expenses reasonably incurred by PGE in taking possession of and operating the Facility, including PGE’s personnel time and expenses, such operation to be subject to the operating budget and any operating agreement if such agreements are applicable;
- (ii) second, to pay any unpaid amounts owed to PGE under this Agreement;
- (iii) third, to satisfy any payments due and owing to any Lenders, arising after PGE’s exercise of its Step-In Rights, and
- (iv) fourth, to Seller.

9.4.4 Title and Possession. During any period that PGE is in control of and operating the Facility pursuant to the exercise of its Step-In Rights, Seller shall retain legal title to and ownership of the Facility and PGE shall assume possession, operation and control solely as agent for Seller, provided that PGE shall operate the Facility in conformance with Prudent Electric Industry Practice (including operation and maintenance of the Facility in accordance with manufacturer’s recommendations), the provisions and covenants set forth herein and in the Interconnection Agreement between Seller and the Transmission Provider, all leases, subleases, rights-of-way, easements and rights of ingress and egress used in connection with the Facility and Law (including all material permits, consents, licenses, approvals or authorizations from any Governmental Authority pertaining to the Facility). PGE’s exercise of its Step-In Rights shall not be deemed an assumption by PGE of any liability of, or attributable to, Seller; provided, however, during the time PGE is operating the Facility, PGE shall indemnify and hold Seller harmless for any third-party claims against Seller arising out of PGE’s negligence or willful misconduct.

9.4.5 Seller’s Resumption of Operations. If PGE is in control of the Facility pursuant to the exercise of its Step-In Rights, Seller may resume operation and PGE shall relinquish its right

to control and operate the Facility under this [Section Error! Reference source not found.9.5](#) at such time as Seller has demonstrated to PGE's reasonable satisfaction that it possesses the resources to perform its duties under this Agreement.

9.4.6 PGE's Return of Control. If at any time after exercising its Step-In Rights and taking control of and operating the Facility, PGE elects to return control and operation to Seller, PGE shall give Seller thirty (30) Business Days' advance notice of the date that PGE intends to return such control to Seller. Upon receipt of such notice, Seller shall take all actions necessary or appropriate to resume control and operation of the Facility on such date in accordance with the terms of this Agreement.

9.4.7 Purpose. PGE and Seller agree that (i) the Step-In Rights are intended solely to provide further assurance that the terms of this Agreement will be achieved, and accordingly that the purpose of the Step-In Rights is the same as the purpose of this Agreement; (ii) there is no separate or additional consideration for the Step-In Rights; and (iii) Seller's obligations in respect of the Step-In Rights are inextricably interrelated to PGE's obligations under the terms of this Agreement.

## **ARTICLE 10 GOVERNMENTAL CHARGES**

### **10.1 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.

### **10.2 Non-Sale Related Governmental Charges and Taxes**

Seller shall pay or cause to be paid all charges or taxes imposed by any government authority ("**Governmental Charges**") on or with respect to the Products arising prior to the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Products at and from the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable (other than those related to the sale of the Products, which are the responsibility of Seller). In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Seller for such Governmental Charges. If PGE is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, PGE 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 7Article 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.

### **10.3 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 Products sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Products to the Generating Facility Delivery Point or Storage Facility Point of Delivery, as applicable.

#### 10.4 **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 Products sold, delivered and received hereunder that are the responsibility of such Party pursuant to this [ARTICLE 10](#)~~Article 10~~.

### **ARTICLE 11 RATES AND TERMS BINDING; FERC STANDARD OF REVIEW**

#### 11.1 **Mobile-Sierra Doctrine.**

11.1.1 Standard of Review. 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 (to the extent that any waiver in Section 11.1.2 below is unenforceable or ineffective as to such 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).

11.1.2 Waiver of FERC Rights. In addition, and notwithstanding Section 11.1.1, to the fullest extent permitted by Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Law or market conditions that may occur. If it were to be determined that Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection Section 11.1.1 shall not apply, provided that, consistent with Section 11.1.1, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 11.1.1.

**ARTICLE 12**  
**REPRESENTATIONS AND WARRANTIES; INDEMNITY**

**12.1 Representations and Warranties.**

On the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

12.1.1 it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

12.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

12.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

12.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

12.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

12.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

12.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

12.1.9 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

12.1.10 the material economic terms of this Agreement were subject to individual negotiation by the Parties;

12.1.11 it is an “eligible contract participant” within the meaning of the Commodity Exchange Act.

## 12.2 **Additional Representations and Warranties of Seller.**

On the Effective Date and throughout the Term, Seller hereby further represents and warrants to PGE that:

12.2.1 Seller has the right to sell the Products to PGE free and clear of liens of encumbrances;

12.2.2 Seller has title to the Products sold under this Agreement free and clear of liens and encumbrances;

12.2.3 Seller is authorized to sell power at market-based rates pursuant to FERC Dockets Number ER [\_\_\_\_\_];

12.2.4 The Facility is either an EWG or a QF;

12.2.5 Seller has obtained, or will obtain as and when required by this Agreement, all Permits and all other rights and agreements required to construct, own, operate and maintain the Facility, and they will be in full force and effect for the Term;

12.2.6 All leases of real property and other real property rights and agreements required for the operation of the Facility or the performance of any obligations of Seller under this Agreement have been obtained and are owned by Seller, free and clear of liens and encumbrances;

12.2.7 Except as disclosed on Exhibit E, neither Seller nor any Affiliate of Seller has entered into any document, arrangement, understanding, promise or agreement or the like with any Person concerning, with respect to the Facility, (i) remediation or mitigation of environmental impacts, (ii) endangered species, (iii) migratory birds (including eagles), (iv) wildlife and species of conservation concern (state and federal), (v) environmentally, culturally or historically sensitive property or resources, (vi) a military facility, or (vii) national security. In addition, neither Seller nor any Affiliate of Seller has entered into any agreement where public disclosure of the agreement or the subject matter of the agreement could reasonably be expected to negatively affect the Facility’s reputation.

12.2.8 Except as disclosed in Exhibit K, there is no litigation, legal action or administrative action pending with respect to the Facility nor, to Seller’s knowledge, is any such litigation, legal action or administrative action threatened.

12.2.9 Seller has at all times been fully compliant with the requirements of the Federal Trade Commission’s “Green Guides,” 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated in any communication concerning Facility Output, the Facility or the Bundled RECs.

12.2.10 Seller has complied with all Laws in effect or that may be enacted during the Term.

Seller shall disclose to PGE the extent of, and as soon as it is known to Seller, any violation of any 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.

12.3 **No Other Representations or Warranties.** Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

12.4 **Indemnification.**

(a) **Indemnification.**

(i) Subject to the provisions of this Article 12, 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 8.4 shall not apply with respect to claims made by third parties.

(ii) Subject to the provisions of this Article 12, and to the fullest extent permitted by law, PGE 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 8.4 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 12 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 1.1.1(b)+2.4(b), or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 1.1.1(b)+2.4(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 13, 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 13 INSURANCE**

13.1 **Evidence of Insurance.** Seller shall on or before each Contract Year, provide PGE with one (1) copy of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit H and this Section 13.1 along with endorsements required below in Section 13.3, 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 PGE, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by PGE). Seller's liability under this Agreement shall not be limited to the amount of insurance coverage required herein.

### 13.2 **Term and Modification of Insurance.**

(a) 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.

(b) 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 PGE, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, PGE shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit H within sixty (60) days.

### 13.3 **Endorsements and Other Requirements.**

(a) Seller shall provide endorsements evidencing that the insurers shall provide PGE 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 PGE and its Affiliates, officers, directors, agents, subcontractors and employees.

(b) 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.

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 H names PGE and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent PGE (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 H 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 PGE to the liability insurance required pursuant to paragraphs (B), (C), and (E) of Exhibit H.

## **ARTICLE 14 TITLE AND RISK OF LOSS**

Title and risk of loss related to the Products associated with the Generating Facility shall transfer from Seller to PGE at the Generating Facility Delivery Point, except that title to Bundled RECs shall transfer to PGE when generated and shall be measured at the Generating Facility Meter. Title to, and risk of loss for all Products associated with the Storage Facility that are delivered to PGE transfers from Seller to PGE upon delivery at the Storage Facility Point of Delivery. Buyer shall have title to Charging Energy, energy stored in the Storage Facility, and Discharging Energy. Risk of loss for PGE’s deliveries of Charging Energy for storage by Seller shall pass from PGE to Seller at the Interconnection Point. Risk of loss for Seller’s deliveries of Discharging Energy to PGE shall pass from Seller to PGE at the Storage Facility Point of Delivery.

Seller represents and warrants that it will deliver all Products to PGE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Generating Facility Delivery Point.

## **ARTICLE 15 ASSIGNMENT; BINDING EFFECT**

### **15.1 Assignment.**

Neither Party may assign this Agreement or its rights hereunder to any entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any direct or indirect change in control of Seller (whether voluntary or by operation of law) will be deemed an assignment of this Agreement and will require prior written consent of PGE pursuant this Section 15.1. Any assignment or other transfer in violation of this provision is null and void. Seller shall pay PGE's reasonable expenses incurred to provide consents, estoppels or other required documentation in connection with Seller's financing of the Facility.

### **15.2 Change in Control.**

No direct or indirect change in the control of Seller may occur without PGE's prior written consent, not to be unreasonably withheld, conditioned or delayed.

### **15.3 Binding Effect.**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

## **ARTICLE 16 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.

## **ARTICLE 17 RECORDS, AUDIT AND ACCOUNTING**

### **17.1 Records.**

Seller and PGE 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 Law. All records of Seller and PGE 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 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, 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 PGE 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 PGE 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 PGE of all meteorological and other related data collected at the Project and corresponding unit availability data.

## 17.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Products delivered under this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.



### 17.3 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 PGE to evaluate if PGE 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 PGE’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 PGE’s accounting treatment for the Agreement, jointly the “**Accounting Standards**”). Seller agrees to provide PGE with information PGE reasonably believes is necessary for PGE to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as PGE deems necessary), and consultations with their respective independent registered public accounting firms, PGE, 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 PGE: (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 PGE’s external auditors to complete an audit of PGE’s consolidated financial statements, PGE 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 17.3(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 17.3(a), Seller shall provide such statements to PGE within five (5) Business Days after those statements are issued.

(iii) Upon reasonable notice from PGE, during normal business hours and mutually agreed terms and dates, Seller shall allow PGE access to Seller’s records and personnel, so that PGE and PGE’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 PGE.

(iv) Once during each calendar quarter, PGE 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) PGE shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 17.3 in confidence in accordance with Article 20 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying PGE'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 Law in which PGE 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 PGE'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 PGE's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Article 20; (iii) not disclose any of Seller's financial information provided under the terms of this Section 17.3 to the extent that such information is not required by the Accounting Standards or Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 17.3 to that information that reflects Seller's operations of the Project; provided, such limited submission is not contrary to the Accounting Standards or other Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that PGE intends to submit pursuant to this Section 17.3 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if PGE discloses information that, based on the advice of its counsel, is legally required to be disclosed, PGE may make such disclosure without being in violation of this Section 17.3.

## **ARTICLE 18 DISPUTE RESOLUTION**

### **18.1 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 three (3) 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 in good faith to resolve the Dispute quickly, informally and inexpensively.

## 18.2 **Mediation.**

Any Dispute that is not resolved pursuant to Section 18.1 within thirty (30) days after the Dispute notice was given may be submitted for mediation by either Party before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the AAA in effect at the time of the mediation (“**AAA Procedures**”); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from each of the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, (c) two unexcused absences by either Party from the mediation sessions, or (d) failure to resolve the Dispute on or before the sixtieth (60<sup>th</sup>) day after the date on which the notice of Dispute was given (unless the Parties otherwise agree in writing to extend such date). The mediator will never participate in any claim or controversy covered by this Article 18 as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

## 18.3 **Legal Action.**

If the Parties are still unable to resolve their differences through mediation pursuant to Section 18.2 within sixty (60) 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 any of the courts of the State of Oregon located in the City of Portland or 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 services 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 18.3 shall apply with respect to any application for such relief.

18.4 **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY 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.

18.5 **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.

18.6 **Survival.** The provisions set forth in this ARTICLE 18~~Article 18~~ shall survive the termination or expiration of this Agreement.

## ARTICLE 19 GENERAL PROVISIONS

### 19.1 **Entire Agreement.**

This Agreement (including the attached exhibits and schedules), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter and supersedes any and all prior oral or written understandings. Any and all Exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

### 19.2 **Joint Efforts.**

This Agreement shall be considered for all purposes as prepared through the joint efforts of both Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

### 19.3 **Amendments in Writing.**

No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

#### 19.4 **No Third-Party Beneficiaries.**

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

#### 19.5 **Non-Waiver.**

No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

#### 19.6 **Severability.**

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement. 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.

#### 19.7 **Survival.**

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

#### 19.8 **Bankruptcy Matters.**

The Parties acknowledge and intend that this Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, and that PGE and Seller are “forward contract merchants” within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same “forward contract,” “forward agreement” and “master netting agreement” within the meaning of the Bankruptcy Code, or that PGE and Seller are not “forward contract merchants” within the meaning of the Bankruptcy Code.

#### 19.9 **Relationships of Parties.**

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 PGE 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.

19.10 **Headings**. The headings used for the Sections and Articles herein are for convenience and reference purposes only and shall not affect the meaning or interpretation of this Agreement.

19.11 **Consolidation of Variable Interest Entities**.

If PGE or one of its Affiliates determines that, under Accounting Standards Codification 810 (“**ASC 810**”) Consolidation of Variable Interest Entities (“**VIE’s**”), formerly referred to as the Financial Accounting Standards Board’s revised Interpretation No. 46 (“**FIN 46**”), it may hold a controlling financial interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and ownership information so that PGE or its Affiliate may assess whether a controlling financial interest in a VIE does exist under FIN 46. If PGE or its Affiliate determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PGE's written request, sufficient financial and other information to PGE or its Affiliates so that PGE may properly consolidate the entity in which it holds the controlling financial interest and present the required disclosures. PGE shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PGE's requests for information under this Section 19.11.

19.12 **Change in Law**.

The price will not be affected by any change in any Law that alters either PGE’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.

19.13 **Exhibits**.

Either Party may change the information for its notice addresses in Exhibit A 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.

19.14 **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.

19.15 **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).

19.16 **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.

19.17 **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, 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.

**ARTICLE 20  
CONFIDENTIALITY AND PUBLICITY**

20.1 **Confidentiality**

For purposes of this Section 20.1, “**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.

(a) 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).

(b) As used in this Section 20.1, “**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 PGE or on PGE'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.

(c) 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.

(d) 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 PGE in seeking protection from the disclosure of Seller's Confidential Information.

20.2 **Naming of Facility.** Subject to Seller's approval, which such approval shall not be unreasonably denied, PGE may name the Project for marketing purposes. Notwithstanding the foregoing sentence, Seller shall not be required to change the name of the Project for regulatory permitting or licensing purposes.

20.3 **Publicity.** After the Execution Date, if either Party desires to issue a press release, such Party will notify the other Party of its intention. Upon receipt of such notice, the Parties will promptly (but in any event no later than ten (10) Business Days after such request) meet and negotiate the content of such press release in good faith. If the Parties fail to reach agreement on the content of such press release, the Party desiring such press release may unilaterally release a limited press release ("**Limited Press Release**") within the next sixty (60) days. Any such Limited Press Release may include, and is strictly limited to, only the following general details of this Agreement: (i) the name of the Project; (ii) reference to the fact that the Project is a [type] facility, (iii) contracted Generating Facility Nameplate Capacity and contracted Storage Facility Storage Capacity; (iv) the state within which the Project will be located; and (v) that the Project is under contract with a counterparty.

## ARTICLE 21 NOTICES AND COUNTERPARTS

### 21.1 **Notices.**

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery), or other documentary form. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or courier. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.1.3 Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit A 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.

21.1.4 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.

## 21.2 **Counterparts.**

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. 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.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Renewable Energy and Storage Capacity Purchase and Sale Agreement to be duly executed as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC  
COMPANY**

**[*Seller*]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**Notices**

**Portland General Electric Company (“PGE”)**

**All Notices:**

Street: 121 SW Salmon Street  
City: Portland, Oregon 97204  
Attn: Power Contracts; 3WTCBR06  
Phone: (503) 464-\_\_\_\_  
Email: \_\_\_\_\_  
Duns: 00-790-9054  
Federal Tax ID Number: 93-0256820

**Invoices:**

Attn: Accounts Payable  
Phone: (503) 464-7126  
Email: \_\_\_\_\_

**Scheduling:**

Attn: Manager Power Coordination  
Phone: (503) 464-7241  
Email: \_\_\_\_\_

**Wire Transfer:**

BNK: United States National Bank of Oregon-  
Portland  
ABA: 123000220  
ACCT: #153600063512  
NAME: Portland General Electric Company

**Credit and Collections:**

Attn: Credit Manager  
Phone: (503) 464-\_\_\_\_\_  
Email: \_\_\_\_\_

With additional Notices of an Event of Default to:

Attn: General Counsel  
Phone: (503) 464-7822  
Email: \_\_\_\_\_

**Seller (“Seller” or “Name”)**

**All Notices:**

Street: \_\_\_\_\_  
City: \_\_\_\_\_ Zip: \_\_\_\_\_  
Attn: Contract Administration  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

With additional Notices of an Event of Default to:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**EXHIBIT B**

**Project Description**

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**EXHIBIT C**  
**Specified Amounts**

**EXHIBIT D**  
**Facility Description**

**EXHIBIT E**  
**Project Documents**



**EXHIBIT F**

**Site**

**EXHIBIT G**

**Start-Up Testing of Generating Facility**

**EXHIBIT H**

**Insurance**

## EXHIBIT I

### Examples

*\*\*Exhibit provided for example purposes only and may not be representative of information included in final contract\*\**

#### Market Index Settlement Price Example

(A)	(B)	(C)	(D) = (C)*(B)/Production Total
Hour	Production (MWh)	Market Index Price (\$/MWh)	Production-Weighted Market Index Price (\$/MWh)
HE01			
HE02			
HE03			
HE04			
HE05			
HE06			
HE07			
HE08			
HE09			
HE10			
HE11			
HE12			
HE13			
HE14			
HE15			
HE16			
HE17			
HE18			

HE19			
HE20			
HE21			
HE22			
HE23			
HE24			
Production Total			
Market Index Settlement Price			

**Example Illustrating Determination of Payments Due under Section [2.32.3.2](#)**

**Example Illustrating Determination of Amount Due to PGE under Section 6.1**


**Example Illustrating Determination of Amount Due to Seller under Section 6.2**

**EXHIBIT J**  
**Intentionally Left Blank**



**EXHIBIT K**  
**Litigation**

**EXHIBIT L**  
**Forecast Methodology**

**EXHIBIT M**

**Optimal Conditions/ Generating Facility Nameplate Capacity**

**EXHIBIT N**

**Operational Hours and Mechanical Availability Methodology**

**EXHIBIT O**

**Commissioning Tests for Storage Facilities**

**EXHIBIT P**  
**Guaranteed Round-Trip Efficiency**

**EXHIBIT Q**  
**Operating Procedures**

**EXHIBIT R**  
**Operating Restrictions**