

Appendix F

~~Storage Capacity Form Agreement~~

~~2023 All-Source RFP~~



~~Storage Capacity Agreement~~
between

Appendix F

Storage Capacity Form Agreement

2025 All-Source RFP



STORAGE CAPACITY PURCHASE AGREEMENT

Between

Portland General Electric Company

And~~and~~

[Seller]

~~dated as~~

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[Date]

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EXHIBITS

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STORAGE CAPACITY ~~PURCHASE AGREEMENT~~

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

This ~~Storage Capacity~~ STORAGE CAPACITY PURCHASE AGREEMENT (~~“Agreement”~~ (this ~~“Agreement”~~), dated”) is entered into effective as of [Date], 2023 (the “_____ day of _____, 20_____” (~~“Effective Date”~~), ~~is by and between [Seller], a [State] [Entity Type] (“Seller”), and Portland General Electric Company, an Oregon corporation (“Buyer”), and [Seller], a [Entity Type] (“Seller”). Each of Buyer~~ PGE). PGE and Seller are also referred to in this Agreement individually as a “Party”, and collectively as the “Parties”.

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

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

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

ARTICLE 1

DEFINITIONS AND ~~RULES OF INTERPRETATION~~

~~1. Defined Terms~~

~~1.1 Unless otherwise required by the context in which it appears, terms~~ Definitions.

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings set forth specified in this Section 4.1.1.

“AAA” means American Arbitration Association.

“AAA Procedures” has the meaning set forth in Section 17.2.

“Abandoned” means that (i) Seller has permanently relinquished all possession or control of the ProjectStorage System 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 ProjectStorage System for ninety (90) consecutive days; or (iii) following the Commercial Operation Date, Seller has ceased to operate or perform maintenance at the ProjectStorage System

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 45.11.16.3(a).

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

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

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

“Affiliate” means, ~~in relation with respect to a Party, any Person, any other Person, who:~~ (a) ~~that, directly or indirectly Controls, or is Controlled, through one or more intermediaries, controls, or is controlled by, or is under common Control/control with, such Person; or (b) directly~~ Party. For this purpose, “control” means ~~the direct or indirectly beneficially owns or holds indirect ownership of fifty percent (50%) or more of any class of voting the outstanding capital stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person; or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person having ordinary voting power.~~

“AGC” or “Automatic Generation Control” means the equipment and capability of the Storage ~~Facility’s~~ System’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~~ System on a real-time basis and such other operating parameters for which Set Points may be transmitted.

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

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

~~“Ancillary Service Attributes” means “Agreement” means this 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, including 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~~ System.

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

“Applicable Law” means any act, statute, law, regulation, ~~Permit~~ 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, ~~in each case having with jurisdiction over (a) any Person or any of its property, (b) Seller, PGE, the Site, the Storage Facility~~ System or the performance of the obligations under the Agreement, and includes any of the same as they may be amended or ~~(c) the Project~~ imposed from time to time.

“AUT Costs” means the net cost, if any, reflected in the ~~Buyer’s~~ PGE’s relevant year AUT filing for the difference between the total benefit of ~~discharging energy~~ Discharging Energy (i.e. discharging MWhs multiplied by relevant market price in those hours), less total cost of ~~charging energy~~ 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 Exeused Hour, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.~~

“Back-Up Metering” has the meaning set forth in ~~Section 6.1(b)(ii)~~ 3.7.2(b)(ii).

“Balancing Authority Area” ~~has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time. As of the Effective Date of this Agreement, the Balancing Authority Area for the Storage Facility is Portland General Electric Company~~ 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 a Person (i) such Person consents to the appointment of or taking possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors; (ii) such Person files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws of any jurisdiction, whether now or hereafter in effect, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answer or consent, under the provisions of any now existing or future bankruptcy, insolvency or other similar law of any jurisdiction, whether

~~now or hereafter in effect, providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with creditors; (iii) such Person's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than sixty (60) days; or (iv) such Person is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than sixty (60) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within sixty (60) days of such filing.~~

"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.

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

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

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

"Capacity Attributes" means any current or future attribute, as may be currently defined or otherwise defined in the future, including but not limited to a characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, associated with the ~~electric charge and discharge capability and capacity of the Project or the Project's capability and ability to discharge or curtail energy~~ Storage System, 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 ~~production tax credits, investment tax credits, ITCs~~ or any other tax credits, deductions, or tax benefits associated with the ~~Project~~ Storage System, or (ii) any state, federal, local, or private cash payments, ~~or grants, or costs~~ relating in any way to the ~~Project~~ Storage System.

"Cash" means U.S. Dollars.

"Capacity Factor" means, for any Settlement Interval, the ratio, equal to (i) the average available capacity during such Settlement Interval (not to exceed the Storage System Nameplate Capacity) divided by (ii) the Storage System Nameplate Capacity; provided that, if the Storage

System is incapable of providing the Storage System Nameplate Capacity during such Settlement Interval due to Excused Hour, then the Capacity Factor for such Settlement Interval shall be deemed to be 1.00.

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

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

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

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

~~“Commercial Operation”~~“Claiming Party” has the meaning set forth in Section 7.2(a).

“COD Conditions” has the meaning set forth in Section 4.5(d)-3.3.1.

“Commercial Operation” means one hundred percent (100%) of the Storage System Nameplate Capacity has been constructed, interconnected, integrated, and tested in accordance with Prudent Electric Industry Practice with the Transmission System and able to deliver Products to the Delivery Point and Discharging Energy to the Delivery Point.

“Commercial Operation Date” or “COD” means 12:01 am on the date in day after which the ~~Commercial Operation Conditions have been met, and the Contract Storage Capacity of the Storage Facility is otherwise fully operational, reliable, and available to Buyer at the Point~~ Seller’s COD Notice has been accepted by PGE or deemed accepted by PGE pursuant to the definition of Delivery Commercial Operation.

“Confidential Information” has the meaning set forth in Section 15.2(e)-18.1(b).

“Contract Price Termination Damages” means ~~\$(Price) per kW the sum of Contract \$125/kW multiplied by the~~ Storage System Nameplate Capacity, expressed in kW.

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

~~“Contract Year” means each 12-month~~the period of consecutive twelve (12) months, commencing on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and ~~after each~~continue through December 31st of such year and the last Contract Year shall continue through the day prior to the anniversary ~~thereafter through~~of the ~~Delivery Term~~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 the Non-Defaulting a Party, the commercially reasonable brokerage fees, commissions, and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting such Party to a Person in connection with terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements to which replace this Agreement, and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting a Party in connection with the termination of this Agreement 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 a Person, on any date of determination entity other than a financial institution, the respective rating then assigned (a) current ratings issued or maintained by S&P or Moody’s with respect to such Person’s entity’s long-term senior, unsecured long-term, unsubordinated debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch, or Moody’s enhancements) or, in the absence of such a rating, the current (b) corporate family credit rating or, if applicable, long-term issuer rating then assigned issued or maintained with respect to such Person entity by S&P or Moody’s.~~

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

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

~~“Default” means an event a financial institution, the ratings issued or condition that would, after giving effect to any applicable notice requirement maintained by S&P or grace period, constitute an Event of Default Moody’s with respect to such entity’s long-term, unsecured, unsubordinated deposits.~~

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

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

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

~~“Delay Damages” for any given day are equal to (i) \$150 per MW of Storage System Nameplate Capacity per day beginning on the first day after the Scheduled Commercial Operation Date through the 30th day after the Scheduled Commercial Operation Date, (ii) \$250 per MW of Storage System Nameplate Capacity per day beginning on the 31st day after the Scheduled Commercial Operation Date through the 60th day after the Scheduled Commercial Operation Date, and (iii) \$350 per MW of Storage System Nameplate per day beginning on the 61st day after the Scheduled Operation Date through the actual Commercial Operation Date or the Guaranteed Commercial Operation Date, whichever occurs first.~~

~~“Delivery Period Security” has the meaning set forth in Section 4.3-10.1(a)(ii).~~

~~“Delivery Point” means [to be supplied].~~

~~“Delivery Term” has the meaning set forth in Section 2.1(a)-2.2.~~

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

~~“Disclosing Party” has the meaning set forth in Section 15.2(a)-18.1.~~

~~“Dispute” has the meaning set forth in Section 15.4(a)-17.1.~~

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

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

~~“Early Termination Date” has the meaning set forth in Section 8.2.1.~~

~~“Effective Date” has the meaning set forth in the preamble tofirst 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 Electric Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

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

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

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

“Energy” means three-phase, 60-cycle alternating current electric energy (expressed in kWh or MWh).

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

~~“EPC Contract Equitable Defenses” means the engineering, procurement, any bankruptcy, insolvency, reorganization and construction agreement (whether styled as a balance of plant, balance of systems, engineering, procurement or other laws affecting creditors’ rights generally, and construction; or other agreement) entered into by Seller for the engineering, procurement, and construction of the Project.~~

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

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

~~“ESS” means energy storage system.~~

~~“ESS Supplier” means the supplier retained by Seller or its applicable Affiliate equitable remedies, the discretion of the court before which proceedings to supply energy storage systems for the Storage Facility under the ESS Supply Agreement.~~

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

~~“Event of Default” has the meaning set forth in Section 11.1(b).8.1.~~

~~“Excused Hour” means an hour in which the Storage System is unavailable to generate, schedule, or deliver due to (i) an Emergency Condition, (ii) reliability curtailments of the Storage System directed by the Transmission Provider or Reliability Entity which are outside of the Seller’s reasonable control and not attributable to Seller’s acts or omissions, (iii) a Force Majeure Event, (iv) a breach of this Agreement by PGE that impacts Seller’s ability to perform its obligations under this Agreement (other than due to a breach by Seller of its obligations under the Agreement or Interconnection Agreement), (v) a PGE requested Outage of the Storage System.~~

~~“FERC” means the Federal Energy Regulatory Commission.~~

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

~~“Fitch” means Fitch Ratings, Inc., or its successor- government agency.~~

~~“Force Majeure Event” “FIN 46” has the meaning set forth in Section 10.1(b)-20.13.~~

~~“Force Majeure Event” is defined in Section 7.1.~~

~~“GAAP” has the meaning set forth in Section 15.116.3(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.~~

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

~~“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 180ninety (90) days after the Scheduled Commercial Operation Date, as such date may be extended pursuant to this Agreement.~~

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

~~“Guaranteed Availability Adjustment” has the meaning set forth in Section 5.10(b)4.1(b).~~

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

~~“Guaranteed Round-Trip Efficiency Adjustment” has the meaning set forth in Section 5.10(e) 4.1(c).~~

~~“Guaranteed Contract Storage Availability” means the Annual Storage Availability of the Storage System that is no less than ninety-five percent (95%).~~

~~“Guaranteed Storage System Capacity” means no less than [Size] MW_{AC} and shall be validMWh for the Delivery Term of the Agreement with no allowance for degradation at the Delivery Point in accordance to Exhibit [].~~

“Guaranteed ~~Contract~~ Storage System Nameplate Capacity Adjustment” has the meaning set forth in Section ~~5.10(a)(ii)-4.3(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 ~~(ai)~~ 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; ~~(bii)~~ petroleum, including any fraction, derivative or additive; ~~(eiii)~~ asbestos; ~~(div)~~ polychlorinated biphenyls; ~~(ev)~~ radioactive material; ~~(fvi)~~ designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; ~~(gvii)~~ defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; ~~(hviii)~~ defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; ~~(ix)~~ defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or ~~(ix)~~ defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“Independent Engineer” means a qualified and independent third-party professional engineering firm licensed and registered where the Storage System is located and selected by either Party but subject to both Parties mutual written consent and agreement.

“Interconnection Agreement” means the interconnection agreement between Seller and ~~the identify applicable Transmission Provider to interconnect the Project with the Transmission System, including any local utility distribution system to which the Project is connected.~~ [if already executed: dated [], 20].]

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

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

“Interest Rate” means, for any ~~daydate~~, the lesser of ~~(xi)~~ 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) ~~and (y)-), or (ii)~~ the maximum rate permitted by Applicable 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 Storage System to the Transmission System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Point” means [].

“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.

~~“kWh” means a kilowatt-hour of Energy.~~

“Letter(s) of Credit” means ~~anone or more~~ irrevocable, transferable, standby ~~letter~~ letters of credit issued by a ~~Qualified Institution~~ substantially in the form attached as ~~Exhibit I~~ or in such other form as may be required by the applicable ~~Qualified Institution~~, major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such ~~modifications thereto as Buyer may in its reasonable discretion require~~ 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 ~~an outstanding~~ a Letter of Credit, the occurrence of any of the following events: (i) the issuer of ~~thesuch~~ Letter of Credit ~~ceases~~ shall fail to be a ~~Qualified Institution~~ 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 ~~fail~~ shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of ~~thesuch~~ Letter of Credit ~~disaffirms, disclaims, repudiates, shall disaffirm, disclaim, repudiate or rejects~~ reject, in whole or in part, or ~~challenges~~ challenge the validity of, ~~thesuch~~ Letter of Credit; (iv) ~~thesuch~~ Letter of Credit ~~expires, terminates, shall be within fifteen (15) Business Days of expiration or otherwise fail~~ termination, or ~~ceases~~ shall fail or cease to be in full force and effect at any time while required to be maintained pursuant to the terms of this Agreement; (v) ~~Seller fails to provide an extended or~~ during the Term, in any such case without replacement Letter of Credit prior to thirty (30) days before the; (v) the issuer of such Letter of Credit ~~expires or terminates~~ shall become Bankrupt; or (vi) the issuer of the Letter of Credit becomes Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” a Merger Event occurs with respect to the issuer of ~~the~~ such Letter of Credit; provided, however, that no Letter of Credit-

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

“Limited Press Release” has the meaning set forth in Section 18.3.

“Local Provider” has the meaning set forth in Section ~~5.1(a);~~ 3.4.1(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

~~“Monthly Payment” has~~~~“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.

"Milestone" and "Milestones" have the meaning ~~set forth~~ assigned to those terms in Section 7.1(3.1.11(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 ~~1,000 kW, or a megawatt of electric power.~~

"MWh" means ~~1,000 kWh, or a megawatt-hour of Energy.~~

"NERC" means the North American Electric Reliability Corporation.

"Non-Defaulting Party" has the meaning set forth in Section ~~11.2(a)~~ 8.2.1.

"O&M Records" has the meaning set forth in Section ~~9.4(a)(i)~~ 16.1(a).

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

"Operating Procedures" means the operating procedures as described in ~~Exhibit Q.~~

"Operating Restrictions" means the operating restrictions as described in ~~Exhibit M.~~

"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.

"Outage" means an Unplanned Outage or Planned Outage.

"Outage Notice" has the meaning set forth in Section ~~5.5(e)~~ 3.4.3(c).

"OPUC" means ~~Oregon Public Utility Commission.~~

"Party" ~~and/or~~ "Parties" have the meanings set forth ~~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” means all 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 Applicable ~~Laws~~Law in connection with the development, construction, operation, occupancy, use and/or maintenance of the Project, Site or Storage System, including those specified in Exhibit E, and all amendments, modifications, supplements, general conditions and addenda thereto.

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

“Planned Outage” means a time during which the Storage Facility System is shut down or its output reduced to undergo scheduled maintenance in accordance Section 5.5(a)-3.4.3(a), or as otherwise agreed by Seller and Buyer PGE.

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

“PGE Representatives” has the meaning set forth in Section 3.9.

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

“Pre-COD Credit Support Amount Security” has the meaning set forth in Section 8.1(a)(i)-10.1(a)(i).

“Product(s)” Products” means collectively, with respect to the Contract Storage Capacity System, the Capacity Attributes, the Ancillary Service Attributes Services, and any future Environmental Attributes from time to time available from, or that may be generated by, Future Storage Attributes associated with the Storage Facility System.

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

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

“Prudent Utility Electric Industry Practice(s)” means the those practices, methods, and acts (including the practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry and NERC) for similar facilities in the Western Interconnection that, at a particular 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 law, regulation, permits, codes, standards good business practices, reliability, safety, environmental protection, economy, safety and expedition, and which practices, methods, standards and acts

reflect due regard for operation and maintenance standards ~~and~~ recommended by the ~~Facility's Storage System's~~ equipment sellers and manufacturers, operational limits, and all applicable ~~Applicable Laws and regulations~~. Prudent ~~Utility Electric Industry Practice(s) are~~ is not necessarily defined as intended to be limited to the ~~optimal standard optimum~~ practice, method, standard or act to the exclusion of all others, but rather ~~refer to to those practices, methods and acts~~ generally acceptable or approved by a ~~range significant portion~~ of actions reasonable under the ~~circumstances~~ electric power generation industry in the Western Interconnection, during the relevant period, as described in the immediately preceding sentence.

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

~~"Qualified Institution" means a major U.S. commercial bank 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), or a U.S. branch office of a major foreign commercial bank, 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 A-3/A-1 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 Storage System is located.~~

~~"Recording" has the meaning set forth in Section 20.16.~~

~~"Receiving Party" has the meaning set forth in Section 15.2(a)-18.1.~~

~~"Receiving Party's Representative Representatives" has the meaning set forth in Section 15.2(b)-18.1(a).~~

~~"Recording Regulatory Event" has the meaning set forth given to that term in Section 15.12-20.6.~~

"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 Storage System or delivery of the Products.

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

"S&P" means ~~S&P Global Ratings~~ the Standard & Poor's, a division of ~~S&P Global 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 [Date]-[____, 20__].

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

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

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

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

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

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

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

“SQMD” has the meaning set forth in Section ~~6.1(b)(iv);~~ 3.7.1(b)(iv).

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

“Station Service” has the meaning set forth in Section ~~53.4.1(a);~~

“Storage Capacity” means the rate of ~~Energy~~ energy in alternating current (electric power), ~~expressed~~ measured in kW or MW, that the Storage ~~Facility~~ System is capable of ~~producing~~ holding and measured at the ~~Point of Delivery~~ Point for four (4) consecutive hours pursuant to the most recent Storage Capacity Test.

“Storage Capacity Test” has the meaning set forth in Section ~~5.9(a)(i);~~ 3.5.5(a)(i).

“Storage Facility” ~~has~~ System Contract Price” means [\$ / kW-month] of the ~~meaning set forth~~ Storage Capacity, fixed price, inclusive of all Products.

“Storage System Documents” means the Permits and other written authorizations, rights, approvals, and agreements under Applicable Law and ~~in the Recitals~~ accordance with Prudent Electric Industry Practices for the construction, ownership, operation, and maintenance of the Storage System and delivery of the Products and services required in this Agreement, including the documents required in Exhibit E.

~~“Storage System 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.~~

“Storage System Nameplate Capacity” means the [MW / MWh] maximum Storage System size.

“Storage System” means that certain [Storage System Size] MW_{AC} 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 System Control Center” means ~~Buyer’s~~ PGE’s representative(s) responsible for dispatch of the Storage ~~Facility~~ System, including but not limited to, the Transmission System Operators, the Balancing Authority Operators, and the Distribution System Operators.

“Storage Ramp Rate” ~~System Operating Procedures” means the rate (measured in MW/minute) at which the storage system operating procedures as described in Exhibit Q.~~

~~“Storage Facility can change power output.~~ System Operating Restrictions” means the storage system operating restrictions as described in Exhibit R.

“Tax Equity Investor” means an investor in the Seller who through a transaction or series of transactions is seeking a return that is enhanced by tax credits and/or tax depreciation and

~~generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without leverage)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a battery storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).~~

~~“Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, minimum, estimated or similar tax, levy or assessment and any related interest or penalty.~~

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

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

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

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

~~“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.~~

~~“Termination Payment” has the meaning set forth in Section 8.3.~~

~~“Termination Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to ARTICLE 8. If the Non-Defaulting Party’s Losses exceed its Gains, then the Termination Settlement Amount shall be an amount owed to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Losses, then the Termination Settlement Amount shall be zero dollars (\$0). The Termination Settlement Amount shall not include consequential, punitive, exemplary or indirect or business interruption damages.~~

~~“Termination Settlement Period” has the meaning set forth in Section 8.2.2.~~

~~“Transmission Provider^{22(s)}” means [Entity Name].~~

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

~~“Transmission System”~~“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 ~~Charging Energy~~ receipts or ~~Discharging Energy~~ deliveries to or from the Project, in each case at the Point of Delivery and Storage System, not associated with ~~Seller~~ Excused Hours.

“USD” means United States Dollars.

~~“WECC” shall mean~~means the Western Electricity Coordinating Council.

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

~~1.1.2~~ Rules of Interpretation~~Headings.~~

Unless the context otherwise requires:

1.2.1 Words singular and the rendering of text plural in bold number shall be deemed to include the other and italics are for convenience and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to ARTICLE 19, any reference purposes only and do not affect the meaning or interpretation of in this Agreement. For purposes of to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

~~1.1.1.2.3~~ 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. A reference to an Exhibit, Schedule, Article, Section or other provision shall be, unless otherwise specified, to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.~~

~~1.1.2.1.2.4~~ 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 AnyA 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 to “this Agreement,” “herein,” “hereof” or “hereunder” shall be deemed to be, 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.

~~1.1.3~~ 1.2.8 Unless otherwise expressly provided in this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to, a reference to a document or agreement, including this Agreement as varied, includes a reference to that document or agreement as modified, amended, supplemented, substituted, novated, assigned or otherwise transferred or restated from time to time.

~~2. References to any Party shall, where applicable, include any successors, transferees and permitted assigns of the Party.~~

~~3. References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”~~

~~4. Words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders.~~

~~1.1.4~~ 1.2.9 If the time for performing an obligation under this Agreement occurs or expires, If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, the time for performance of then such obligation payment, act, matter or thing shall be extended until, unless otherwise expressly provided for herein, occur on the next succeeding Business Day.

~~5. References to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.~~

~~6. References to any amount of money shall mean a reference to the amount in United States Dollars.~~

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; CONDITIONS PRECEDENT AND SURVIVAL DELIVERY TERM; PRICE; SALE OF OBLIGATIONS FACILITY

2.1 Term; Conditions Precedent.

2.1.1 Term. This The term of this Agreement is effective shall begin on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement or by written agreement of the Parties, will remain in effect shall continue through the ~~1st~~th [XX] anniversary of the Commercial Operation Date (as may be extended by mutual agreement of the Parties, the "Term"). The delivery term under this Agreement (the "**Delivery Term**") includes the period from and including the Commercial Operation Date and continuing through the end of the Term. Applicable provisions of 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 in effect after termination, including early termination, to the extent necessary govern with respect to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to before termination until such obligations are fully discharged.

2.1.2 PGE's Conditions Precedent. The PGE's obligations of the Parties under this Agreement are subject to satisfaction of the following conditions precedent, subject to and in accordance with this Section 2.1, by no later than [Date]; each of which may be waived by PGE in its sole discretion:

- (a) Buyer shall provide notice to Seller when all [Storage System Specific Conditions: TBD]; and
- (a)(b) All authorizations, approvals and consents of all Persons, including Buyer's executive management and board of directors, that PGE's Board of Directors, which are required in connection with the execution, delivery, and performance of this Agreement have been received by PGE; and
- (c) List Acknowledgement of Seller's the final shortlist by the OPUC 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.

~~7. Conditions Precedent Satisfaction Certificate. As soon as reasonably practicable after satisfaction, or waiver by Buyer in the case of Section 2(b)(i) or Seller in the case of Section 2(b)(ii), of the conditions precedent, the applicable Party shall execute and deliver to the other Party a Conditions Precedent Satisfaction Certificate in the form of Exhibit N. For the avoidance of doubt, the conditions precedent is not considered satisfied until the execution and delivery of the Conditions Precedent Satisfaction Certificate.~~

~~2.21.1 Effect of Termination — Survival of Seller's Conditions Precedent. Seller's Obligations Generally. Except as set forth in Section 2.2(b) or as otherwise set forth in this Agreement, following termination of this Agreement neither Party will have future or further rights or obligations under this Agreement.~~

~~2.2.12.1.3 Survival of Obligations. In addition to any other provisions of this Agreement that, by their terms, survive the termination of this Agreement, the following rights, 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, and provisions survive the termination of this Agreement; under the PPA should be set out here]~~

- ~~1. the provisions of this Section 2.2;~~
- ~~2. all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement;~~
- ~~3. the payment related provisions set forth in Section 7.2;~~
- ~~4. limitation of liability provisions set forth in Article 12, and the warranty limitations set forth in Section 13.3;~~
- ~~5. the indemnifications specified in this Agreement; and~~
- ~~6. the provisions of Article 15.~~

~~2. —~~

~~PURCHASE AND SALE~~

~~1. Purchase and Sale~~

~~Generally. In accordance with the terms and If these conditions of this Agreement, commencing 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 Term.

Starting on the Commercial Operation Date and continuing through the end of the Term (~~“Delivery Term. Seller shall sell and deliver, and Buyer shall purchase and accept from”~~), Seller, ~~shall Schedule and deliver~~ all of the Products ~~associated with or otherwise available from the~~ Storage System at the Delivery Point and PGE shall confirm and receive all of the Products stored ~~and delivered from the Project in accordance with~~ Storage System to the Delivery Point at prices ~~and the terms of and conditions set forth in~~ this Agreement.

- ~~1. Monthly Payment. Buyer shall pay Seller on a monthly basis in accordance with Article 7.~~
- ~~2. No Other Payments. The Monthly Payment constitutes the full compensation due to Seller for the Products associated with the Project.~~

2.3 Price and Adjustments.

For each calendar month during the Delivery Term, 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 System Contract Price multiplied by the Storage System Nameplate Capacity, less
- (b) Storage System Test Energy costs that Seller is responsible for pursuant to Section 3.7.1(b)(i), if any.

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

2.4 Sales to Third Parties. ~~One~~

Seller shall sell one hundred percent (100%) of the ~~Product~~Products from the ~~Project shall be dedicated~~Storage System exclusively to ~~Buyer~~PGE for so long as this Agreement is in force and effect and no ~~Buyer~~PGE Event of Default exists. When an undisputed ~~Buyer~~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 ~~Product~~Products to any Person and divert, redirect or make available the ~~Project~~Storage System or any resource therefrom to any Person, and Seller shall receive and be entitled to all revenue therefrom. ~~Buyer~~PGE shall retain the right to Discharging Energy that is already within the ~~Project~~Storage System at the time the Event of Default arises (if any). -Seller shall retain the right to ~~discharge energy~~Discharging Energy that is already within the ~~Project~~Storage System at the time the Event of Default is resolved (if any), for which Seller has paid for the Charging Energy.

~~2.32.5~~ Notice of Sale of Storage System.

If Seller or an Affiliate of Seller desires to sell the Storage System during the Term, either by a sale of the Storage System’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 Storage System. PGE agrees to notify Seller if it is interested in acquiring the Storage System 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 Storage System, then such exclusive negotiation period shall be automatically extended for an additional ninety (90) day period, during which time the Parties may negotiate to execute a purchase and sale agreement for the Storage System. 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 Storage System 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 Storage System 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 Storage System 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 Storage System 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 Storage System 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 Storage System.

ARTICLE 3

FACILITY DEVELOPMENT, CONSTRUCTION AND OPERATION

3.1 Development and Construction of Storage System.

3.1.1 Storage System Description. Seller shall design, construct, interconnect, own, operate, and maintain the Storage System as described in Exhibit B according to the Interconnection Agreement and Prudent Electric Industry Practice. Seller shall not modify Exhibit B without prior review and consent by PGE. Exhibit B shall include but not limited to, (i) a description and map of the Storage System location, Storage System layout and design drawings including all major equipment, location of interconnection facilities, Interconnection Point, Delivery Point, and Storage System gen-tie, (ii) Storage System latitude and longitude, (iii) Storage System one-line diagram, (iv) manufacturer(s) and model number(s) of all major equipment, (v) Storage System's interconnection queue position number(s). Seller shall provide PGE with the Storage System Documents listed in Exhibit E within ten (10) days from the specified milestone date in Exhibit E. Any review by PGE of the design, construction, operation or maintenance of the Storage System 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 Storage System.

3.1.2 Labor Requirements. Storage System labor must fully comply with the requirements of ORS 757.306, as applicable. Seller must have, and Seller shall endeavor to cause the construction contractor for the Storage System and each subcontractor for the Storage System to have, policies in place that are designed to limit or prevent workplace harassment and discrimination. Pursuant to ORS 757.306, Seller will within thirty (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 Storage System in accordance with this Agreement.

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

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

~~3. Disclosure. Compliance.~~ Seller shall (a) design, construct, test, own, operate, repair and maintain the Project in compliance with all Permits and in accordance with the Project Documents and Prudent Utility Practice, including with respect to project design, engineering and selection and installation of equipment to be used at or installed in the Project, and (b) ensure the continuous ability of the Project to satisfy the Seller's obligations to Buyer under this Agreement. ~~Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.~~

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

3.1.7 Construction and Testing; Interconnection. Seller shall, at its cost, construct and test the Storage System 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; provided however, Seller may not amend the point of interconnection specified in the Interconnection Agreement without first obtaining PGE's written consent, which may be withheld in its sole discretion.~~

~~4. Progress Reports. Oregon House Bill 2021 Compliant Labor.~~ Project labor must fully comply with the requirements of Oregon House Bill 2021, as applicable. ~~The labor group that is~~

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

3.1.8 ~~Buyer's~~After the Effective Date and before Seller's issuance of notice to proceed with construction, Seller shall provide PGE with quarterly written reports detailing Seller's progress in completing the development, execution of major equipment supply agreements, permits, interconnection, and transmission (if applicable) of the Storage System. After Seller's issuance of notice to proceed with construction and prior to the Commercial Operation Date, Seller shall provide PGE with monthly written reports detailing Seller's progress in completing the construction, testing and commissioning of the Storage System. The quarterly and monthly reports shall include the following: (i) description of the progress toward meeting the Milestones and Storage System Documents in Exhibit E, (ii) identifies any missed Milestones and Storage System Documents, including the cause for the delay, and (iii) detailed description of Seller's corrective actions to achieve the missed Milestones or Storage System Documents. Seller shall, at PGE's reasonable request, meet with PGE's representatives to discuss such progress, which may include Site visits.

3.1.9 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 Storage System in a timeframe that reasonably would allow Seller to achieve the Commercial Operation Date of the Storage System on or before the Scheduled Commercial Operation Date.

~~2.3.43.1.10~~ PGE's Access and Inspection Rights. ~~Buyer may~~PGE shall have the right to have its representatives present at the Site to monitor the construction, commissioning, and testing of the ~~Project and its systems-Storage System~~. Seller shall provide ~~Buyer~~PGE with notice, pursuant to ~~Section 4.520.22.1~~, of all commissioning and testing of the ~~ProjectStorage System~~ and its systems. ~~-~~Seller shall permit physical inspections of the ~~ProjectStorage System~~ upon the reasonable request of ~~Buyer~~PGE at any point during or after construction. ~~Buyer~~PGE shall ensure that all persons visiting the ~~ProjectStorage System~~ on behalf of ~~Buyer~~PGE comply with all the applicable safety and health rules and requirements of Seller that are provided to such persons. ~~Buyer's~~PGE's inspection of the ~~ProjectStorage System~~ or technical reviews shall not to be construed as an endorsement of the ~~ProjectStorage System~~ design or as any warranty of safety, durability, or reliability.

~~2.3.53.1.11~~ Project-Milestones.

- (a) ~~Generally-~~Seller shall ~~use commercially reasonable~~design, construct, own, operate, repair, and maintain the Storage System in accordance and consistent with the Storage System Documents, Exhibit B, and Prudent Electric Industry Practice so as to ensure the continuous ability of the Storage System to meet Seller's obligations to PGE under this Agreement.

Seller shall also exercise its best efforts to ~~(i) cause complete development of the Storage System in accordance with the dates for each Milestone set forth in Exhibit B to be achieved by the corresponding~~ this Section 3.1.11 (each, a “**Milestone**” and collectively “**Milestones**”). Seller shall provide evidence or documentation to PGE for each of the below Milestones in accordance with the date specified for such Milestone:

- (i) Site Control. Within thirty (30) days following the Effective Date, ~~and (ii) cause~~ Seller to provide to PGE evidence of one hundred percent (100%) Site control for the Storage System for the Term of this Agreement.
- (ii) Pre-COD Security. Within ten (10) days following the Effective Date, Seller shall establish and fund the Pre-COD Security in accordance to Sections 10.1(a)(i) and 10.1(b);
- (iii) Interconnection Agreement. No later than [insert date], Seller will provide to PGE a fully executed Interconnection Agreement, any subsequent amendments, supplements or replacements of the Interconnection Agreement thereafter. The executed Interconnection Agreement must confirm the Storage System will receive Network Resource Interconnection Service;
- (iv) Major Equipment Procurement. Seller shall provide to PGE documentation no later than [insert date] that major equipment (such as solar modules, inverters, BESS system, high voltage breakers, main transformer) have been procured for the Storage System;
- (v) Permits. No later than [days] Business Days after the Effective Date, Seller shall provide to PGE copies of all final Permits in accordance to Exhibit E;
- (vi) Start of Construction. Seller shall commence construction of the Storage System and provide to PGE documentation of notice to proceed with construction no later than [insert date];
- (vii) Major Equipment Deliveries. Seller shall evidence in writing or documentation no later than [insert date] that all major equipment (such as solar modules, inverters, BESS system, high voltage breakers, main transformer) have been delivered at the Site;
- (viii) Commissioning Tests. Seller shall evidence in writing or documentation no later than [insert date] that Commissioning Tests have commenced on the Storage System;
- (ix) Delivery Period Security. Within five (5) Business Days following the Commercial Operation Date ~~to occur~~, Seller shall establish and

fund the Delivery Period Security in accordance to Sections 10.1(a)(ii) and 10.2(a) or 10.2(b);

~~(i)(x)~~ Commercial Operation Date. Seller shall cause the Storage System to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. Further, Seller shall, at its own cost and expense, negotiate, enter into, and perform its obligations under, the Interconnection Agreement, (as may be extended for Force Majeure);

~~5. Milestones.~~

~~1. When Seller achieves a Milestone, Seller shall provide to Buyer reasonably detailed documentation demonstrating completion of the Milestone. Seller shall provide such documentation to Buyer within thirty (30) days of such completion.~~

~~(b)~~ PGE shall acknowledge receipt of Seller's documentation provided under this Section 3.1.11 and shall provide Seller with written acceptance or objection of each Milestone within fifteen (15) Business Days of receipt of the documentation.

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

~~(c)(d)~~ If any Milestone is not completed on or before the deadline specified for that Milestone in Exhibit B, this Section 3.1.11, Seller shall (i) inform BuyerPGE of a revised projected date for the achievement of the Milestone, (ii) inform BuyerPGE of any impact on the timing of the Commercial Operation Date and on each other Milestone, and (iii) provide BuyerPGE 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. 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 Storage System 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.

- ~~2. For the avoidance of doubt, the delay or failure to achieve any Milestone, other than Scheduled Commercial Operation Date and Guaranteed Commercial Operation Date, do not result in Delay Damages or Event of Default.~~
- ~~3. Notification and support for any of the items (i) through (iii) above may be provided in the monthly progress reports.~~

~~3.1.12 Monthly Tax Credits.~~

- ~~(a) Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Storage System's eligibility to receive ITCs or other tax credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. Seller's obligations under this Agreement shall be effective regardless of whether the sale of Storage System Output from the Storage System, or the Storage System itself, is eligible for, or receives, ITCs or other tax credits during the Term.~~
- ~~(b) As of the Effective Date, Seller anticipates that the Storage System is eligible for and will receive a [%] ITC. If, at any time during the Term, Seller or its Affiliate realizes any net economic or monetary benefit, including increased ITC, usage of ITC, direct pay, or other economic or monetary benefits from the IRA for the Storage System ("IRA Benefit"), then within thirty (30) days prior to the date Seller reasonably expects that it will realize the IRA Benefit, Seller will provide PGE with an accounting with detailed information of the net benefit to Seller of any IRA Benefits, and the Parties will begin negotiating in good faith to amend this Agreement within ninety (90) days of any such determination, such that the Parties benefit equally, with PGE's share reflected in a one-time reduction in the Storage System Contract Price applicable for the remainder of the Delivery Term. During any such negotiation period the calculation and payment of the Termination Settlement Amount will continue. If, after thirty (30) days of negotiating in good faith, the Parties are unable to satisfactorily agree to an amendment to this Agreement, then the Parties shall initiate dispute resolution in accordance with ARTICLE 17. For purposes of determining when an IRA Benefit is realized under this Section 3.1.12(b), realization will have been deemed to have occurred upon the earliest occurrence of any of the following with respect to an IRA Benefit: (i) the closing of any Tax Equity Financing by Seller or its Affiliate, (ii) the transfer of any income tax credits generated as a result of the IRA, (iii) the claiming of any income tax credits afforded to a Person pursuant to the IRA on the federal income tax return (on the date such return is filed) of any entity, or (iv) the date upon which Seller realizes an IRA Benefit not otherwise identified in this Section 3.1.12(b).~~

- ~~6. Progress Reports. Seller shall deliver to Buyer a monthly progress report by no later than the 10th Business Day of each month until Commercial Operation is achieved, which reports will~~

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

- ~~1. a detailed description of corrective actions to address any missed Milestones and all subsequent Milestones prior to the Guaranteed Commercial Operation Date;~~
- ~~2. status of permitting and other required approvals;~~
- ~~3. financing for construction and operation of the Project;~~
- ~~4. status of major supply equipment;~~
- ~~5. interconnection matters;~~
- ~~6. labor and contracting matters; and~~
- ~~7. environmental, health, safety, and security matters.~~

~~2. Extension of Scheduled Commercial Operation Date.~~

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

~~3. Delay Damages~~

~~1. Failure to Timely Achieve Commercial Operation.~~

- ~~1. If the Commercial Operation Date has not occurred by the Scheduled Commercial Operation Date, as such date may be extended pursuant to Section 4.3, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay Delay Damages to Buyer for each day after the Scheduled Commercial Operation Date until~~

the earlier of (a) the Commercial Operation Date and (b) the Guaranteed Commercial Operation Date.

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

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

~~4. Procedures to Achieve Commercial Operation~~

~~3.2 Commissioning Tests for Storage System.~~

~~2.3.63.2.1 Commissioning Tests for Storage System. Seller shall give BuyerPGE at least thirty (30) days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of each of the ProjectStorage System ("Commissioning Tests") as described in Exhibit F-Exhibit O. Representatives of BuyerPGE shall have the right to be present at all such testing. Seller shall promptly notify BuyerPGE of any changes to the test date or the date of any Commissioning Tests relating to the ProjectStorage System in order for BuyerPGE to arrange for its respective representatives to attend.~~

1. ~~Storage System Test Period. Seller and BuyerPGE shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Storage System Test Period as reasonably required for purposes of testing and commissioning the ProjectStorage System. Seller shall subsequently procure and deliver such Charging Energy to Buyer at the Point of Delivery as Discharging Energy Point during the Storage System Test Period. In accordance with Section 3.2(b), Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify BuyerPGE, to the extent practicable, thirty (30) days prior to commencement of such Storage System Test Period.~~
2. ~~Notice of Commercial Operation. Not less than sixty (60) days prior to the date upon which Seller expects to achieve Commercial Operation, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than one hundred eighty (180) days prior to the Scheduled Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied. Seller shall not unreasonably withhold providing such notice once all requirement described in Section 4.5(d) have been met. Buyer shall, within five (5) Business Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Buyer shall specifically identify any defects or deficiencies, Seller shall either promptly correct any defects or deficiencies identified by Buyer and resubmit the notice, or initiate dispute resolution in~~

accordance with ~~Section 15.4~~ in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation or fails to reject Seller's notice within five (5) Business Days of receipt, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Scheduled Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Commercial Operation Date.

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

~~2.3.73.2.2~~ 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 System Contract Storage Capacity, as confirmed by a Storage Capacity Test, in accordance with the requirements of all Applicable Law and this Agreement Price for Discharging Energy received by PGE during the Storage System Test Period shall be zero dollars (\$0.00), and Seller shall be responsible any costs or additional expenses that are required for PGE to receive the Storage System Test Period Charging Energy and Discharging Energy.

1. ~~Buyer has received and reviewed a copy of the initial Storage Capacity Test confirming (1) the Contract Storage Capacity, and (2) the Storage Facility meets the Guaranteed Round-Trip Efficiency.~~
2. ~~Seller has obtained all Permits necessary for Seller to perform its obligations under this Agreement in compliance with Applicable Law, this Agreement, and Prudent Utility Practices, and all such Permits are in final form and in full force and effect.~~
3. ~~Seller has delivered to Buyer a certificate of a Licensed Professional Engineer acceptable to Buyer in its reasonable discretion certifying that, as of the Commercial Operation Date:~~
 1. ~~the Project is complete in all material respects (other than punch list items that will not materially and adversely affect the safe operation, performance, or maintenance of the Project), and~~

- ~~2. the Project has (i) all AGC equipment installed and operational in accordance with the requirements of this Agreement; and (ii) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement.~~

3.3 Seller-Commercial Operation.

3.3.1 Commercial Operation Conditions. Without limiting Seller's other obligations under this Agreement, Commercial Operation occurs when all of the following "COD Conditions" have been achieved:

- (a) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that (i) one hundred percent (100%) of the Storage System Nameplate Capacity have been installed and became operable to deliver Discharging Energy to the Delivery Point and to accept Charging Energy at the Delivery Point and store it in the Storage System, (ii) the Seller and the Transmission Provider have executed the Interconnection Agreement, and Seller has received no notice of breach thereof from the Transmission Provider, (iii) the Storage System are interconnected to the Transmission System, and has been fully tested, achieved initial synchronization, and been successfully operated at a generation level acceptable to the Transmission Provider, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (iv) Seller has or is capable of declaring commercial operation under the Interconnection Agreement, (v) the Storage System is able to charge, store, and deliver Discharging Energy of the Storage System Nameplate Capacity, as confirmed by a Storage Capacity Test, in accordance with the requirements of this Agreement and Interconnection Agreement, and (vi) Seller has made all other arrangements necessary to deliver Discharging Energy during the Delivery Term;
- (b) Commissioning Tests of the Storage System shall have been completed;
- (c) PGE has received and reviewed a copy of the initial Storage Capacity Test confirming (i) the Storage System Nameplate Capacity, and (ii) the Storage System meets the Guaranteed Round-Trip Efficiency;

- ~~4. PGE has delivered to Buyer notice consistent with Exhibit J in accordance with Section 4.4(c).~~

- (a)(d) Seller has installed and commissioned the received a certificate addressed to PGE from a Licensed Professional Engineer stating that the Storage System Metering Facilities ~~and~~, AGC system equipment, ~~data circuits~~, and other communication systems necessary to allow for PGE's remote monitoring of

the Project Storage System have been installed and are operational in accordance with the Interconnection Agreement and this Agreement;

5. — Seller has transferred Credit Support to Buyer having a value equal to the Operating Period Credit Support Amount.

3. —

OPERATIONS; PERFORMANCE GUARANTEES

1. — Station Service

(e) PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, (i) all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Storage System are physically interconnected with the applicable Transmission System in conformance with the Interconnection Agreement, and (ii) Seller has paid all amounts due under the Interconnection Agreement, including, but not limited to required network upgrades;

(f) PGE has received a certificate addressed to PGE from an authorized officer of Seller stating that (i) Seller has obtained or entered into all Storage System Documents, and copies of all Storage System Documents have been delivered to PGE; provided that Seller may redact or omit confidential or commercial terms from non-public Storage System Documents, (ii) all necessary and material Permits have been obtained, are in full force and effect and the entity granting the Permit has not placed any temporary or conditional restrictions or limitations on the Storage System or its operation, (iii) Seller is in compliance with this Agreement in all material respects, (iv) Seller has made all necessary arrangements to obtain and pay the Local Provider for Station Service, and (v) the Storage System are available to commence normal operations in accordance with this Agreement and Applicable Law, Seller's operating agreements, Prudent Electric Utility Practice and applicable manufacturers' warranties;

(g) Seller shall have maintained or replenished the full Pre-COD Security and Seller shall have paid and PGE received any and all Delay Damages.

3.3.2 Commercial Operation Notice. Seller shall provide written notice to PGE not less than five (5) Business Days in advance of the anticipated date of Commercial Operation ("COD Notice"). A COD Notice shall include all the necessary supporting documentation satisfying the occurrence of all the COD Conditions described above. PGE shall have ten (10) Business Days after receipt of Seller's COD Notice to review and confirm to Seller that all of the COD Conditions have been satisfied or raise any commercially reasonable objection to Seller's satisfaction of any of the COD Conditions; provided however, that if within such time period, PGE fails to respond or object to Seller's COD Notice, Seller's COD Notice shall be deemed accepted by PGE. If within such ten (10) Business Day period PGE has raised any commercially reasonable objection

to any of the COD Conditions, the Commercial Operation Date shall not occur until Seller has addressed the objections stated in PGE's notice to the mutual satisfaction of both Parties. Seller may notify PGE of completion of one or more COD Conditions on an individual and incremental basis prior to COD, provided, however, that PGE shall in all cases have up to ten (10) Business Days to review and object to each such notice.

3.3.3 Delay Damages. If the Storage System fails to achieve Commercial Operation on or before the Scheduled Commercial Operation Date ("COD Delay"), Seller shall pay Delay Damages to PGE as a liquidated damage and not a penalty for any COD Delay. Delay Damages shall begin to accrue on the day after the Scheduled Commercial Operation Date (as may be extended due to Force Majeure) until the first to occur of Commercial Operation or termination of this Agreement pursuant to Section 3.3.4 below. Delay Damages are payable to PGE no later than ten (10) days following the calendar month in which such Delay Damages accrued. If Seller does not timely pay the Delay Damages, PGE will have the right to draw on and retain for its sole benefit the Pre-COD Security in any amount equal to the Delay Damages that have accrued and not been paid by Seller.

3.3.4 Failure to Achieve Guaranteed Commercial Operation Date. Seller shall be in default under this Agreement if the Storage System fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, and PGE's exclusive remedies as liquidated damages shall be (i) the payment by Seller of Delay Damages and Contract Termination Damages, and (ii) the right of first offer set forth in Section 8.8.

3.4 Storage System Operations.

3.4.1 Station Service.

~~(b)~~(a) This Agreement does not provide for the supply of retail electric power to the ~~Project~~Storage System, for any purpose ("**Station Service**"). For the avoidance of doubt, Station Service includes auxiliary loads that are critical for the operation of the Storage System (e.g., start-up, shut-down, panel adjustment, lighting, alarms, HVAC) during periods in which the Storage ~~Facility~~System is in an idle or standby mode ~~but~~. Station Service excludes auxiliary load self-supplied by the Storage ~~Facility~~System during charging and discharging that originated as Charging Energy. In no event shall Charging Energy be used for Station Service. Seller shall contract with the local utility in whose retail service territory the ~~Project~~Storage System is located ("**Local Provider**") for the supply of Station Service consistent with requirements of the Interconnection Agreement.

~~(e)~~(b) Seller's arrangements for the supply of Station Service to the ~~Project~~Storage System shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary Station Service for the ~~Project~~Storage System 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 BuyerPGE or an Affiliate of BuyerPGE.

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

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

~~(f)~~(e) Notwithstanding the foregoing or anything to the contrary herein, Seller may power the Project'sStorage System's HVAC and thermal management systems with auxiliary powerStation Service subject to the terms and conditions of this Agreement.

2.3.83.4.2 Site Control. At all times during the Term, Seller shall control the Site through ownership or lease and shall ~~maintain such AGC throughout the Delivery Term.~~ Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's Set Point(s) margin of error. ~~Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set point provide PGE with prompt notice of any change in control during normal operations of the Site.~~

- ~~1. Outages~~Beginning on the Commercial Operation Date and throughout the Delivery Term, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability subject to Section 5.9.
- ~~2. For each day during the Delivery Term, (i) Buyer shall be responsible for, if it chooses, to register the Project in the Western Energy Imbalance Market (EIM) at its sole cost and expense and shall schedule and discharge the Project in accordance with the EIM's rules, procedures and regulations, including those contained in the EIM OATT, and any applicable Buyer business practices and (ii) Buyer shall communicate directly to the Project in real time to dispatch the charging and discharging of the ESS for the control modes identified in Exhibit L. This Section 5.2(c) will apply in the event the EIM is replaced, or any other market participation elected by Buyer in accordance with Section 5.4(b).~~
- ~~3. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including NERC holidays) using Energy from any source; provided that Buyer shall pay for all such Energy.~~

~~2. Delivery Arrangements~~

- ~~1. Seller shall take all actions required in accordance with the terms and conditions of this Agreement to accept the Charging Energy at and from the Point of Delivery, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the ESS. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this Agreement. Seller shall secure the interconnection service necessary (i) to deliver the Discharging Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.~~
- ~~2. Seller shall be responsible for the costs of interconnection (excluding such costs for which Transmission Provider is responsible) and costs required to receive Charging Energy and deliver Discharging Energy at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this Agreement, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer related charges applicable to Discharging Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.~~
- ~~3. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer related charges required to deliver Discharging Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer related charges for delivery of Charging Energy to the Point of Delivery.~~
- ~~4. Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) receive Discharging Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery.~~

~~3. Obligation to Schedule~~

~~3.4.3 Buyer shall arrange all scheduling services necessary to ensure compliance with NERC operating policies and criteria, Transmission Provider OATT requirements, including Western EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharging Energy and Charging Energy in accordance with NERC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharging Energy or Charging Energy during Unplanned Outages.~~

- ~~1. Planned Outages and Force Majeure Events.~~
- ~~2. If at any point during the Delivery Term, an alternative market design is implemented in which the Buyer, at its sole discretion, elects to participate the Project in an energy market or no~~

longer participate in an energy market (a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this Agreement, the Parties shall cooperate in good faith to facilitate the delivery of Energy from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this Agreement to the extent possible; provided that if implementing a Market Event increases Seller's costs above those costs reasonably anticipated as of the Effective Date Buyer shall compensate Seller for the increased costs in either a lump sum or an increase in the Contract Price.

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

~~3. 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.~~

~~4. Unless otherwise specified by superseding policies or procedures of the System Control Center, Seller shall, by 06:00 a.m. PPT on each day, submit a good faith estimate of the hourly ESS availability for the next seven (7) days. If, at any time following submission of a good faith estimate, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.~~

~~4. Outages~~

~~(b)(a) Planned Outages. Seller shall maintain all ProjectStorage System equipment or cause the same to be maintained at all times in accordance with Prudent Electric Utility Practices and otherwise in accordance with this Agreement. At least sixty (60) days before the Commercial Operation Date, Seller will provide Buyer a notice of Planned Outages for the Project for the first Contract Year within the Term. Thereafter, no later than September 1 of each Contract Year, Seller shall provide Buyer with a non-binding notice of the annual Planned Outages for the following Contract Year and a notice of estimated long term Planned Outages for the next four (4) Contract Years. Each notice of Planned Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each annual Planned Outage for the Contract Year will be subject to approval by Buyer, unless (i) maintenance is required to avoid an emergency or damage one or more of the Project, the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities; (ii) maintenance has been deferred at the request of the Buyer, the Transmission Provider, Reliability Coordinator, or a Governmental Authority; (iii) maintenance is required to maintain equipment warranties or as otherwise required by the equipment, manufacturer; (iv) maintenance is required by Applicable Laws, Transmission Provider, Reliability Coordinator, or a Governmental Authority. Buyer may, within fifteen (15) days after receipt of the schedule, request warranties, and otherwise in~~

accordance with this Agreement. Seller shall coordinate regular maintenance requirements for the Storage System with PGE and provide maintenance schedules to PGE for review and shall be subject to PGE's reasonable modifications to the schedule. Seller may not schedule any non-emergency maintenance that reduces the Project charging or discharging capability by more than ten percent (10%) during June 1st through approval. Seller shall notify PGE, on or before September 1 preceding the Commercial Operation Date and on or before September 30th unless (i) such outage is required to avoid significant and material damage to the Project, (ii) such maintenance is necessary to maintain equipment warranties and cannot be 1 of each subsequent Calendar Year, of the scheduled outside the maintenance for the Storage System for the next Calendar Year, and shall use commercially reasonable efforts to plan scheduled maintenance (i) to maximize the productive capability of the Storage System, and (ii) not to occur during the months of June/July through August, (iii) such outage is required in accordance with Prudent Utility Practices, or (iv) the Parties agree otherwise in writing. Each annual Planned Outage for a Contract Year shall not exceed two hundred forty (240) hours. Buyer may request Seller to defer or reschedule any Planned Outage up to forty eight (48) hours before commencement of the outage unless the maintenance is addressed by clauses (i) September and during the months of December through (iv) of this Section 5.5(a). Seller must give Buyer no less than sixty (60) days February; provided however, scheduled maintenance may occur during such periods to the extent (x) required by or necessary to maintain major equipment warranties, (y) is consistent with Prudent Electric Industry Practice, or (z) necessary for safety and to protect life or property. Seller shall not make changes to any annual maintenance schedule approved by PGE without PGE's prior written approval and Seller must provide 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/PGE, and Seller agrees to compensate Buyer/PGE for AUT Costs incurred by Buyer/PGE as a result of such change. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval.

- (b) Duty to Mitigate Impact. 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 System Nameplate Capacity subject to an Outage at any time.
- (c) Unplanned Outage. ~~Buyer/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. ~~Buyer/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 BuyerPGE Reliability Coordinator outage reporting timing requirements, via telephone to ~~the Buyer’sPGE’s~~ Balancing Authority Area Operator and Power Operations Real-Time Desk, such that the BuyerPGE 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 System Nameplate Capacity, if any, that would be available at the ~~Point of Delivery~~ Point during such event. BuyerPGE 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 ProjectStorage System during or after the end of such event.-

~~(e)~~(d) Outage Report. Within five (5) Business Days after the end of the month, Seller shall prepare, maintain and deliver to BuyerPGE 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 BuyerPGE and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

3.5 Storage System Operations.

3.5.1 Delivery Arrangements

- (a) PGE will have the right to charge the Storage System 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 Charging Energy.
- (b) 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 Delivery Point, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy to the Storage System. Seller shall use and only use the Charging Energy for PGE’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 Delivery Point, and (ii) receive Charging Energy from the grid at the Delivery Point to the Storage System, 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 Storage System.

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

2.3.93.5.2 Storage System Operating Procedures. Not later than one hundred and twenty (120) days before the Storage System Test Period, Seller shall provide ~~Buyer~~PGE a draft of all Storage System Operating Procedures. Not later than sixty (60) days before the Storage System Test Period, an operating committee consisting of Seller and ~~Buyer~~PGE representatives shall develop mutually agreeable written Storage System Operating Procedures for integration of the ~~Project~~Storage System into ~~Buyer's~~PGE's system and shall be included as Exhibit QQ to the Agreement. ~~Buyer~~PGE and Seller shall review and mutually agree on any appropriate updates to the Storage System Operating Procedures at least once per calendar year or more frequently as changes dictate. Storage System 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~~PGE, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharging Energy reports; unit operations log; Seller Unplanned Outage and Planned Outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the ~~Project~~Storage System at all times consistent with the Storage System Operating Procedures, the Agreement, Prudent Electric Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. -The Storage System Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the ~~Project~~Storage System must be continuously

available, either at the ProjectStorage System or capable of being at the ProjectStorage System on ninety (90) minutes' notice, and must be continuously available by phone.- Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. BuyerStorage System. PGE will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

2.3.403.5.3 Storage System Operating Restrictions

- (a) Seller shall operate or procure the operation of the ProjectStorage System in accordance with Prudent Electric Utility Practices and the Storage System Operating Restrictions ("Storage System Operating Restrictions") as detailed in Exhibit M-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'sPGE's dispatching of the ESSStorage System and the following clause (ii)) have the sole responsibility to, and shall at its sole expense, operate and maintain the ProjectStorage System in accordance with all requirements set forth in this Agreement; and (ii) comply with reasonable requirements of BuyerPGE regarding day-to-day or hour-by-hour communications with BuyerPGE. Subject to compliance with the Storage System Operating Restrictions, Seller agrees to operate the ProjectStorage System in such a manner that Discharging Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Service AttributesServices 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 BuyerPGE with all real time measurement parameters of the ProjectStorage System including individual inverter and system availability data made available to BuyerPGE via a SCADA or equivalent interface. -Seller shall provide BuyerPGE, and shall maintain during the Term, a data link into the forecasting tools used by Seller.
- (b) Seller shall operate the ProjectStorage System such that all system protective equipment is in service whenever the ProjectStorage System is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project'sStorage System's protective equipment shall meet the requirements of the Interconnection Agreement and Prudent Electric 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 Electric Utility Practices, at least once every twelve (12) months. Seller shall perform a unit functional trip test after each overhaul of the Project'sStorage System's major equipment and shall

provide results to BuyerPGE in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Electric Utility Practices. BuyerPGE reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide BuyerPGE with a ten (10) day written notice of planned testing and/or calibration.

2.3.413.5.4 PGE Dispatch Outside of Storage System Operating Restrictions.

Notwithstanding anything to the contrary in this Agreement, in the event that BuyerPGE dispatches the ESSStorage System outside of the Storage System Operating Restrictions in response to an Emergency Condition and remedies for such dispatch are not otherwise defined within this Agreement, the Guaranteed Storage 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 ProjectStorage System to-date, including periods of time in which the ProjectStorage System was operated well within the Storage System Operating Restrictions. In the event the Parties cannot agree on appropriate and equitable adjustments, such matter shall be subject to the dispute resolution provisions set forth in Section 15.4, ARTICLE 17. Except for Buyer'sPGE's negligence or willful misconduct, the event of a BuyerPGE dispatch of the ESSStorage System outside of the Storage System Operating Restrictions shall not be deemed a BuyerPGE Event of Default.

2.3.423.5.5 Storage Capacity Testing of Storage System

- (a) Storage Capacity Testing and Setting of ~~Contract~~ Storage System Nameplate Capacity.
 - (i) Prior to the Commercial Operation Date, Seller shall schedule with at least ten (10) Business Days' notice to BuyerPGE and complete a storage capacity test of the Storage FacilitySystem in accordance with the testing procedures, requirements and protocols set forth in Exhibit OExhibit O (a "**Storage Capacity Test**"). Thereafter, once per Contract Year, BuyerPGE shall schedule with at least sixty (60) days' notice to Seller and Seller shall complete a Storage Capacity Test in accordance with Exhibit O- BuyerExhibit 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 FacilitySystem indicates a potential underperformance of any of the Performance Guarantees in Section 5-10-4.1. 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. BuyerPGE may witness all Storage Capacity Tests of the Storage Facility- BuyerSystem. PGE shall schedule any visit to the ProjectStorage

System in advance with Seller, shall comply with Seller's reasonable written health, safety and security requirements provided to BuyerPGE, and shall not interfere with Seller's construction, installation, start-up, testing, commissioning, operation or maintenance of the ProjectStorage System.

- (iii) BuyerPGE shall schedule, deliver, and receive Storage System Test Energy in accordance with the ~~scheduling procedures~~Scheduling Procedures outlined in Section 5-43.8 in order to complete any Storage Capacity Test. BuyerPGE is responsible for all costs of Storage System Test Energy for the first Storage Capacity Test in each Contract Year and any BuyerPGE-directed Storage Capacity Tests (described in Section 3.5-9(a)(i-vi)) prior to Commercial Operation or during any Contract Year. Seller is responsible for all costs of Storage System Test Energy for any Seller-directed Storage Capacity Test (described in Section 5-9(a)(i-v)3.5(a)(i)) and the first Storage Capacity Test prior to Commercial Operation. Storage System Test Energy shall be at wholesale electricity prices inclusive of capacity or reserves costs and any Seller incurred Storage System Test Energy costs shall be deducted from the Monthly Payment.
- (iv) Following each Storage Capacity Test, Seller shall submit a test report to BuyerPGE within ten (10) Business Days in accordance with Exhibit O-Exhibit O, together with reasonable supporting data. Within twenty (20) Business Days after submission of a test report, BuyerPGE shall have the right to require (BuyerPGE-directed) and Seller shall have the right to schedule (Seller-directed) a retest of the Storage Capacity Test in accordance with Exhibit O-Exhibit O.
- (v) If the actual capacity determined pursuant to a Storage Capacity Test is less than the then-current ~~Contract~~-Storage System Nameplate Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new ~~Contract~~-Storage System Nameplate Capacity effective from the date of the Storage Capacity Test for all purposes under this Agreement.

3.6 Automatic Generation Control (AGC).

- 5. ~~Prior to the Commercial Operation Date, Seller, at its sole cost and expense, shall install AGC at the Storage System 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.~~ Performance Guarantees

- 1. ~~Guaranteed Contract Storage Capacity.~~

- ~~1. During the Delivery Term, Seller shall maintain the Storage Facility with a Contract Storage Capacity of not less than the Guaranteed Contract Storage Capacity.~~
- ~~2. If the Contract Storage Capacity for the Storage Facility is determined during a Storage Capacity Test to be less than the Guaranteed Contract Storage Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by multiplying (i) the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (ii) the Contract Price (adjusted to \$/MW/month (multiplied by 1,000), multiplied by 125% by (iii) the difference between the Guaranteed Contract Storage Capacity and the Storage Capacity as determined during the most recent Storage Capacity Test ("Guaranteed Contract Storage Capacity Adjustment") until such deficiency is cured.~~
- ~~3. Payment of Guaranteed Contract Storage Capacity Adjustment is Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with the Contract Storage Capacity being less than the Guaranteed Contract Storage Capacity for any single Contract Year. This Section 5.10(a)(iii) doesn't limit Buyer's right to declare an event of default under Section 11.1(b)(vii).~~

~~(a) Availability. Seller shall ensure that the Storage Facility has an Actual Availability for each Contract Year during the Delivery Term of no less than the Guaranteed Availability. If the Storage Facility has Actual Availability in a Contract Year less than the Guaranteed Availability, then Seller shall pay Buyer liquidated damages in the amount equal to the product of (a) the positive difference between the Guaranteed Availability and the Actual Availability, multiplied by (b) the Contract Storage Capacity during the Contract Year, multiplied by (c) the Contract Price (adjusted to \$/MW/month), multiplied by (d) twelve (12) months (the "Guaranteed Availability Adjustment"). No later than the thirtieth (30th) day of such Contract Year (or thirty (30) days after the end of the last Contract Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Actual Availability for the previous Contract Year and the Guaranteed Availability Adjustment, if any, due to Buyer (the "Availability Report"). Such Availability Report shall include the total amount of the Guaranteed Availability Adjustment. Amounts due Seller shall ensure that the Storage System's AGC Remote/Local status is in "Remote" set-point control during normal operations.~~

~~2. Beginning on the Commercial Operation Date and owing will be subject to Article 7.~~

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

~~4. —~~ **METERING**

- (c) ~~For each day during the Delivery Term, (i) PGE shall be responsible for, if it chooses, to register the Storage System in the Western Energy Imbalance Market (EIM) at its sole cost and expense and shall schedule and discharge the Storage System 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 System in real time to dispatch the charging and discharging of the Storage System for the control modes identified in Exhibit L. This Section 3.6(c) will apply in the event the EIM is replaced, or any other market participation elected by PGE in accordance with Section 20.11.~~
- (d) ~~Storage System. PGE will have the right to charge the Storage System 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 Charging Energy.~~

3.7 Storage System Metering.

~~2.3.13.7.1~~ 3.7.1 Storage System Metering Requirements

- (a) Seller shall install Storage System Metering Facilities and Back-Up Metering, each in an arrangement consistent with the configuration depicted in the one-line diagram in ~~Exhibit E, 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 System 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 System Metering Facilities used to measure the Charging Energy and Discharging Energy and to monitor and

coordinate operation of the ~~Project~~Storage System shall be purchased and installed in accordance with the Interconnection Agreement at no cost to ~~Buyer~~PGE under this Agreement. The design of the Storage System Metering Facilities shall be subject to ~~Buyer~~PGE approval prior to commencement of construction of the ~~Project~~Storage System. PGE shall have the right, at its own expense, to inspect and test the Storage System Metering Facilities upon installation and at least annually thereafter and shall provide all test results to Seller upon request within a reasonable timeframe. Storage System Metering Facilities shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive ~~Energy~~energy, if supplied by either the grid or ~~ESS~~Storage System. Storage System Metering Facilities shall be programmed such that meter readings will reflect losses between the Meter and the ~~Point of Delivery~~ Point. Seller shall provide ~~Buyer~~PGE with all authorizations necessary to have access to the Storage System Metering Facilities, including arranging with the Transmission Provider to provide ~~Buyer~~PGE reasonable access to all Storage System Metering Facilities. Seller, at its sole expense, shall also have the right to conduct its own tests of the Storage System Metering Facilities in Seller's reasonable discretion, in accordance with Prudent Electric Utility Practices, and upon reasonable advance notice to ~~Buyer~~PGE, and shall provide all test results to ~~Buyer~~PGE upon request within a reasonable timeframe. Either Party shall have the reasonable opportunity to be present at any time when such Storage System 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~~PGE.

- (ii) In addition to the Storage System 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~~ARTICLE 3, 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 System Metering Facilities, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.
- (iv) SQMD Plan. -Prior to commencing Commercial Operation, Seller shall support and reasonably cooperate with ~~Buyer~~PGE in ~~Buyer's~~PGE's development and submittal to the Market Operator of its Settlement Quality Meter Data ("SQMD") plan for the ~~Storage Facility~~System. 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 BuyerPGE. Without limiting the foregoing obligation, ~~Buyer~~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~~Storage System and are not prohibited by the Interconnection Agreement. Seller shall upon reasonable advance notice permit ~~Buyer~~PGE or ~~Buyer's~~PGE's representatives access to the ~~Project~~Storage System and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. ~~Buyer~~PGE shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

2.3.143.7.2 ~~Storage System~~ Meter Inaccuracies and Retroactive Adjustments

- (a) If any inspections or tests of the Storage System 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 System 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 System Metering Facilities or Back-up Metering were in service since last tested, but not exceeding six (6) months, in the amount the Storage System 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 System 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~~ ARTICLE 3. 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~~ Storage System at the ~~Point of~~ Delivery Point and Discharging Energy from the ~~Project~~ Storage System to the ~~Point of~~ Delivery Point, in each case during periods of similar operating conditions when the Storage System Metering Facilities registered accurately. The adjustment shall be made for the period as determined pursuant to ~~Section 6.2(a)~~ 3.7.2(a).

~~5.~~

~~BILLING AND PAYMENT~~

~~1. Billing~~

- ~~1. The total amount due from Buyer to Seller each month during the Delivery Period (the "Monthly Payment") shall be calculated as follows:~~

- ~~1. the Contract Price multiplied by the Contract Storage Capacity, less~~
- ~~2. the Guaranteed Availability Adjustment for such year, if any, less~~
- ~~3. the Guaranteed Round Trip Efficiency Adjustment for such year, if any, less~~

~~4. the Guaranteed Contract Storage Capacity Adjustment, if any, *less*~~

~~3.8 Test Energy costs that Seller is responsible for pursuant to Section 5.9(a)(iii), if any. Forecasting, Scheduling and Curtailment.~~

~~3.8.1 Obligation to Schedule Storage System.~~

~~(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 System 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.~~

Seller shall
communicate to
PGE's Pre-
schedule Desk

the Storage System's hourly availability for the Pre-Scheduling Day(s) by 06:00a.m.

5. ~~And~~ subject to Section 5.10(b)(i)

(b) ~~Seller shall read or have read on its behalf the~~ PPT of the customary WECC Pre-Scheduling Day for each day during the Delivery Term.

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

- (d) Unless otherwise specified by superseding policies or procedures of the Storage System Control Center, Seller shall, by 06:00 a.m. PPT on each day, submit a good faith estimate of the hourly Storage System 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 PGE, Seller shall promptly notify PGE of such change or predicted change.

3.9 Access.

Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Applicable 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 Storage System: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, (c) to provide tours of the Storage System to customers and other guests of PGE (not more than twelve (12) times per year), (d) for purposes of implementing Section 16.2 (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 Storage System, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller.

ARTICLE 4

STORAGE SYSTEM PERFORMANCE GUARANTEES

4.1 Storage System Performance Guarantees

- (a) Guaranteed Storage System Nameplate Capacity.
- (i) During the Delivery Term, Seller shall maintain the Storage System with a Storage System Nameplate Capacity of not less than the Guaranteed Storage System Capacity.
- (ii) If the Storage System Nameplate Capacity for the Storage System is determined during a Storage Capacity Test to be less than the Guaranteed Storage System 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 System Contract Price (adjusted to \$/MW/month (multiplied by 1,000), multiplied by 125% by (iii) the difference between the Guaranteed Storage System Capacity and the Storage Capacity as determined during the most recent Storage Capacity Test (“Guaranteed Storage System Nameplate Capacity Adjustment”) until such deficiency is cured. Amounts due and owing by Seller for the Guaranteed Storage System Capacity Adjustment shall be netted against amounts due and owing by PGE in the next billing cycling after the completion of the Storage Capacity Test.

- (iii) Payment of Guaranteed Storage System Nameplate Capacity Adjustment is Seller's sole and exclusive liability, and PGE's sole and exclusive remedy, in connection with the Storage System Nameplate Capacity being less than the Guaranteed Storage System Capacity for any single Contract Year. This Section 4.1(a)(iii) doesn't limit PGE's right to declare an Event of Default.
- (b) Annual Storage Availability. Seller shall ensure that the Storage System has an Annual Storage Availability for each Contract Year during the Delivery Term of no less than the Guaranteed Storage Availability. If the Storage System has Annual Storage Availability in a Contract Year less than the Guaranteed Storage Availability, then Seller shall pay PGE liquidated damages in the amount equal to the product of (a) the positive difference between the Guaranteed Storage Availability and the Annual Storage Availability, multiplied by (b) the Storage System Nameplate Capacity during the Contract Year, multiplied by (c) the Storage System Contract Price (adjusted to \$/MW/month), multiplied by (d) twelve (12) months (the "Guaranteed Availability Adjustment"). No later than January 30th 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 Annual Storage 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 by Seller for the Guaranteed Availability Adjustment shall be netted against amounts due and owing by PGE in the next billing cycling after the Availability Report is delivered to PGE.
- (c) Round-Trip Efficiency. During the Delivery Term, Seller shall maintain the Storage System with an Actual Round-Trip Efficiency greater than the Guaranteed Round-Trip Efficiency values set forth in Exhibit P which shall be measured during each Storage Capacity Test. 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 Delivery Point (the "Guaranteed Round-Trip Efficiency Adjustment"). Amounts due and owing by Seller for the Guaranteed Round-Trip Efficiency Adjustment shall be netted against amounts due and owing by PGE in the next billing cycling after the completion of a Storage Capacity Test.

4.2 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this ARTICLE 4 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 4 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 Applicable 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 4 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 4 may be submitted by either Party for resolution in accordance with ARTICLE 17 and with Applicable Law.

4.3 Survival.

The provisions of this ARTICLE 4 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 5 PAYMENT AND NETTING

5.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement unless another period of time is expressly provided. On or before the tenth (10th) 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 System 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.

~~2. On or before the tenth (10th) day following the end of each month included in the Delivery Term, Seller shall provide to Buyer an invoice. Each such invoice provided by Seller must be accompanied by supporting documentation sufficient to enable Buyer to verify the accuracy of the amounts specified in the invoice, and if applicable, a statement of any transfers of future Environmental Attributes made during the ended month. Seller shall deliver each invoice in accordance with the notice requirements of Section 15.1.~~

~~3. If banks in the State of Oregon are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.~~

~~2. Payments~~

5.2 Generally—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 (20th) day of each ~~month~~Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. ~~Subject to Section 7.2(e), Seller shall pay all amounts due to Buyer under this Agreement, including any liquidated damages, or otherwise~~

in respect of any Seller indemnities, within ten (10) Business Days following receipt of Buyer's invoice for such amount. All payments under this Agreement will be made by the applicable Party by wire transfer of immediately available funds to the account designated in writing by the payee for receipt of such payments. 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.

2.45.3 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 5.3 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.

5.4 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 **Error! Reference source not found.** (unless one of the Parties elects to accelerate payment of such amounts as permitted by Section 8.2.1), 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.

5.5 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 6
TITLE AND RISK OF LOSS

Title to, and risk of loss for all Products associated with the Storage System that are delivered to PGE shall transfer from Seller to PGE upon delivery at the Delivery Point. PGE shall have title to Charging Energy, energy stored in the Storage System, and Discharging Energy, and Seller shall not attempt to create, or allow the creation of, any lien or encumbrance of any nature on the Charging Energy or 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 Delivery Point.

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 Delivery Point.

~~ARTICLE 3~~**ARTICLE 7**
FORCE MAJEURE ~~EVENTS~~

~~3.17.1~~ **Definition.** "Force Majeure Event" means an event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance, or combination of events or circumstances, that meets all of the following criteria:-

- (a) arises after~~during~~ the Effective Date~~Term~~,
 - (b) ~~was not caused by and is unforeseeable and is~~ beyond the reasonable control of the affected ~~Party claiming the Force Majeure Event~~ Party,
 - (c) ~~is unavoidable or was not foreseeable, or if foreseeable, could not be prevented~~have avoided or overcome by the affected Party through the exercise of commercially reasonable efforts and due diligence ~~of the Party claiming the Force Majeure Event~~, and
- ~~1. 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.~~
- (d) is not the result of the fault or negligence of the affected Party claiming the excuse.

Provided ~~they meet all of that~~ the criteria ~~described in~~ (a) through (d) above are met, 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~~Storage System 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 Applicable Laws). Notwithstanding anything in the foregoing to the contrary, in~~

~~Under no event/circumstances shall any of the following constitute a Force Majeure Event: (i) inability or excess cost to procure any equipment necessary to perform this Agreement; (ii) 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; (iii) cost or shortages of labor or manpower; (iv) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (v) events that affect the cost of equipment or materials; (vi) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vii) 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; (viii) any weather conditions which are not defined above as Force Majeure Events; (ix) actions of a Governmental Authority in respect of or in relation to or resulting from Seller's compliance or non-compliance with Applicable Laws; (x) any delay or failure by Seller to obtain and/or maintain any Permit it is required necessary to obtain or maintain hereunder; (xi) any other act, omission, delay, default or failure (financial or otherwise) of a subcontractor of Seller or other personnel of Seller; (xii) loss of PGE's markets; (xiii) PGE's inability economically to use or resell the Product/Products purchased under this Agreement; (xiv) the loss or failure of Seller's fuel supply or equipment; (xv) either Party's inability to pay when due any amounts owed under this Agreement; or (xvi) Seller's ability to sell the Product/Products at a price greater than the Fixed Price. Seller may not raise a claim of; (xvii) Environmental Contamination at the Site; (xviii) changes in markets; (xix) any Change in Law. A Force Majeure with respect to Event shall also not include the unavailability of capacity/Products from the Facility based on any Storage System arising out of the following: (i) routine or scheduled maintenance of the Facility/Storage System; (ii) any unscheduled outage undertaken to address normal wear and tear of the Facility during the Term/Storage System; (iii) any unscheduled outage that is caused by or arises from mechanical or equipment breakdown, fire, explosion or other event or condition attributable to normal wear and tear, unless such event or condition is caused by a Force Majeure Event. (iv) any outage caused by Seller's failure to design, construct, operate or maintain the Facility/Storage System consistent with Prudent Electric Industry Practice; (v) and/or manufacturer warranties; (v) changes in climactic conditions; (vi) environmental obstructions caused by events or circumstances that may impact the Facility's generation output but without causing a Facility outage (e.g., forest fire or volcanic eruption located outside of the Facility site); (vi) financial inability to perform; (vii) changes in cost or availability of materials, equipment, or services; or (viii) strikes or labor disturbances involving the employees of Seller or any of its subcontractors unless such strike or labor disturbance has a national impact making it impossible for Seller to perform its obligations with respect to the Facility. Claims; Resolution/Storage System; or (x) any reasonably foreseeable~~

inclement weather events, including those caused by, attributable to, or expected to result from climate change.

7.2 Claims Occurrence and Notice.

(a) Claim of Force Majeure. ~~In addition to~~ If a Party (the conditions set forth in Section 10.1(a) above and in the definition of “**Claiming Party**”) is prevented by a Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes ~~of from carrying out, in whole or part, its obligations under this Agreement only to,~~ the extent that such Claiming Party shall:

- (i) ~~provides prompt~~ provide notice ~~of such and details of the Force Majeure Event to the other Party promptly, but in no event later than five (5) Business Days after the Claiming Party obtains knowledge of the Force Majeure Event to the other Party giving.~~ The notice shall include an estimate of ~~its~~ expected duration and the probable impact on the performance of its obligations under this Agreement ~~and, if applicable, the construction and operation of the Project;~~
- (ii) ~~provides~~ provide weekly updates during the continuance of the Force Majeure Event that (A) summarize the measures taken by the ~~affected~~ Claiming Party and that the ~~affected~~ 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 ~~affected~~ Claiming Party of its material obligations under this Agreement will be prevented or the construction or operation of the ~~Project~~ Storage System, 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~~ Storage System, is no greater in scope and no longer in duration than is necessary based on the Force Majeure Event.

~~(d)~~ (b) Resumption of Performance. ~~The~~ ~~affected~~ 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~~ Storage System 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 7 shall be upon the Claiming Party.

(d) Excused Performance. If all conditions set forth in Section 7.2 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.

7.3 Obligations~~Termination Due To Force Majeure Event~~

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

~~6.~~

~~EVENTS OF DEFAULT, TERMINATION~~

~~1. Events of Default~~

~~1. Mutual Events of Default. The occurrence with respect to a Party of any of the following events or conditions constitutes an event of default with respect to such Party:~~

~~The~~

~~A Force Majeure Event shall only relieve a Party of such obligations as are actually precluded by the Force Majeure Event. This ARTICLE 7 shall not relieve either Party of any liability for breach or any obligations or any payments that were due or to be performed or that accrued before the Force Majeure Event.~~

7.4 Right to Terminate.

If, (i) prior to Commercial Operation Date, the Force Majeure Event affecting Seller continues for a period of one hundred eighty (180) consecutive days, or (ii) after the Commercial Operation Date, the Force Majeure Event affecting Seller continues for a period of two hundred forty (240) consecutive days or two hundred forty (240) non-consecutive days in any two (2) year period, PGE may at any time following the end of such period terminate this Agreement upon

written notice to Seller without further obligation by either Party except as to any payments and obligations arising before the effective date of such termination.

ARTICLE 8

EVENTS OF DEFAULT; REMEDIES

8.1 Events of Default.

An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following events and such default shall be deemed an Event of Default by the Defaulting Party immediately upon its occurrence if no cure period is provided below. If a cure period is provided below and such default shall become an Event of Default if not cured within the specified cure period:

~~3.1.28.1.1~~ the failure-of such Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after the failing Party’s receipt of written notice-of such failure.;

~~3.1.38.1.2~~ Anyany 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 andif such failure, if capable of being remedied, inaccuracy is not remediedcured within thirty (30) days after such Party’s receipt of writtenthe Non-Defaulting Party gives the defaulting Party a notice thereof-of default;

8.1.3 Thesuch Party becomes Bankrupt;

8.1.4 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;

8.1.5 in the case of Seller, Seller’s failure to establish and maintain the Performance Assurance in the amounts required under ARTICLE 10, if such failure is not cured within five (5) Business Days after PGE provides notice of Seller’s failure;

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

8.1.7 in the case of Seller, the occurrence of an Event of Default under Section 3.1.11(d);

8.1.8 in the case of Seller, the Storage System is Abandoned;

8.1.9 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 Delivery Point in accordance with Applicable Law, and in either case such failure continues for fifteen (15) days after Seller’s receipt of written notice or discovery of such failure;

8.1.10 in the case of Seller, Seller sells to a Person other than PGE or diverts for the use of any Person other than PGE, any of the Product during the Delivery Term (unless there is a then existing PGE Event of Default);

8.1.11 in the case of Seller, Seller's failure to achieve the Commercial Operation Date for the Storage System by the Guaranteed Commercial Operation Date;

8.1.12 in the case of Seller, if, after the Commercial Operation Date, the Annual Storage Availability for two [2] out of three [3] consecutive years during the Delivery Term is less than ninety-five percent (95%);

8.1.13 in the case of Seller, if, after the Commercial Operation Date, the Storage Capacity is less than the Guaranteed Storage System Nameplate Capacity after a Storage Capacity Test and is not cured within thirty (30) Days with Seller completing another Storage Capacity Test that demonstrates the Storage Capacity is at least equal to the Guaranteed Storage System Nameplate Capacity;

8.1.14 in the case of Seller, if, after the Commercial Operation Date, the Actual Round-Trip Efficiency is ninety percent (90%) less than the Guaranteed Roundtrip Efficiency after a Storage Capacity Test and such failure is not cured within thirty (30) Days with Seller completing another Storage Capacity Test that demonstrates the Actual Round-Trip Efficiency is at least ninety percent (90%) of the Guaranteed Roundtrip Efficiency;

~~3.1.48.1.15~~ 8.1.15 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;

- ~~1. — Such Party becomes Bankrupt.~~
- ~~2. — Such Party fails to perform any of its obligations under Article 8, if the failure is not cured within ten (10) Business Days after the Non-Defaulting Party gives the Defaulting Party notice of the default.~~

~~3.1.58.1.16~~ 8.1.16 Assignment of this Agreement, except as permitted in accordance with Section ~~45.319.1~~.

~~2. — Seller Events of Default.~~ In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an event of default with respect to such Seller (the events and conditions set forth in Section 11.1(a) and this Section 11.1(b), each an "Event of Default"):

- ~~1. — The Project is Abandoned.~~
- ~~2. — Seller's dissolution or liquidation.~~

- ~~3. Seller fails to maintain in effect (A) the Interconnection Agreement or (B) any other agreement or any Permit required to receive Charging Energy at the Interconnection Point and deliver Discharging Energy to the Point of Delivery in accordance with Applicable Law, and in either case such failure continues for fifteen (15) days after Seller's receipt of written notice or discovery of such failure.~~
- ~~4. Seller sells to a Person other than Buyer or diverts for the use of any Person other than Buyer, any of the Product during the Delivery Term (unless there is a then-existing Buyer Event of Default).~~
- ~~5. Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Commercial Operation Date.~~
- ~~6. If, after the Commercial Operation Date, the Actual Availability for [] or more months within a rolling [] month period during the Delivery Term is less than [percentage].~~
- ~~7. 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.~~
- ~~8. 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.~~

The Defaulting Party shall be responsible for any direct actual damages incurred by the Non-Defaulting Party as a result of an Event of Default by the Defaulting Party that does not result in a termination of this Agreement.

8.2 Termination for Event of Default and Calculation of Termination Settlement Amounts.

- ~~3. Early Termination Date. Upon and any time following an Event of Default occurs with respect to by a Defaulting Party and is continuing, the other Party (the "Non-Defaulting Party") may, subject to Article 12, (i) suspend performance of its obligations under terminate this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written immediately upon notice to the Defaulting Party, designate a date not earlier than the effective- and (i) after the date of such notice as is the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.~~

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

3.1.68.2.1 Termination Payment. Upon termination of this Agreement in connection with an Event of Default, and accelerate all amounts owing between the Parties, and (ii) withhold any payments due to the Defaulting Party under this Agreement. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner without the obligation of either Party to enter into any replacement transaction in order to determine any losses, its Gains or Losses and Costs resulting from the termination payment due to such Party (each a “of this Agreement as of the Early Termination Date. The Non-Defaulting Party shall calculate the Termination Payment”) payable hereunder in accordance with this Section 11.2(e); 8.3 below.

1. ~~If the termination of this Agreement due to a Seller Event of Default occurs before the Commercial Operation Date, then the Termination Payment shall be owed to Buyer and shall be equal to the amount of the Pre-COD Credit Support Amount, less any Delay Damages paid, provided that receipt of the Termination Payment shall be Buyer’s sole and exclusive remedy for such termination.~~
2. ~~If the termination of this Agreement due to a Seller Event of Default occurs after the Commercial Operation Date then the Termination Payment shall be owed to Buyer and shall be equal to (i) all amounts due and owing to Buyer as of the termination of this Agreement plus (ii) the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under transactions replacing this Agreement minus (y) the present value of the payments Buyer would be required to make for Product under this Agreement, in each case for the period from the early termination date through the scheduled end of the Delivery Term and determined by Buyer in a commercially reasonable manner plus (iii) Buyer’s Costs less (iv) all amounts due to the Seller under this Agreement.~~
3. ~~If termination of this Agreement due to a Buyer Event of Default occurs after the Commercial Operation Date then the~~

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

~~8.2.2 Notice of Termination Payment. As soon as practicable after a termination date is declared, the Non-Defaulting Party shall provide notice to~~Calculation of Termination 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 ("Termination Settlement Period"). 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 (i) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment and (ii) a Party's Gains or Losses 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 Losses exceed its Gains, then the Termination 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 Termination Settlement Amount shall be zero dollars (\$0).

8.3 Termination Payment.

~~The "Termination Payment" shall equal the sum of all amounts owed by the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation. If Buyer is to the Non-Defaulting Party and reasonably expects under this Agreement, including a Termination Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to incur penalties, fines or costs from the Transmission Provider, any other Governmental Authority, then Buyer may estimate the Defaulting Party determined as of the Early Termination Date.~~

8.4 Notice of Payment of Termination Payment.

Within five (5) Days after calculating the Termination Payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of those penalties and fines and the Termination Payment due from the Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If a Termination Payment is due from the Defaulting Party, the Termination Payment amount. The shall be made by the Defaulting Party within two (2) Business Days after receipt of such notice.

8.5 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 to the Non-Defaulting Party as provided in Section 5.3 and transfer, within five (5) Business Days after, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

8.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 8.3, 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 8.6 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).

8.7 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 during the cure period associated with the Event of Default (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an early Termination Date shall have been declared and notice thereof pursuant to Section 8.4 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. Effect of Termination. Termination of this Agreement shall not operate to discharge any liability that has been incurred by either Party prior to the effective date of such termination.~~

3-28.8 Right of First Offer.

- (a) If BuyerPGE terminates this Agreement due to a Seller Event of Default or Force Majeure Event, neither Seller nor ~~Seller's~~ Seller's Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the ProjectStorage System to a party other than BuyerPGE for a period of ~~two (2)~~ three (3) 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 BuyerPGE 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).

~~1.~~ If BuyerPGE fails to accept an offer made by Seller pursuant to Section 11.3(a)8.8(a) within forty-five (45) days of Buyer'sPGE's receipt thereof, Seller and its Affiliates may sell, market or deliver any quantity of the Products associated with or attributable to the ProjectStorage System at the price offered to PGE to any third party and on any terms in its sole discretion. ~~Buyer's; 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 Products to PGE pursuant to the requirements contained in this Section 8.8.~~ PGE's acceptance of such an offer within forty-five (45) days of Buyer'sPGE's receipt thereof may be conditioned on BuyerPGE obtaining approval from Buyer'sPGE's Board of Directors or the Oregon Public Utility Commission.

- (b) Neither Seller nor Seller's Affiliates may sell or transfer the Storage FacilitySystem, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 8.8 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 8.8.

~~(b)~~ (c) Subject to the rights contained in Section 19.1, neither Seller nor Seller's Affiliates may sell or transfer the Storage System or any interest therein, or any part thereof, or land rights or interests in the Site so long as the limitations contained in this Section 11.38.8 apply, unless the transferee agrees in writing to be bound by the terms set forth in this Section 11.3-8.8 pursuant to a written agreement approved by PGE. In the absence of such an agreement, any purported sale or transfer of the Storage System or interest therein, or any part thereof, or land rights or interests in the Site, shall be void.

- ~~(e)~~ (d) Subject to Section 11.4 Seller shall indemnify and hold BuyerPGE harmless from all benefits lost and other damages sustained by BuyerPGE as a result of any breach

by Seller of its covenants contained within this Section 41.3.8.8. This provision shall survive the termination of this Agreement.

~~3.38.9~~ 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.

~~ARTICLE 4~~ ARTICLE 9
LIMITATIONS OF LIABILITY

~~2.~~ General Limitations

9.1 Essential Purposes.

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

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

3. Pre-COD Limitation.

~~ARTICLE 10 PRIOR TO THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR DAMAGES IS LIMITED TO THE CREDIT SUPPORT AMOUNT THEN APPLICABLE TO SELLER, EXCEPT THAT SUCH LIMITATION WILL NOT APPLY TO THE EXTENT THAT SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER OR BY THE INTENTIONAL BREACH BY SELLER OF ITS OBLIGATIONS UNDER THIS AGREEMENT.~~
CREDIT AND COLLATERAL REQUIREMENTS

7.

REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

4-10.1 Seller Representations and Warranties Performance Assurance.

~~1. General Representations. Seller represents and warrants to Buyer as of the Effective Date and throughout the Delivery Term that:~~

- ~~1. Seller is a [entity type] duly organized, validly existing and in good standing under the laws of the State of [State]. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.~~
- ~~2. The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:~~

- ~~1. require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;~~
- ~~2. violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;~~
- ~~3. result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or~~
- ~~4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Financing Party or as otherwise may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.~~
- ~~3. The obligations of Seller under this Agreement are valid and binding obligations of Seller.~~
- ~~4. The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.~~
- ~~5. To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business during the Term, all Governmental Approvals necessary for Seller's execution,~~

delivery and performance of this Agreement have been duly obtained and are in full force and effect.

6. ~~Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.~~
7. ~~Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.~~
8. ~~To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.~~
9. ~~To Seller's knowledge, Seller has and/or will have good and marketable title to future Environmental Attributes immediately prior to delivery to Buyer.~~
10. ~~Seller has not sold, delivered or transferred future Environmental Attributes to any other Person, in whole or in part.~~
11. ~~All right, title and interest in and to future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.~~
12. ~~There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Seller's ability to perform its obligations under this Agreement.~~
13. ~~There are no proceedings under applicable bankruptcy or insolvency law contemplated by Seller or, to Seller's knowledge, threatened against it.~~

~~4.11.1 Buyer Representations and Warranties~~General Representations. Buyer represents and warrants to Seller as of the Effective Date and throughout the Delivery Term that:

- ~~1. Buyer is duly organized and validly existing as a corporation under the laws of the State of Oregon, has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement.~~
- ~~2. Buyer, subject to obtaining the approvals provided for in Section 2.1(b)(i), has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.~~
- ~~3. This Agreement has been duly and validly executed and delivered by Buyer, constitutes the legal, valid, and binding obligations of Buyer, and is enforceable against Buyer in accordance with its terms (except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity).~~
- ~~4. There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority that individually or in the aggregate are reasonably likely to have a materially adverse effect on Buyer's ability to perform its obligations under this Agreement.~~
- ~~5. The execution, delivery and performance of this Agreement by Buyer does not conflict with: its governing documents; any Applicable Laws; or any material covenant, agreement, understanding, decree, or order to which Buyer is a party or by which it is bound or affected.~~
- ~~6. There are no proceedings under applicable bankruptcy or insolvency law contemplated by Buyer or, to Buyer's knowledge, threatened against it.~~

~~2. Limitation on Representations~~

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

~~3. Indemnification~~

~~(a) Indemnification~~

- ~~1. Subject to the provisions of this Article 13, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property (collectively, "Losses") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 12.1(d) shall not apply with respect to claims made by third parties.~~
- ~~2. Subject to the provisions of this Article 13, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable. The waiver of consequential damages set forth in Section 12.1(d) shall not apply with respect to claims made by third parties.~~

- ~~(a) Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 13 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing~~

~~acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents' material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out of pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor, provided that, in such event it waives any right to indemnification therefor.~~ Performance Assurance Amount.

- (i) Within ten (10) Business Days after the Effective Date, Seller shall issue, or cause to be issued in favor of PGE, Performance Assurance in the amount equal to the sum of \$125/kW multiplied by the Storage System Nameplate Capacity, expressed in kW (the "Pre-COD Security").
 - (ii) On or before the Commercial Operation Date, Seller shall issue, or cause to be issued in favor to PGE, Performance Assurance in the amount equal to the sum of \$100/kW multiplied by the Storage System Nameplate Capacity, expressed in kW (the "Delivery Period Security").
- (b) Replenishment. 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 10 within five (5) Business days after PGE makes a draw on the Pre-COD Security or Delivery Period Security.
- (c) Return of Seller Performance Assurance. Seller shall maintain Pre-COD Security for the benefit of PGE until Seller posts Delivery Period Security. PGE shall return the Pre-COD Security within ten (10) Business Days after Seller posts Delivery Period Security. Seller shall maintain Delivery Period Security for the benefit of PGE until the later of (x) twelve (12) months after 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.

10.2 General Provisions Applicable to Performance Assurance.

- (a) Performance Assurance 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 Performance Assurance 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 Performance Assurance, 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 Performance Assurance in the form of Cash transferred to or received by PGE by Seller with a Qualified Institution.
- (iii) In lieu of any interest paid or deemed to have been paid with respect to Performance Assurance in the form of Cash (all of which may be retained by PGE), Performance Assurance 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 5.1. Any accrued interest will constitute Performance Assurance in the form of Cash and will be subject to the security interest granted under Section 10.2(d).
- (iv) For purposes of this Agreement, the value of Performance Assurance 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 Performance Assurance.

(b) Performance Assurance in the form of a Letter of Credit.

- (i) The Performance Assurance may be in the form of an irrevocable standby Letter of Credit from a Qualified Institution acceptable to PGE in the form of Exhibit [].
- (ii) The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of three hundred sixty (360) Days or more for the remainder of the Delivery Term more than sixty (60) Days prior to each expiration date of the Letter of Credit. Seller shall give PGE at least sixty (60) Days advance notice prior to any expiration or earlier termination of the Letter of Credit. If the Letter of Credit is not renewed or extended at least sixty (60) Days prior to its expiration date, PGE shall have the right to draw immediately upon the Letter of Credit and place the amounts drawn in an escrow account, at Seller's cost, until Seller provides a replacement form of Performance Assurance that meets the requirements of this ARTICLE 10.
- (iii) Upon the occurrence of a Letter of Credit Default of the type described in clauses **Error! Reference source not found.**, (iii), or (vi) of the definition of Letter of Credit Default, 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 and Seller shall provide a replacement form of Performance Assurance that meets the requirements of this ARTICLE 10 within five (5) Days following notice thereof from 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 Performance Assurance in the form of Cash.

(v) For purposes of this Agreement, the value of Performance Assurance 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, replacing, cancelling, increasing, or reducing the amount of (as the case may be) one or more Letters of Credit are the responsibility of Seller.

~~(b)(c)~~ Replacement. Seller may change the form of Performance Assurance upon commercially reasonable prior notice to PGE and provided that the Performance Assurance at all times meets the requirements of this ARTICLE 10. In the event that the Performance Assurance fails to satisfy the requirements of this ARTICLE 10 or PGE determines in a commercially reasonable manner that an event has occurred or circumstances that may cause the Performance Assurance to fail to meet the requirements of this ARTICLE 10, Seller shall replace the Performance Assurance within five (5) Days following notice thereof from PGE.

~~(e)(d)~~ Grant of Security Interest/Remedies.

~~2. If indemnitor does not provide a responsive notice within the thirty (30) day period set forth in this Section 13.4(b), or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 13.4(b), the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys’ fees of the indemnitee’s counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; provided that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 9, as applicable, as to which it has assured the defense; provided, however, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor’s failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the~~

~~indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.~~

- (i) ~~GOVERNMENTAL~~ To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance, 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 Performance Assurance, including any such rights and remedies under Applicable 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 Performance Assurance 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.
- (iii) The Performance Assurance contemplated by this ARTICLE 1010: (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.

10.3 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 10, 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 10 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.~~

~~ARTICLE 5~~ARTICLE 11 GOVERNMENTAL CHARGES

~~5.411.1~~ 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.

~~5.211.2~~ Non-Sale Related Governmental Charges and Taxes-

Seller shall pay or cause to be paid all charges or taxes imposed by any ~~Governmental Authority~~government authority ("**Governmental Charges**") on or with respect to the ~~Product~~Products arising prior to the ~~Point of Delivery-~~Buyer Point. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the ~~Product~~Products at and from the ~~Point of Delivery Point~~ (other than ~~ad valorem, franchise or income Taxes that are those~~ related to the sale of the ~~Product~~Products, which are the responsibility of Seller). -In the event Seller is required by Applicable Law or regulation to remit or pay Governmental Charges which are ~~Buyer's~~PGE's responsibility hereunder, ~~Buyer~~PGE shall promptly reimburse Seller for such Governmental Charges. -If ~~Buyer~~PGE is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, ~~Buyer~~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 7~~ARTICLE 52 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 Applicable Law.

~~5.311.3~~ Sale-related Governmental Charges and Taxes-

In addition to all other payments required under this Agreement, Seller shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the ~~Product~~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 ~~Product~~Products to the ~~Point of Delivery-~~ Point.

~~5.411.4~~ Indemnification-

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to

the ~~Product~~Products sold, delivered and received hereunder that are the responsibility of such Party pursuant to this ~~Article~~ARTICLE 11.

~~8. —~~
MISCELLANEOUS

~~1. —~~ **Notices**

ARTICLE 12
INDEMNIFICATION

12.1 Indemnification.

- ~~1. **Notices in Writing.** Notices required by this Agreement shall be addressed to the other Party at the addresses noted in Exhibit D. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing. Certain matters as identified in Exhibit D are required to be either hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party, in addition to email notification. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real time or routine communications concerning operation of the Project shall be exempt from this Section.~~
- ~~2. **Representative for .** Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this Agreement. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.~~

~~(a) **Authority of Representatives.** Indemnification.~~

- ~~(i) Subject to the provisions of this ARTICLE 12, and to the fullest extent permitted by Applicable Law, Seller shall defend, save harmless and indemnify PGE, 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 9.4 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 PGE, 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 9.4 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 12.1(b), or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 12.1(b)10.1(a), 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 15, 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
RATES AND TERMS BINDING;
FERC STANDARD OF REVIEW

5.1.13.1 Mobile-Sierra Doctrine.

5.1.13.1.1 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 13.1.2 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).

13.1.2 Waiver of FERC Rights. In addition, and notwithstanding Section 13.1.1, to the fullest extent permitted by Applicable 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 Applicable 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 Applicable Law or market conditions that may occur. If it were to be determined that Applicable 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 Section 13.1.2 shall not apply, provided that, consistent with Section 13.1.1, 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 13.1.1.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties

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

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

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

14.1.3 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;

14.1.4 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;

14.1.5 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;

14.1.6 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;

14.1.7 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;

14.1.8 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;

14.1.9 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;

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

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

14.2 Additional Representations and Warranties of Seller.

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

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

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

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

14.2.4 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 Storage System, and they will be in full force and effect for the Term;

14.2.5 All leases of real property and other real property rights and agreements required for the operation of the Storage System 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;

14.2.6 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 Storage System, (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 Storage System’s reputation.

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

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

14.2.9 Seller reasonably expects, based on the current status of Storage System’s development, that the Storage System will achieve Commercial Operation by the Scheduled Commercial Operation Date and in no event later than the Guaranteed Commercial Operation Date.

14.3 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.

ARTICLE 15 INSURANCE

15.1 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 15.1 along with endorsements required below in Section 15.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to the Storage System, together with such other evidence of insurance (including redacted policies) as PGE may reasonably request. 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.

5.215.2 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.

15.3 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 PGE.

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 16

RECORDS, AUDIT AND ACCOUNTING

16.1 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 Applicable Law. All records of Seller and PGE pertaining to the operation of the Storage System or this Agreement as specified herein or otherwise shall be maintained at the Storage System or in an office of Seller or PGE, as applicable, in such format as may be required by Applicable Law and/or any Governmental Authority. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharging Energy, MWh of delivered Charging Energy, Seller's Storage System Operating Procedures, the Storage System equipment manuals and O&M Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this Agreement. Seller shall provide PGE copies of O&M Records upon PGE's request.

- (a) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Storage System that will include, without limitation, dispatch and scheduled Discharging Energy delivered, Charging Energy received, and Station Service and auxiliary load consumption; changes in operating status; outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; 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 Electric Utility

Practices or any Storage System agreement (in the prescribed format); and Seller Forced Outages ("O&M Records").

- (b) 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 5 and grant the other Party reasonable access to those records.

2. Provision of Real-Time Data. ~~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.~~

3. Compliance Information.

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

- (c) Waiver of~~Upon request by PGE, Seller shall provide real-time, read-only and downloadable electronic access to PGE of all unit availability data related to the Storage System.~~

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

4. No Third-Party Beneficiary

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

~~-~~

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.

5.416.3 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 ~~Buyer~~PGE to evaluate if ~~Buyer~~PGE must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this Agreement (~~ai~~) will be considered a lease under Accounting Standards Codification 842 - Leases, or (~~bii~~) require consolidation of Seller’s financial information with ~~Buyer’s~~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 ~~Buyer’s~~PGE’s accounting treatment for the Agreement, jointly the “Accounting Standards”). Seller agrees to provide ~~Buyer~~PGE with information ~~Buyer~~PGE reasonably believes is necessary for ~~Buyer~~PGE to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as ~~Buyer~~PGE deems necessary), and consultations with their respective independent registered public accounting firms, ~~Buyer~~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 ~~Buyer~~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 ~~Buyers~~PGEs external auditors to complete an audit of ~~Buyer’s~~PGE’s consolidated financial statements, ~~Buyer~~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 ~~15.11(A)-16.3(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 ~~15.11(A)-16.3(a)~~, Seller shall provide such statements to ~~Buyer~~PGE within five (5) Business Days after those statements are issued.

- (iii) Upon reasonable notice from BuyerPGE, during normal business hours and mutually agreed terms and dates, Seller shall allow BuyerPGE access to Seller's records and personnel, so that BuyerPGE and Buyer'sPGE'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 BuyerPGE.
- (iv) Once during each calendar quarter, BuyerPGE 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) BuyerPGE shall treat Seller's Financial Statements or other financial information provided under the terms of this Section 16.3 in confidence in accordance with Section 15.2 ARTICLE 18 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer'sPGE's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which BuyerPGE is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer'sPGE's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer'sPGE's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 15.2 ARTICLE 18; (iii) not disclose any of Seller's financial information provided under the terms of this Section 15.116.3 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 15.116.3 to that information that reflects Seller's operations of the ProjectStorage System; provided, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the ProjectStorage System that BuyerPGE intends to submit pursuant to this Section 15.116.3 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if BuyerPGE discloses information that, based on the advice of its counsel, is legally required to be disclosed, BuyerPGE may make such disclosure without being in violation of this Section- 16.3.

ARTICLE 17
DISPUTE RESOLUTION; GOVERNING LAW

17.1 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.

17.2 Mediation.

Any Dispute that is not resolved pursuant to Section 1717.1 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: (i) written agreement signed by both Parties, (ii) determination by the mediator that the Parties are at an unresolvable impasse, (iii) two unexcused absences by either Party from the mediation sessions, or (iv) failure to resolve the Dispute on or before the sixtieth (60th) 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 17 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.

17.3 Legal Action.

If the Parties are still unable to resolve their differences through mediation pursuant to Section 17.2 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 (i) accepts the exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (iii) irrevocably waives, to the fullest extent permitted by Applicable 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 Applicable Law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (iv) 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 17.3 shall apply with respect to any application for such relief.

17.4 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.

17.5 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.

17.6 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.

17.7 Survival.

The provisions set forth in this ARTICLE 17 shall survive the termination or expiration of this Agreement.

ARTICLE 18
CONFIDENTIALITY AND PUBLICITY

18.1 Confidentiality.

For purposes of this Section 18.1, “**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 18.1, “**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 or any reporting obligation, 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.

18.2 Naming of Storage System.

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

18.3 Publicity.

After the Effective 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 Storage System; (ii) reference to the fact that the Storage System is a battery storage facility, (iii) contracted Storage System Storage Capacity; (iv) the state within which the Storage System is or will be located; and (v) that the Storage System is under contract with each of the Parties.

ARTICLE 19 ASSIGNMENT; BINDING EFFECT

19.1 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 19.1. 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 Storage System.

19.2 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.

19.3 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 20
GENERAL PROVISIONS

20.1 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.

20.2 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.

20.3 Amendments in Writing.

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

20.4 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.

20.5 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.

5.520.6 SeverabilityShould any.

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

20.7 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations that by their nature survive the expiration or termination of this Agreement shall remain in effect, after the expiration or termination, for the purpose of complying herewith.

20.8 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.

20.9 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.

20.10 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.

20.11 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.

20.12 Compliance with Reliability Standards.

To the extent that new reliability standards applicable to the operation and maintenance of the Storage System 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 Storage System, Seller shall reimburse PGE for its share of monetary penalties.

20.13 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 20.13.

20.14 Change in Law.

The ~~Contract Price~~price will not be affected by any ~~change~~Change in ~~any Applicable~~ Law that alters either ~~Buyer's~~PGE's or Seller's costs in connection with this Agreement, Seller's operation of the ~~Project~~Storage System, 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.

20.15 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.

20.16 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 Storage 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.

20.17 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).

20.18 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.

20.19 Compliance Information.

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

20.20 Seller Disclosures.

Seller shall disclose to PGE the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Storage System, the presence of Environmental Contamination at the Storage System or Site (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

20.21 Notices.

20.21.1 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, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery). 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. To the extent notice by telephone is permitted, notice by telephone shall be deemed to have been received at the time the call is received.

20.21.2 A Party may change its notice information by providing notice of the same in accordance with the provisions of Section 20.21.1.

20.21.3 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.

~~5.6.4~~20.21.4 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.

5.720.22 **Counterparts**

This Agreement may be executed in ~~one or more~~ counterparts ~~and by different Parties in separate counterparts~~, each of which ~~will be deemed~~ is an original and all of which ~~when taken together~~ constitute ~~a single agreement, 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.

5. Section Headings

~~The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit~~

~~IN WITNESS WHEREOF, the scope or intent of this Agreement or the intent of any provision contained herein and are to be ignored for the purposes of construction.~~

~~Exhibits~~

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

~~6. Entire Agreement; Amendments~~

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

[signature page follows]

~~The Parties have caused this Storage Capacity Purchase and Sale Agreement to be duly executed and delivered by their duly authorized representatives as of the Effective Date. This Agreement shall not become effective as to either Party unless and until executed by both Parties.~~

~~BUYER:~~

~~PORTLAND GENERAL ELECTRIC
COMPANY~~

By: _____
Name: _____
Title: _____

~~SELLER:~~

~~[SELLER]~~

By: _____
Name: _____
Title: _____

PORTLAND GENERAL ELECTRIC
COMPANY

[Seller]

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____

Inserted Cells

Inserted Cells

EXHIBIT A

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

Site map as separate attachment following this page.

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: _____

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: 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:

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

MILESTONE SCHEDULE

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

Storage System Description

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EXHIBIT C

DESCRIPTION OF SITE

~~As a separate attachment following this page.~~

Specified Amounts

€2

EXHIBIT D**NOTICES**

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

~~D-3~~

Notices	{Seller}	Portland General Electric Company
		Attn: Energyinvoicing Facsimile: (503) 464 8933 Email: Energyinvoicing@pgn.com
Credit and Collections:		Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: Credit Manager Phone: (503) 464 7816 Facsimile: (503) 464 2605
Notices of an Event of Default or Potential Event of Default, Termination or potential Termination: ALL OF WHICH MUST ALSO BE PROVIDED IN WRITING VIA CERTIFIED MAIL	{Seller}	Portland General Electric Company 121 SW Salmon Street Portland, OR 97204 Attn: General Counsel Phone: (503) 464 7822 Facsimile: (503) 464 2200

Storage System Description

~~D~~ 4

EXHIBIT E

PROJECT DOCUMENTS

~~1. Permits~~

~~i) [List]~~

~~2. Storage System Documents~~

~~(a) Seller's proposed development and construction schedule, including significant Storage System activities, milestones and deliverables in GANTT chart or Microsoft Project format.~~

~~(b) A list of permits and approvals, including dates of completion or receipt, required for the construction and operation of the Storage System.~~

~~(c) Storage System layout drawings, including all major equipment and balance of plant equipment.~~

~~(d) An electrical ~~one~~single-line diagram for the ~~Project~~Storage System.~~

~~Attached as a separate document following this page.~~

~~3. (e) 12x24 net energy profile and 8760 net energy production estimate.~~

~~(f) Executed Interconnection Agreement.~~

~~Attached as a separate document following item 2.~~

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

~~Electrical One-Line Diagram~~

~~E-2~~

Page X – EXHIBIT E

PGE 2025 All-Source RFP
Page 2

(g) Storage System specific fire safety and response plan for construction and operations.

EXHIBIT F

Site COMMISSIONING TESTS

~~[EXAMPLE ONLY – TO BE NEGOTIATED FOR PROJECT DETAILS]~~

~~Commissioning Tests~~

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

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

~~A. Automatic Generation Control (AGC) Functionality Test~~

~~Purpose:~~

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

~~System starting state:~~

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

~~Procedure:~~

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

~~System end state:~~

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

~~A.—— SCADA Functionality Test~~

~~Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 days prior to the Scheduled Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.~~

~~B.—— Owner Control and Data Link Functionality Test~~

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

EXHIBIT G

~~INSURANCE COVERAGE~~

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

~~A. Workers' Compensation-Reserved~~

EXHIBIT H
Insurance

EXHIBIT I

Examples

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

Example Illustrating Determination of Payments Due~~Insurance~~, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full time, leased, temporary, or casual.

B. ~~Commercial General Liability Insurance~~, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. ~~Business Automobile Liability Insurance~~, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. ~~[Intentionally Omitted.]~~

E. ~~Excess or Umbrella Liability~~. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Ten Million dollars (\$10,000,000) written on a per occurrence basis during the period prior to commencement of construction of the Project and with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis beginning at the commencement of construction and through the Term.

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

F. ~~All Risk Equipment Insurance~~. Seller shall provide and maintain All Risk insurance coverage all risk of physical loss of damage to Seller Equipment; providing that Seller has the right to self-insure this exposure through the Project Substantial Completion Date; and

G-4

~~G. — Builders Risk Insurance.~~ Seller shall provide and maintain, at its sole cost and expense, from the date of mobilization at the Project under Section Error! Reference source not found.

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

EXHIBIT H

AVAILABILITY GUARANTEE

****FOR ILLUSTRATIVE PURPOSES ONLY****

Section 1. Calculation of Annual Storage Availability

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

	A	B	C = B/A	D = A*C
	Storage Contract Capacity	Available Capacity	Availability Factor	Actual Availability per Settlement Interval
Hour 1	200	180	0.90	180
Hour 2	200	175	0.88	175
Hour 3	200	190	0.95	190
Hour 4	200	200	1.00	200
Hour 5	200	190	0.95	190
Hour 6	200	150	0.75	150
Hour 7	200	175	0.88	175
Hour 8	200	-	1.00	200
Hour 9	200	190	0.95	190
Hour 10	200	200	1.00	200
.....Sum Hours 11-8760*	1,750,000	1,680,000	0.96	1,680,000
Sum of A	1,752,000	E	Sum of D	1,681,850
*Calculation would be done for all hours individually, summing here for simplicity of example				F
Actual Availability per Contract Year =				96% E/F

	A	B	C = B/A	D = A*C
	Storage Contract Capacity	Available Capacity	Capacity Factor	Actual Availability per Settlement Interval
Hour 1				
Hour 2				
Hour 3				
Hour 4				
Hour 5				
Hour 6				
Hour 7				
Hour 8				
Hour 9				
Hour 10				
.....Sum Hours *				
Sum of A	E		Sum of D	F
*Calculation would be done for all hours individually, summing here for simplicity of example				
Actual Availability per Contract Year =				F/E

Where:

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

“Actual Annual Storage Availability per Settlement Interval” means for any Settlement

Interval, the product of (i) the ~~Contract~~ Storage System Nameplate Capacity *multiplied by* (ii) the AvailabilityCapacity Factor.

“AvailabilityCapacity 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 System Nameplate Capacity) *divided by* (ii) the ~~Contract~~ Storage System Nameplate Capacity; *provided* that, if the Storage FacilitySystem is incapable of providing the ~~Contract~~ Storage System Nameplate Capacity during such Settlement Interval due to Seller Excused Hour, then the AvailabilityCapacity Factor for such Settlement Interval shall be deemed to be 1.00.

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

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

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

Section 2: Calculation of Guaranteed ~~Annual~~ Availability Adjustment

The product of:

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

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

The product of:

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

Guaranteed Annual Availability _____	A
Actual Availability per Contract Year _____	B
Availability and the Actual Availability per Contract _____	C = A-B

The product of:

Availability and the Actual Availability per Contract _____	C
---	---

Storage Capacity during the **FORM OF COMMERCIAL OPERATION CERTIFICATION**
Contract Price (adjusted to \$/MW) _____

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

Seller hereby certifies and represents to Buyer the following:

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

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

{Seller}

Sig
nature:

Na
me:

Titl
e:

Commercial Operation Year

Twelve (12) months

Total Guaranteed Annual Availability Adjustment

Example Illustrating Determination of Amount Due to PGE under Section 6.1

Example Illustrating Determination of Amount Due to Seller under Section Error!
Reference source not found.

EXHIBIT J

Reserved

EXHIBIT K

OPERATING PARAMETERS

~~[EXAMPLE ONLY – PROJECT DEPENDENT]~~

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

Part 1: Specifications

Operating-Parameter	Values	Notes
Charging-Source		This is for main power. Station Service to feed auxiliary loads to come from the same source. However, Station Service will be accounted for in a separate meter register within the Metering Facilities.
Minimum CP-rate for Charging the Storage Facility Maximum CP-rate for Charging the Storage Facility		Maximum rate in MW at which energy can be charged. Measured at the Storage Facility Metering Point Provide Constant Power charge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in <u>Exhibit A</u>)
Minimum CP-rate for Discharging the Storage Facility Maximum CP-rate for Discharging the Storage Facility		Maximum rate in MW at which energy can be discharged. Measured at the Storage Facility Metering Point. Provide Constant Power discharge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in <u>Exhibit A</u>)

Storage Ramp-Rate		Maximum ramp rate setpoint
Rated Apparent Power		The real or reactive power (leading/lagging) that the Storage Facility can provide at the Point of Delivery continuously without exceeding the operating limits of the Storage Facility
Rated Discharging Energy		Total Discharging Energy the fully-charged Storage Facility can deliver to the Point of Delivery at the rated continuous discharge power without recharging
Rest Period		Between full-discharge and-charge Between charge and full-discharge
Operational-SoC Limits		
Operating Mode		List operating modes Storage Facility is designed and capable of and any limitations, for example Standby-Mode
Additional operating limitations- e.g. thermal or seasonal limits		Min/Max ambient temperatures- for example

Part 2: Day Ahead Inputs

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

Part 3: Real Time SCADA POINTS

[TO BE DETERMINED]

Litigation

EXHIBIT L

CONTROL MODES

Control Modes

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

Offline Mode

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

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

Standby Mode

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

Contingency Reserve (Spinning and Non-Spinning) Mode

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

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

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

Frequency Response Mode

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

Active Power Regulation Mode

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

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

Reactive Power Regulation Mode

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

Voltage Regulation Mode

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

Automatic Generation Control Mode

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

Target SOC Mode

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

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

~~Manual/HMI~~

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

~~Integration to Other Buyer Control Systems~~

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

Forecast Methodology

EXHIBIT M

Operating Restrictions

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

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

Reserved

EXHIBIT N

~~FORM OF CONDITION PRECEDENT SATISFACTION CERTIFICATE~~

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

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

[Party Name]

By _____

Name _____

Title _____

Reserved

~~N-3~~

EXHIBIT O

~~STORAGE CAPACITY TEST~~

~~[EXAMPLE ONLY]~~

Commissioning Tests for Storage Facilities

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

~~A.~~

A. **Storage Capacity Test**

A.1 ~~A.1~~ General

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

A.1.2 ~~A.1.2~~ Requirements Applicable to all Storage Capacity Tests

A. ~~A.~~ Purpose of Test. -Each SCT shall:

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

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

- (1) ~~(1)~~—discharge time (minutes);
- (2) ~~(2)~~—Charging Energy measured at the Storage System Meter prior to any compensation, in MWh ("ESSStorage System Meter Energy In");
- (3) ~~(3)~~—Discharging Energy measured at the Storage System Meter prior

to any compensation, in MWh ("~~ESS~~Storage System Meter Energy Out");

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

System at a constant power charge rate equal to the Storage Capacity;

- (6) ~~(6)~~—the determination of the charging Storage Ramp Rate in MW/min as the maximum charge setpoint achieved divided by the time elapsed to get to that setpoint from 0 MW;
- (7) ~~(7)~~—the determination of Facility Point of Delivery Energy In, as measured by the Meter, ~~that which~~ is required to charge the ESSStorage System until a 100% State of Charge is achieved as of the commencement of the Storage Capacity Test.

E. ~~E.~~ Test Conditions.

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

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

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

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

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

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

H. ~~H. — Supplementary Storage Capacity Test Protocol.~~ No later than one hundred twenty-

(120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this ~~Exhibit- O~~ with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then-current design of the Project (collectively, the

“Supplementary Storage Capacity Test Protocol”). -Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary Storage Capacity Test Protocol. -The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit- O. Future modifications to the Supplementary Storage Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

H.I. ~~I.~~ Adjustment to Storage Capacity. - The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any SCT (up to, but not in excess of, the product of (i) the Guaranteed Contract Storage Capacity, as such Guaranteed Contract Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new Contract Storage Capacity to the extent such new Contract Storage Capacity is less than the Guaranteed Contract Storage Capacity. The actual capacity determined pursuant to an SCT, not to exceed the Contract Storage Capacity, shall become the new Contract Storage Capacity for all purposes under this Agreement pursuant to Section 5.9(a)(v).

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

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

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

EXHIBIT P**GUARANTEED ROUND-TRIP EFFICIENCY**

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

EXHIBIT Q

~~OPERATING PROCEDURES~~

~~[To be provided, developed, and agreed to in accordance with Section 5.6]~~ **Storage System
Operating Procedures**

EXHIBIT R

Storage System Operating Restrictions



PGE Corporate Headquarters

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