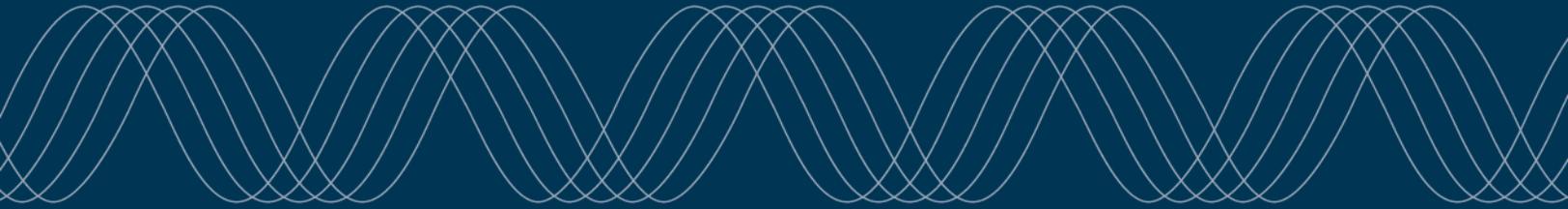


Appendix F

Storage Capacity Form Agreement

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2021 All-Source RFP



STORAGE CAPACITY AGREEMENT

between

Portland General Electric Company

and

[SELLER]

dated as of

[_____] [___], 20[___]

STORAGE CAPACITY AGREEMENT¹

This Storage Capacity Agreement (this “Agreement”), dated as of [_____] [___], 20[___] (the “Effective Date”), is between Portland General Electric Company, an Oregon corporation (“Buyer”), and [_____] a [_____] (“Seller”). Each of Buyer and Seller are referred to in this Agreement as a “Party”, and collectively as the “Parties”.

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

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

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

1.1 Defined Terms

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

“AAA Procedures” has the meaning set forth in Section 11.10(b).

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

“AC Capacity” and the subscript use of “AC” mean the peak alternating current Energy that the Storage Facility is capable of delivering, expressed in kW or MW, as applicable.

¹ **Note to Bidders:** This Agreement is drafted for an on-system battery storage resource. To the extent Seller is proposing an off-system or non-battery storage resource, various provisions will need to be updated (e.g., interconnection point, transmission requirements, scheduling requirements, procurement of charging energy, etc.).

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

“Actual Round-Trip Efficiency” means the percentage, calculated monthly, based on the amount of MWhs discharged from the Storage Facility divided by the amount of MWhs used to charge the Storage Facility, as measured by the Metering Facilities at the Interconnection Point, multiplied by 100.

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

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

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

“Ancillary Service Attributes” means [all ancillary services, products and other attributes, if any that may be obtained from or generated by the Storage Facility.]

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

“Availability Factor” means, for any Settlement Interval, the ratio, equal to (i) the lowest capacity in MW provided by the Storage Facility during such Settlement Interval (not to exceed the Storage Contract Capacity) *divided by* (ii) the Storage Contract Capacity; *provided* that, if the Availability Factor for any Settlement Interval is less than 70%, then the Availability Factor for such Settlement Interval shall be deemed to be 0; and *provided further* that, if the Storage Facility is incapable of providing the Storage Contract Capacity during such Settlement Interval due to Force Majeure or a Planned Outage, then the Availability Factor for such Settlement Interval shall be deemed to be 1.00.

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

“Business Day” means a day on which national banks are not required or authorized by law or executive order to close in Portland, Oregon.

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

“Buyer’s Customer” means a direct or indirect retail electric customer of Buyer or any of its Affiliates.

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

“Cash” means U.S. Dollars.

“Change 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 all Energy delivered to the Interconnection Point in accordance with a Charge Request.

“Charge Request” means an electronic operating instruction sent by Buyer to charge the Storage Facility at a specific MW rate to a specified Stored Energy Level, delivered in accordance with the procedures set forth on Schedule I, together with any subsequent updates to such notification.

“Commercial Operation” means that Seller has satisfied the Commercial Operation Conditions, as determined pursuant to Section 7.4(c).

“Commercial Operation Conditions” has the meaning set forth in Section 7.4(d).

“Commercial Operation Date” means the later of (x) the date specified by Seller as the anticipated Commercial Operation Date in the Commercial Operation Notice delivered to Buyer, and (y) the date on which Commercial Operation is actually achieved, and the Storage Contract Capacity of the Storage Facility is otherwise fully operation, reliable, and available to Buyer at the Delivery Point.

“Commercial Operation Notice” has the meaning set forth in Section 7.4(c).

“Confidential Information” means (i) any and all information provided by one Party to the other in connection with this Agreement and (ii) any and all information provided by one Party to the other with respect to the Project or the transactions contemplated hereby, but excluding information (a) that has become generally known or available within the industry or the public through no act or omission of such Party; (b) a Party can demonstrate, prior to disclosure in connection with the transactions contemplated

hereby, was already in the possession of such Party; (c) that was rightfully received by a Party from a third party who became aware of it through no act or omission of such Party and who is not under an obligation of confidentiality to the other Party; or (d) a Party can demonstrate was independently developed by employees or consultants of Seller.

“Contract Price” means \$[•] per kW of Storage Contract Capacity, as adjusted pursuant to this Agreement.

“Contract Year” means the calendar year, a 12-month period commencing on January 1st and continuing through and including December 31st of each year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall continue through and include the last day of the Delivery Term.

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise. Instances of “Controls”, “Controlled by”, and “under common Control with” have meanings correlative thereto.

“Control Area Services” means generation imbalance, variable energy resource balancing service and any EIM costs associated with the Interconnection Agreement. Control Area Services do not include ancillary service costs associated with the Transmission Provider’s provision of firm transmission service.

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

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

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

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

“Customer Marks” has the meaning set forth in Section 7.9(a).

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

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

“Delay Condition” has the meaning set forth in Section 7.2(d).

“Delay Damages” has the meaning set forth in Section 7.3(b).

“Delivery Point” means the Interconnection Point.

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

“Discharging Energy” means all Energy discharged by the Storage Facility delivered to the Delivery Point, as measured by the Project’s Metering Facilities.

“Discharge Request” means an electronic operating instruction sent by Buyer to discharge the Storage Facility at a specific MW rate to a specified Stored Energy Level delivered in accordance with the procedures set forth on Schedule I, together with any subsequent updates to such notification.

“Dispatchable Capacity” means the product of (a)(i) the Maximum Usable State of Charge *minus* (ii) the Minimum Usable State of Charge *multiplied by* (b) the Storage Contract Capacity.

“Dispute” has the meaning set forth in Section 11.10(a).

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

“DOE” means the United States Department of Energy.

“Duration” means the time, in hours, required to discharge the Storage Facility from the Maximum Usable State of Charge to the Minimum Usable State of Charge at a discharge level equal to the Dispatchable Capacity.

“Duration LDs” means, with respect to a single discharge event, an amount equal to the product of (i) (A) the Guaranteed Duration *minus* (B) the Duration for such discharge event *multiplied by* (ii) the Storage Contract Capacity *multiplied by* (iii) the average Distribution Point Price for the hours when the Storage Facility would have been discharged but for the shortfall in Duration. In no event may Duration LDs be less than \$0.00.

“EA Transfer Deadline” means the reporting deadline that applies to the applicable Environmental Attribute so that such Environmental Attribute may be recorded, retired, or otherwise reported for the year in which it was generated.

“e-Tags” shall have the meaning set forth in Section **Error! Reference source not found.**

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

“Energy” means all electrical energy produced, flowing or supplied by, discharged and stored by the Project, measured in kilowatt-hours or multiple units thereof. Energy shall include any energy-based products and services that may be developed by or evolve from the Project from time to time during the Term.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the generation of electricity from the Project, 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, such as the carbon content of the Energy generated by the Project and REC Reporting Rights. 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.

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

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

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

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

“Event of Default” has the meaning set forth in Section 9.1(b).

“Facility Energy” means with respect to a Settlement Interval, the Discharging Energy and/or the Charging Energy for such Settlement Interval.

“Failure to Deliver Damages” has the meaning set forth in Section 7.8(a)(v).

“Fed Funds Rate” means with respect to any day, the rate for that day opposite the caption “Federal Funds (Effective)” in the statistical release designated as H.15 (Selected Interest Rates (Daily)) or any successor publication, published by the Board of Governors of the Federal Reserve System, but not less than 0%.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure Event” has the meaning set forth in Section 8.1(b).

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory or quasi regulatory autonomous entities (including FERC, NERC, DOE and WECC) or taxing authorities or any department, municipality or other political subdivision thereof.

“Guaranteed Charging Rate” has the meaning set forth in Section 7.7(c).

“Guaranteed Commercial Operation Date” means the date that is 120 days after the Scheduled Commercial Operation Date, as such date may be extended pursuant to Section 7.2(d).²

“Guaranteed Duration” has the meaning set forth in Section 7.7(d).

“Guaranteed Monthly Availability” has the meaning set forth in Section 7.7(b).

“Guaranteed Monthly Availability Adjustment” has the meaning set forth in Section 7.7(b).

“Guaranteed Round-Trip Efficiency” has the meaning set forth in Section 7.7(d).

“Guaranteed Round-Trip Efficiency Adjustment” has the meaning set forth in Section 7.7(d).

“Guaranteed Storage Contract Capacity” has the meaning set forth in Section 7.7(a).

“Guaranteed Storage Contract Capacity LDs” has the meaning set forth in Section 7.7(a).

“Heavy Load Hours” means each hour included in the period from hour ending 0700 PPT through and including hour ending 2200 PPT, Monday through Saturday of each week.

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

“Interconnection Point” means the Project’s point of interconnection with [XX substation] as identified in the Interconnection Agreement, owned and operated by the Transmission Provider.

“Interest Rate” means, for any day, the lesser of (x) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) *plus* 2% and (y) the maximum rate permitted by Applicable Law.

“kW” mean a kilowatt of electric capacity.

“kWh” means a kilowatt-hour of Energy.

“LDs” has the meaning set forth in Section 7.7(a).

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

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

² **NTD:** Such date to be set at 120 days after the Scheduled Commercial Operation Date.

Bankrupt or any event analogous to an event specified in the definition of the term “Bankrupt” occurs with respect to the issuer of the Letter of Credit.

“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 7.5(b)(i).

“Losses” has the meaning set forth in Section 9.4.

“Marks” has the meaning set forth in Section 7.9(a).

“Maximum Usable State of Charge” means a Usable State of Charge equal to [\bullet]³%.

“Meters” means the meters associated with the Project’s Metering Facilities.

“Metering Facilities” means the [interchange] meter 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 C.

“Milestone Date” means the date by which a Milestone is expected to be achieved, as set forth in Exhibit C, as may be extended pursuant to Section 7.2(d).

“Minimum Usable State of Charge” means a Usable State of Charge equal to [\bullet]⁴%.

“Monthly Actual Availability” means the average of the Actual Availability of all of the Settlement Intervals occurring in a calendar month.

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

“Monthly Payment” has the meaning set forth in Section 3.1(b).

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

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

“NERC” means the North American Electric Reliability Corporation.

“Non-Buyer Charge” has the meaning set forth in Section 3.5(d).

“Non-Defaulting Party” has the meaning set forth in Section 9.2(a).

³ **Note to Bidders:** - To be determined on a Project-by-Project basis. Bidders to propose.

⁴ **Note to Bidders:** - To be determined on a Project-by-Project basis. Bidders to propose.

“O&M Service Provider” means the Person or Persons retained to perform operation and maintenance services with respect to the Project, including under any long-term service and maintenance agreement (however defined or described) and including any subcontractor thereof.

“Operating Period Credit Support Amount” has the meaning set forth in Section 6.1(a)(ii).

“Operating Procedures” means the operating procedures as described in Appendix A.

“Outage” means a Unplanned Outage or Planned Outage.

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

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

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

“PGE Marks” has the meaning set forth in Section 7.9(a).

“Planned Outage” has the meaning set forth for such term in in Section 7.8(b)(i).

“PPT” means Pacific Prevailing Time.

“Pre-COD Credit Support Amount” has the meaning set forth in Section 6.1(a)(i).

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

“Project” has the meaning set forth in the first recital paragraph.

“Project Lender” means any Person (including any trustee, arranger, or agent on behalf of such Person) lending money or extending credit to Seller in connection with the development, construction, ownership, operation, or maintenance of the Project, including any refinancing thereof.

“Project QSE” has the meaning set forth in Section 7.8(a)(i).

“Prudent Utility Standards” shall mean those practices, methods, equipment, specifications and standards of care, skill, safety and diligence and acts as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the interconnection, transmission, ownership, operation or maintenance of energy storage facilities of comparable type and complexity to the Project and which would have been expected to accomplish the desired result in a manner consistent with Applicable Law, safety, environmental protection, economy and expedition. Prudent Utility Standards are not

necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather, refer to a range of actions reasonable under the circumstances.

“Qualified Issuer” means a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank that is acceptable to Buyer, organized under the laws of the United States (or any state or political subdivision thereof) with such bank having shareholder equity of at least Ten Billion U.S. Dollars (\$10,000,000,000.00) and a credit rating of at least A- by S&P or A1 by Moody’s, or an insurance company with assets of Two Billion U.S. Dollars (\$2,000,000,000.00) or greater with an A.M Best financial strength rating of A or greater and that authorized to issue surety bonds in the state in which the Facility is located.

“REC” means the Environmental Attributes and the REC Reporting Rights associated with Energy generated from a renewable generating resource, however commercially transferred or traded under any or other product names, such as “green tags,” “Green-e Eligible,” or otherwise. RECs are accumulated on a MWh basis and one REC represents the Environmental Attributes made available by the generation of one MWh of Energy generated from a renewable generating resource.

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

“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 Facility or delivery of the Product.

“Replacement EA Damages” has the meaning set forth in Section 3.3(c).

“Replacement EA Value” means [Five Dollars per MWh (\$5.00/MWh)]; provided, if, after the Effective Date, a liquid market for RECs emerges in a form and location that a Party determines reasonably states the market value of the RECs delivered hereunder, then either Party shall have the right to notify the other Party requesting that a designated market price report will be used to determine the Replacement EA Value. The notice must include a proposed method for calculating three (3) years of projected REC replacement costs for purposes of determining the Replacement EA Damages. The proposed use of the designated market price report and the proposed calculation method shall be subject to such other Party’s consent. If the other Party does not consent to the notifying Party’s designation of the market price report and proposed calculation method within thirty (30) days, the matter will be subject to dispute resolution under Section 11.10.

“Replacement Price” means the average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical Off-Peak (bilateral) indices (“ICE DA Indices”) for any particular month.

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

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

“Scheduled Commercial Operation Date” means [____].⁵

“Scheduling Procedure” means those procedures described in Sections 7.8(a)(iii) and **Error! Reference source not found.**

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

“Seller Agent” means any Person acting for the benefit of or at Seller’s direction, including the EPC Contractor, the O&M Service Provider, and any subcontractor of any of the foregoing.

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

“Site” means the real property on which the Project is to be built and located, as more particularly described in Exhibit A.

“Station Service” has the meaning set forth in Section 3.5(d).

“Storage Contract Capacity” means the actual total installed nameplate AC Capacity of the Storage Facility as determined by the then-current Storage Contract Capacity Test, as the same may be adjusted from time to time pursuant to Section 7.6(a)(iv).

“Storage Contract Capacity Test” has the meaning set forth in Section 7.6(a)(i).

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

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility, expressed in MWh.

“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.

“Termination Payment” has the meaning set forth in Section 9.2(b).

“Test Energy” means all energy discharged by the Storage Facility prior to achieving the Commercial Operation Date.

⁵ NTD: Such date may not to be later than December 31, 2024.

“Transmission Provider” means the Person that owns and operates the Energy transmission facilities to which the Project is or will be, as applicable, interconnected at the Interconnection Point.

“Transmission System” means the facilities used for the transmission of electricity in [___], including any modifications or upgrades made to such facilities, that are owned and operated by the Transmission Provider.

“Unplanned Outage” means any period of time during which the Project is offline other than during a Planned Outage.

“Usable State of Charge” means the amount of dischargeable electrical energy in the Storage Facility, expressed as a percentage of the Storage Contract Capacity.

“WECC” shall mean Western Electricity Coordinating Council.

1.2 **Construction**

Headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement. For purposes of this Agreement:

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

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

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

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

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

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

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

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

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

Article 2

TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Term and Delivery Term⁶

This Agreement is effective on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement or by written agreement of the Parties, will remain in effect through the 15th 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.

2.2 Effect of Termination - Survival of Obligations

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

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

- (i) the provisions of this Section 2.2;
- (ii) all applicable provisions to the extent necessary to provide for final billings and adjustments related to the period prior to termination and repayment of any money due and owing to either Party pursuant to this Agreement;
- (iii) the payment related provisions set forth in Section 5.2;
- (iv) limitation of liability provisions set forth in Section 9.3 and the warranty limitations set forth in Section 10.3;
- (v) the indemnifications specified in this Agreement; and
- (vi) the provisions of Article 11.

Article 3

PURCHASE AND SALE

3.1 Purchase and Sale

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

⁶ **Note to PGE:** Please confirm if you wish to include in the form a Buyer ROFO to purchase the facility.

and Buyer shall purchase and accept from Seller, all of the Products associated with or otherwise available from the Project in accordance with the terms of this Agreement.

(b) Monthly Payment. Buyer shall pay Seller the Contract Price on a monthly basis in accordance with Article 5 for the Storage Contract Capacity, less (i) the Guaranteed Monthly Availability Adjustment for such month, if any, less (ii) Guaranteed Round-Trip Efficiency Adjustment for such month, if any, less the Guaranteed Storage Contract Capacity LDs, Duration LDs, and Failure to Deliver Damages, in each case if any are due and owing for such month (such payment, the “Monthly Payment”); *provided* that in the event the Storage Facility is curtailed due to Force Majeure, by direction of the Transmission Provider, or for any reason other than the Buyer’s action or inaction, Buyer shall not be obligated to pay for any such curtailed energy and Seller shall not be liable for any related Failure to Deliver Damages.

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

3.2 Title and Risk of Loss

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

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

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

3.3 Environmental Attributes

(a) Future Environmental Attributes. The Parties acknowledge that Buyer shall be entitled to receive (without any increase in any amount due from Buyer hereunder) and Seller shall at the direction of Buyer obtain and transfer to Buyer any future Environmental Attributes generated by or with respect to the Project; *provided* that Buyer shall bear all documented and reasonable third party costs associated with the transfer, qualification, verification, registration, and ongoing compliance for such future Environmental Attributes. Upon Seller’s receipt of notice from Buyer of Buyer’s intent to claim such future Environmental Attributes, Buyer and Seller shall determine the necessary actions and additional costs to be reimbursed by Buyer associated with such future Environmental Attributes. Seller shall have no obligation to alter the Project unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration required to be reimbursed as described above. If Buyer elects to receive future Environmental Attributes pursuant to this Section 3.3(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation

of any additional costs in accordance with the above; provided, that Buyer and Seller each acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

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

(c) Failure to Deliver Environmental Attributes. If Seller fails to transfer to Buyer any Environmental Attributes required to be transferred by this Section 3.3 and such failure is not excused under the terms of this Agreement or by Buyer's failure to perform or if any representation made by Seller with respect to such Environmental Attributes is determined to have been incorrect in any material respect when made, then Seller shall, with respect to the quantity of Environmental Attributes that Seller failed to transfer or to which such representation applied, as applicable, pay to Buyer as damages ("Replacement EA Damages") an amount equal to (x) the Replacement EA Value for the vintage year in which the Discharging Energy associated with such Environmental Attributes was delivered multiplied by (y) the quantity of Environmental Attributes that Seller failed to transfer or that were adversely affected by the inaccuracy of such representation, as applicable. Buyer will invoice Seller for any Replacement EA Damages within thirty (30) days following discovery of such inaccurate representation, as applicable, which invoice will be due and payable by Seller in accordance with Section 5.2.

3.4 Tax Credits

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

3.5 Charging Energy

(a) Seller shall procure and take any and all action necessary to cause the Charging Energy to be delivered to and received at the Interconnection Point, including maintenance repair or replacement of equipment in Seller's possession or control used to deliver or receive the Charging Energy at the Interconnection Point. Charging Energy shall be measured at the Interconnection Point by the Metering Facilities.

(b) Buyer shall direct the scheduling of the Charging Energy via Charge Requests, including the Charging Energy necessary for Seller to conduct any tests required under this Agreement. Buyer shall schedule the Charging Energy in a manner consistent with the requirements of Schedule II, Prudent Utility Standards and Applicable Law.

(c) Buyer will have the right to charge the Storage Facility seven 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, subject to Section 7.6(a)(ii).

(d) Buyer will have no obligation to purchase, schedule or deliver any of the Energy (i) required to serve the ancillary electric needs of the Project, including for lighting, security, cooling towers, draft fans, climate control, ventilation mechanisms, control systems, operation and other auxiliary systems necessary for operation, and maintenance of the Project ("Station Service") and (ii) charged or dispatched by Seller and not initiated by a Charge Request or Discharge Request. Seller will be required to procure, meter separately, and pay for all Energy for Station Service and will be responsible for all fees and costs associated with establishing and use of electricity for Station Service, including transmission and distribution fees and charges assessed by any utility or wires company in connection with Station Service.

If Seller (i) charges the Project to a Stored Energy Level greater than the Stored Energy Level provided for in a Charge Request or (ii) charges the Project without a Charge Request (each, a “Non-Buyer Charge”), then (x) Seller shall be responsible for all energy costs associated with such charging, and (y) Buyer shall be entitled to discharge such energy without notice and entitled to all of the benefits associated with such discharge, without credit to Seller. Seller shall be responsible and pay for charges, sanctions, or penalties associated with a Non-Buyer Charge, any failure to charge the Project consistent with a Charge Request, and any deviations from a Charge Request.

Article 4 METERING

4.1 Metering Requirements

(a) Meters. The amount of Discharging Energy to be transferred from Seller to Buyer at the Delivery Point with respect to a Settlement Interval will be determined based on measurements at the Interconnection Point made by the Project’s Metering Facilities. The amount of Charging Energy to be transferred from Seller to Buyer at the Interconnection Point with respect to a Settlement Interval will be determined based on measurements at the Interconnection Point made by the Project’s Metering Facilities. Seller shall ensure that the Metering Facilities are selected, provided, installed, owned, maintained, and operated in accordance with the Interconnection Agreement at Seller’s or the Transmission Provider’s sole cost and expense, as applicable and in accordance with the requirements of Buyer set forth on Schedule I, subject to any modifications provided by Buyer in writing from time to time. Seller shall ensure that (i) the Metering Facilities are maintained and operated in accordance with Prudent Utility Standards, and (ii) the Meters are tested at least once per Contract Year, Seller’s obligation with respect to clauses (i) and (ii) will be limited to enforcing its rights and remedies under the Interconnection Agreement. Seller shall provide reasonable prior notice to Buyer of the time and date of each test of the Meters and shall permit Buyer to be present at such tests. Seller shall provide Buyer with a copy of the results of any test of the Meters.

(b) DCS. Seller shall install and maintain the Distributed Control System equipment and data circuits necessary to determine and transmit real time data from the Project’s Metering Facilities to [____], and shall submit to [____], or allow [____] to retrieve, all data required by [____] related to the Project and its Products in accordance with the [____].⁷.

(c) Other Equipment and Remote Access by Buyer. Seller shall, at its cost and expense, (i) provide Buyer (or its designee) with real-time access to all monitored DCS points, and (ii) install and maintain all communications, hardware, and software applications and related intellectual property necessary to provide such access to Buyer, including such applications, and intellectual property set forth on Schedule I, subject to any modifications provided by Buyer in writing from time to time. Without limiting the foregoing obligation, Buyer has the right, at its cost and expense, to install any updates or upgrades to the Meters, as well as to install and maintain check meters and related measuring equipment necessary to permit an accurate determination of the quantities of Facility Energy delivered under this Agreement, in each case subject to the condition that such updates, upgrades, or other equipment will not interfere with Seller’s Meters or the Project and are not prohibited by the Interconnection Agreement. Seller shall upon reasonable advance notice permit Buyer or Buyer’s representatives access to the Project and interconnection facilities at reasonable times for the purpose of installing and maintaining such check meters. Buyer shall ensure that its representatives at all times while at the Site comply with safety and security rules provided by Seller.

⁷ **Note to PGE:** Please confirm what regional transmission authority reporting and control obligations may apply.

4.2 **Meter Inaccuracies and Retroactive Adjustments**

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

4.3 **Records and Audits**

(a) **Records.** Seller shall keep complete and accurate records necessary for the purposes of proper administration of this Agreement, including all records necessary for billing and payments, records of the Charging Energy and Discharging Energy and such other records as may be required by applicable Governmental Authorities or Prudent Utility Standards. Seller shall retain all such records for a period of not less than two (2) years following their creation or such longer period as may be required by Applicable Law. Seller shall upon request provide Buyer with copies of such records and with such other information as Buyer may require in connection with the performance of its obligations under this Agreement or Applicable Law.

(b) **Audit Rights.** Each Party has the right (at its sole expense during normal working hours and provided that such Party has given reasonable prior notice) 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 Energy delivered at the Delivery Point or Interconnection Point, as applicable. 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.

Article 5 BILLING AND PAYMENT

5.1 **Billing**

On or before the 10th day following the end of each month included in the Delivery Term, Seller shall provide to Buyer an invoice specifying (i) the fees due to Seller pursuant to Section 3.1 during the ended month and (ii) any other amounts due between the Parties with respect to such ended month (other than amounts separately invoiced by Buyer). 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 Environmental Attributes made during the ended month. Seller must deliver each invoice in accordance with the notice requirements of Section 11.1.

5.2 **Payments**

(a) **Generally.** Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Subject to Section 5.2(c), Seller shall pay all amounts due

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

(b) Late Payments and Interest Rate. Any undisputed amounts not paid when due will accrue interest on a daily basis at the Interest Rate from and including the date due through but excluding the date paid. All calculations of interest will be computed on the basis of a 365-day year.

(c) Disputes and Adjustments of Invoices. Each Party may, in good faith, Dispute the correctness of any invoice or invoice adjustment provided by the other Party by providing written notice within thirty (30) days of receipt of an invoice or invoice adjustment, stating the basis for the dispute. Subject to Section 5.3 or manifest error, the disputing Party shall make payment of the entire amount due under the disputed invoice. Any amounts to be paid to the disputing Party shall be made within ten (10) Business Days of resolution of the Dispute, together with interest accrued at the Interest Rate, from and including the date of such overpayment until the date of repayment. In no event shall Buyer be obligated to pay amounts to which it exercises its right of setoff under Section 5.3.

5.3 Netting and Setoff

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

5.4 Allocation of Taxes

Seller shall pay or cause to be paid all Taxes on or with respect to the Product sold and delivered hereunder arising prior to transfer of title of such Product pursuant to Section 3.2(b). Buyer shall pay or cause to be paid all Taxes on or with respect to the Product purchased and received hereunder arising after the transfer of title of such Product pursuant to Section 3.2(b) (other than ad valorem, franchise or income Taxes that are related to the sale of the Product which are the responsibility of Seller). In the event Seller is required by Applicable Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly upon written demand reimburse Seller for such Taxes. If Buyer is required by Applicable Law to remit or pay Taxes that are Seller's responsibility hereunder, Seller shall promptly upon written demand reimburse Buyer for such Taxes or, at Buyer's option, Buyer may deduct the amount of any such Taxes from amounts due to Seller under this Agreement. Nothing in this Agreement obligates or requires a Party to pay or be liable to pay any Taxes for which it is exempt under Applicable Law.

Article 6 CREDIT REQUIREMENTS

6.1 Seller Credit Support

(a) Credit Support Amount.

(i) Within thirty (30) days following the Effective Date, Seller shall transfer Credit Support to Buyer having an aggregate value equal to (A) \$200 *multiplied by* (B) the Guaranteed Storage Contract Capacity, expressed in kW (the "Pre-COD Credit Support Amount"). The Pre-COD Credit Support Amount will apply with respect to Seller until the Commercial Operation Date.

(ii) By no later than the Commercial Operation Date, Seller shall transfer Credit Support to Buyer in substitution of the Credit Support delivered pursuant to Section 6.1(a)(i) having an aggregate value equal to (A) \$100 *multiplied by* (B) the Storage Contract Capacity, expressed in kW (the “Operating Period Credit Support Amount”).

(b) Maintenance of Seller Credit Support. Seller shall maintain Credit Support for the benefit of Buyer having an aggregate value at least equal to the Credit Support Amount then applicable to Seller until the later of (x) the end of the Delivery Term and (y) the date on which all of Seller’s obligations under this Agreement have been satisfied in full (other than contingent obligations with respect to which Buyer has not made a claim). If the resolution of any disputed amount may result in a payment due from Seller, Seller’s payment obligations under this Agreement will not be deemed to have been satisfied until such Dispute is resolved and the amount, if any, payable by Seller upon such resolution has been paid in full. If following the Commercial Operation Date any portion of the Credit Support provided by Seller is applied by Buyer to satisfy any outstanding obligations of Seller under this Agreement, then Seller shall within five (5) Business Days following Buyer’s written demand replace such Credit Support so that the amount of Credit Support outstanding in favor of Buyer is not less than the Operating Period Credit Support Amount.

6.2 General Provisions Applicable to Credit Support

(a) Credit Support in the form of Cash.

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

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

(iii) In lieu of any interest paid or deemed to have been paid with respect to Credit Support in the form of Cash (all of which may be retained by Buyer), Credit Support in the form of Cash will accrue interest on a daily basis at the Fed Funds Rate for the actual number of days elapsed based on a year of 365 days. Seller shall include the amount of the accrued interest, if any, payable by Buyer with respect to a month in the invoice provided with respect to such month pursuant to Section 5.1.⁸ Any accrued interest will constitute Credit Support in the form of Cash and will be subject to the security interest granted under Section 6.2(a)(i).

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

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

(i) Each Letter of Credit must provide that Buyer may, and Buyer has the right to, in the following situations and upon presentation to the issuer of such Letter of Credit of the

⁸ **Note to PGE:** Consider alternatively having all interest accrue until the Operating Period Credit Support is released following the Term.

certificates or other documentation required by the terms of the Letter of Credit, draw upon the Letter of Credit in an amount up to the amount due and unpaid by Seller (including any amounts due in connection with the termination of this Agreement) in the case of clause (A), or up to the entire amount available to be drawn thereunder in the case of clause (B):

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

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

(ii) With respect to each outstanding Letter of Credit, Seller shall either cause the Letter of Credit to be renewed or provide substitute Credit Support, in each case at least sixty (60) days prior to the expiration date of the Letter of Credit. If a Letter of Credit Default occurs with respect to an outstanding Letter of Credit, Seller shall within five (5) Business Days following receipt of Buyer's notice of the Letter of Credit Default, as applicable, transfer to Buyer substitute Credit Support. For purposes of this clause (ii), the aggregate value of substitute Credit Support that Seller is required to transfer to Buyer must be at least equal to the amount required to cause the total value of all outstanding Credit Support, calculated excluding the value of (x) the expiring Letter of Credit, or (y) the Letter of Credit to which the Letter of Credit Default applies, as applicable, to be at least equal to the Credit Support Amount then applicable to Seller.

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

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

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

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

(c) Substitution and Return.

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

Buyer will only be required to return Credit Support with a value as the date of transfer equal to the value of the substitute Credit Support as of the same date.

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

(d) Buyer's Rights and Remedies. If at any time a default or Event of Default with respect to Seller has occurred or if an early termination date in respect of this Agreement has occurred or been designated as a result of an Event of Default with respect to Seller, then, and in addition to the other rights and remedies set forth in the Agreement, Buyer may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Credit Support in the form of Cash held by Buyer; (ii) any rights and remedies available to Buyer under the terms of any Letter of Credit provided for its benefit, if any; and (iii) the right to set off any present or future amounts payable by Seller under this Agreement against any Credit Support held by Buyer (or any obligation of Buyer to transfer that Credit Support to Seller).

Article 7 ADDITIONAL OBLIGATIONS

7.1 Construction, Operation and Maintenance of the Project

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

(b) Design and Location. Exhibit A includes (i) a detailed description of the Project, including the anticipated number and manufacturer of the energy storage systems comprising the Project, and (ii) a map of the Site that depicts the Project location and the location of ancillary facilities, including the Interconnection Point. Seller may not modify Project's design as set forth in Exhibit A unless such modification could not reasonably be expected to (x) have a material and adverse effect on either Party's ability to perform its obligations under this Agreement; (y) materially move the Project's location or the Interconnection Point; or (z) materially affect the Storage Contract Capacity, the charging rate, the Round-Trip Efficiency or the Duration of the Storage Facility during each Contract Year. If a proposed modification could reasonably be expected to have a consequence specified in clause (x), (y) or (z) of this Section 7.1(b), then Seller shall not implement such modification without Buyer's prior written consent, which may be withheld by Buyer in its sole discretion. Seller shall deliver to Buyer an updated version of Exhibit A promptly following completion of any modification that changes the Project's design as set forth in Exhibit A.

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

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

(e) Insurance. Seller shall at all times during the Term maintain at its sole expense, policies of insurance in amounts and with coverage as set forth in Exhibit D. All such insurance policies must: (i) be issued by companies that (A) are authorized to issue policies in the state in which the Project is located, (B) have a financial strength rating of at least “A-” from A.M. Best, and (C) satisfy the requirements of A.M. Best financial size category [“ ”]⁹ or larger; (ii) not permit cancellation or reduction in coverage prior to providing Buyer at least 30 days’ prior written notice; (iii) for commercial general liability, umbrella/excess liability, all risk property, builders risk, and auto liability policies, name Buyer, its Affiliates, and its and their respective officers, directors, members, managers, employees, successors, assigns, licensees, contractors, and agents as additional insureds; (iv) provide coverage on an “occurrence” basis for commercial general liability and umbrella/excess liability policies; (v) waive any insurer right of subrogation against Buyer, its Affiliates, and its and their respective officers, directors, members, managers, employees, successors, assigns, licensees, contractors, and agents; (vi) provide primary coverage, without any right of contribution from any insurance of Buyer; and (vii) add Buyer as a loss payee to the extent of Buyer’s interest in any claim proceeds under operational all risk property policies, including business interruption. Seller shall provide Buyer with certificates of insurance for the coverages set forth in Exhibit D on the Effective Date (or when the insurance is otherwise required to be in place) and annually upon renewal of each such policies.

7.2 Construction

(a) Generally. Seller shall use commercially reasonable efforts to (i) cause each Milestone set forth in Exhibit C to be achieved by the corresponding Milestone Date, (ii) cause the Commercial Operation Date to occur on or before the Scheduled Commercial Operation Date; and (iii) cause the Storage Contract Capacity to equal or exceed the Guaranteed Storage Contract Capacity by not later than 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 and such other agreements with the Transmission Provider as may be needed to enable Seller to receive Charging Energy at and discharge Discharging Energy from the Interconnection Point. Seller shall comply with the transmission requirements set forth in Appendix C.

(b) 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 15 percent of the total work hours performed by individuals from those communities.

(c) Monthly 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 Gantt chart, and a description of progress toward the achievement of each of the Milestones (or any missed Milestones, including the cause of the delay) and the Commercial Operation Date (with supporting photographic evidence). Each

⁹ **Note to PGE:** Please identify the standard here.

report must (A) include such information as Buyer may reasonably request in advance, and must contain reasonable detail and supporting documentation, and (B) information related to:

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

(d) Milestone Date Extensions. In the event that Seller's achievement of any Milestone by the applicable Milestone Date or of the Commercial Operation Date by the Guaranteed Commercial Operation Date is prevented due to a Delay Condition, the applicable Milestone Date or the Guaranteed Commercial Operation Date, as applicable, will be extended on a day-for-day basis by the number of days by which the occurrence or continuance of the Delay Condition prevented Seller from achieving, as applicable, the affected Milestone or the Commercial Operation Date. For purposes of this Agreement, "Delay Condition" means (i) the occurrence of a Force Majeure Event, or (ii) Buyer's breach of its obligations under this Agreement. In no event will any Milestone Date or the Guaranteed Commercial Operation Date be extended, in the aggregate, by more than 120 days pursuant to this Section 7.2(d).

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

7.3 Delay Damages

(a) Milestone Related Notices.

(i) Seller shall provide written notice to Buyer of the achievement of each Milestone, which notice must include a certification from an officer of Seller, as applicable, that is familiar with the Project, stating that Seller has achieved the applicable Milestone.

(ii) If Seller determines that it is more probable than not that it will not achieve a Milestone by the applicable Milestone Date or the Commercial Operation Date by the Guaranteed Commercial Operation Date, or if it becomes aware of any Delay Condition that could reasonably be expected result in the extension of the applicable Milestone Date or the Guaranteed Commercial Operation Date as described in Section 7.2(d), then Seller shall promptly provide written notice thereof to Buyer, which notice must be accompanied by an explanation in reasonable detail of the basis for such determination or the Delay Condition, as applicable, and the actions Seller is taking and will take in order to address any resulting delay in the achievement of either or both, as

applicable, the affected Milestone and the Commercial Operation Date. If Seller fails to achieve a Milestone (other than the achievement of the Commercial Operation Date) on or prior to applicable Milestone Date, Buyer's sole and exclusive remedy for such failure is the right to receive the information required pursuant to the foregoing provisions of this Section 7.3(a)(ii).

(b) Failure to Timely Achieve Commercial Operation.

(i) If Seller fails to cause the Commercial Operation Date to occur on or before the Scheduled Commercial Operation Date, Seller shall pay to Buyer delay liquidated damages ("Delay Damages") for each day of delay occurring from and after the Scheduled Commercial Operation Date through the earlier to occur of (x) the date the Commercial Operation Date occurs, and (y) the Guaranteed Commercial Operation Date, at a rate equal to \$150 per MW of the Storage Contract Capacity per day beginning on the Scheduled Commercial Operation Date through the thirtieth (30th) day after the Scheduled Commercial Operation Date, \$250 per MW of the Storage Contract Capacity per day beginning on the thirty first (31st) day through the sixtieth (60th) day after Scheduled Commercial Operation Date, and \$350 per MW of the Storage Contract Capacity per day beginning on the sixty first (61st) day after Scheduled Commercial Operation Date until the first to occur of (i) Seller's achievement of the Commercial Operation Date; and (ii) the Guaranteed Commercial Operation Date.

(ii) If Seller fails to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date, then Buyer will thereafter have the right, until the Commercial Operation Date has occurred, to terminate this Agreement by providing written notice of termination to Seller. The Parties agree that actual damages that would be suffered by Buyer as a result of such termination are difficult to determine, and that Buyer may therefore draw on and retain all Credit Support (including interests thereon, if any) provided by Seller as liquidated damages, and not a penalty, representing a reasonable pre-estimate of the damages that would be incurred by Buyer as a result such failure. Payment of such liquidated damages shall be Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with the termination of this Agreement by Buyer due to Seller's failure to cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date. Such liquidated damages payment shall constitute a Termination Payment in accordance with Section 9.2(b).

(c) Exclusive Remedies. Unless this Agreement is terminated by Buyer in accordance with Section 7.3(b)(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.

7.4 Commercial Operation Procedure

(a) Agreement with Transmission Provider. Seller shall be responsible for all costs of interconnecting the Storage Facility to the Interconnection Point in accordance with the Interconnection Agreement, and for all Control Area Services that may be required by the Transmission Provider as required in the Interconnection Agreement or as may be necessary to ensure delivery of Charging Energy to the Delivery Point.

(b) Guaranteed Storage Contract Capacity. Seller shall use commercially reasonable efforts to cause the Storage Contract Capacity to be equal to or exceed the Guaranteed Storage Contract Capacity by no later than the Commercial Operation Date.

(c) Procedure for Achieving Commercial Operation. Seller shall deliver to Buyer a written notice that describes in reasonable detail Seller's schedule for achieving any remaining Commercial

Operation Conditions and the anticipated Commercial Operation Date (the “Commercial Operation Notice”) thirty (30) days prior to the anticipated Commercial Operation Date. When Seller believes the requirements of the Commercial Operation Conditions have been met, Seller shall provide Buyer with written notice certifying the satisfaction of the Commercial Operation Conditions, together with reasonable documentation and such other information as Buyer may reasonably request for Buyer to evaluate whether or not Seller has satisfied the Commercial Operation Conditions. If Buyer disagrees with Seller’s determination, Buyer must provide Seller notice of such disagreement, together with an explanation of the basis for such disagreement, within ten (10) Business Days following its receipt of Seller’s notice and supporting documentation. If Buyer so notifies Seller of such disagreement, the Parties shall review the supporting documentation and promptly resolve the dispute and determine whether or not the Commercial Operation Conditions have been satisfied. In the event the disagreement remains unresolved within thirty (30) days, either party may initiate the dispute resolution procedures in Section 11.10.

(d) Commercial Operation Conditions. Commercial Operation will occur once all of the following conditions (the “Commercial Operation Conditions”) are, subject to Section 7.4(d), satisfied by Seller or waived by Buyer in its sole and absolute discretion:

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

(ii) The Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration.

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

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

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

(B) the Storage Facility is capable of reliably (I) receiving and storing Charging Energy at the Interconnection Point, (II) delivering Discharging Energy to the [Delivery Point], and (III) the Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration.

(v) Seller has delivered to Buyer a certificate of an officer of Seller certifying in writing that (A) the Project is, as of the Commercial Operation Date, (I) 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), (II) consists of the equipment and characteristics described in Exhibit A (as such equipment and characteristics may be modified in accordance with Section 7.1(b)), and (III) is sufficient to permit Seller to satisfy its obligations under this Agreement, (B) the Storage Facility is capable of reliably receiving and storing Charging Energy at the Interconnection Point in an amount equal to the Guaranteed Storage Contract Capacity and reliably delivering Discharging Energy to the Delivery Point in an amount equal to the Storage

Contract Capacity, (C) the Storage Facility meets the Guaranteed Charging Rate, the Guaranteed Round-Trip Efficiency, and the Guaranteed Duration, (D) Seller is not in breach of its obligations under the Interconnection Agreement, (E) Seller has completed all arrangements necessary for the supply of required electric services to the Project, including the supply of start-up and shutdown power, house power, and maintenance power and such required electric services are in effect and available to supply the Project, (F) Seller has obtained all Permits required to be obtained by Seller to construct and operate the Project in compliance with Applicable Law, this Agreement, and Prudent Utility Practice, and all such Permits are in full force and effect, (G) Seller is in compliance with the terms and conditions of this Agreement in all material respects.

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

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

7.5 **Loss Events**

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

(b) **Loss Event Affecting Storage Contract Capacity.**

(i) If Seller is unable to restore any Storage Contract Capacity affected by a Loss Event, then Seller shall (A) continue to deliver the Products to Buyer to the extent possible from as much of the unaffected Storage Contract Capacity as is possible, and (ii) for any portion of the Project impacted by the Loss Event and from which Seller cannot deliver Products to Buyer, for the applicable Products that are not expected to be delivered as a result of the Loss Event from date of the Loss Event through the end of the Delivery Term, Seller will buy-down the portion of Seller's obligation to provide Products that Buyer cannot supply from the Project at a price equal to the positive amount, if any, equal to (x) the present value of the payments Buyer would be required to make under a replacement agreement to obtain such undelivered Products, at a price determined based on then prevailing market prices for such Products, *minus* (y) the present value of the payments Buyer would be required to make under this Agreement for such undelivered Products, as determined by Buyer in a commercially reasonable manner (the "**Loss Event Buy-Down Amount**");

(ii) Seller will have ninety (90) days following any Loss Event to elect to either restore the portion of Storage Contract Capacity affected by the Loss Event or determine that it is unable or unwilling to do so. If during such ninety (90) day period, Seller elects to restore the portion of Storage Contract Capacity affected by the Loss Event, then Seller will be afforded a period of 180 days following the occurrence of the Loss Event in which to complete such restoration before the **Section 7.6-5(b)(i)** buy-down is required. If prior to the end of such 180 day period, Seller delivers to Buyer a certificate of an independent engineer reasonably acceptable to Buyer certifying that any remaining restoration of the Project can be completed within an additional one eighty (180)

days, then the period for restoration shall be three sixty (360) days before the Section 7.6-5(b)(i) buy-down will be required; and

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

7.6 **Testing**

(a) **Performance Testing.**

(i) Prior to the Commercial Operation Date, Seller shall schedule and complete a test of the Storage Facility in accordance with the testing procedures, requirements and protocols set forth in Appendix B (a "Storage Contract Capacity Test"). Thereafter, at least once per year, Seller shall schedule and complete a Storage Contract Capacity Test in accordance with Appendix B. Buyer shall have the right to require a retest of the Storage Contract Capacity Test in accordance with Appendix B.

(ii) Seller may schedule and deliver Test Energy to Buyer in accordance with the Scheduling Procedure in order to complete the Storage Contract Capacity Test prior to achievement of the Commercial Operation Date. In such case, the Parties shall coordinate in good faith to schedule deliveries of Test Energy to Buyer that minimizes the burden to each of the Parties, and Buyer shall receive the Test Energy. Buyer shall not be required to pay for the Test Energy and Seller shall pay any costs or additional expenses that are required for Buyer to receive the Test Energy, including but not limited to reimbursement for negative pricing, and any necessary capacity costs or reserves costs.

(iii) Buyer shall have the right to send one or more representative(s) to witness all Storage Contract Capacity Tests, but Buyer will bear all costs, expenses and fees payable or reimbursable to its representative(s). Buyer shall pay for the Charging Energy used to charge the Storage Facility in connection with the first Storage Contract Capacity Test during any Contract Year. Any other costs of any Storage Facility Test, including costs for Charging Energy for subsequent Storage Contract Capacity Tests, shall be borne by Seller .

(iv) Following each Storage Contract Capacity Test, Seller shall submit a testing report to Buyer in accordance with Appendix B, together with reasonable support data. If the actual capacity determined pursuant to a Storage Contract Capacity Test is less than the then-current Storage Contract Capacity, then the actual capacity determined pursuant to such Storage Contract Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Operational Readiness Testing.** If the Storage Facility has not been operated at full power for a period of six weeks, Seller shall reasonably demonstrate operational readiness of the Storage Facility to ensure that it is ready to respond to a dispatch instruction from Buyer.

7.7 **Performance Guarantees**

(a) **Storage Capacity.** During the Delivery Term, Seller shall maintain the Storage Facility with a Storage Contract Capacity of not less than the [•] MW_{AC} (the "Guaranteed Storage Contract

Capacity”). If the Storage Contract Capacity for the Storage Facility is determined during a Storage Contract Capacity Test to be less than the Guaranteed Storage Contract Capacity, Seller shall pay to Buyer as liquidated damages for such deficiency an amount determined by *multiplying* the number of months since the last Storage Capacity Test (including the month in which the most current Storage Capacity Test was completed) by (i) Contract Price *multiplied by* [125%] *multiplied by* (ii) the difference between the Guaranteed Storage Contract Capacity and the Storage Contract Capacity for the Storage Facility as determined during the most recent Storage Contract Capacity Test (“Guaranteed Storage Contract Capacity LDs”). Payment of Guaranteed Storage Contract Capacity LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the Storage Contract Capacity being less than the Guaranteed Storage Contract Capacity for a Contract Year.

(b) Availability Adjustment. Each month during the Delivery Term, Seller shall ensure that the Storage Facility has an Monthly Actual Availability of no less than ninety-eight percent (98%) (the “Guaranteed Monthly Availability”). If the Storage Facility has Monthly Actual Availability less than the Guaranteed Monthly Availability during any month, then the Contract Price that would be owed to Seller for such month shall be adjusted as follows, after any adjustments have been made to the Contract Price due to the Guaranteed Round-Trip Efficiency Adjustment pursuant to Section 7.7(e) (the “Guaranteed Monthly Availability Adjustment”):

(i) If the Monthly Actual Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then the Contract Price for such month will equal the product of (i) the Contract Price multiplied by (ii) $100\% - [(98\% - \text{Monthly Actual Availability}) \times 2]$; and

(ii) If the Monthly Actual Availability is less than 70%, then the Contract Price for such month will equal the product of (i) the Contract Price multiplied by (ii) 0.0%.

(c) Charging Rate. During the Delivery Term, Seller shall maintain the Storage Facility with the ability to charge at a rate of greater than [•] MW per hour (the “Guaranteed Charging Rate”). If the Storage Facility does not satisfy the Guaranteed Charging Rate as determined by the most recent Storage Contract Capacity Test, then Seller will be required to place the Storage Facility into an Unplanned Outage and repair the Storage Facility such that it satisfies the Guaranteed Charging Rate within thirty (30) days.

(d) Duration. During the Delivery Term, Seller shall maintain the Storage Facility with a Duration not less than four hours (the “Guaranteed Duration”). If, for any single discharge event, the actual Duration is less than the Guaranteed Duration, then Seller will pay Buyer the Duration LDs as liquidated damages. Payment of Duration LDs is Seller’s sole and exclusive liability, and Buyer’s sole and exclusive remedy, in connection with the actual Duration being less than the Guaranteed Duration for such single discharge event.

(e) Round-Trip Efficiency. During the Delivery Term, Seller shall maintain the Storage Facility with a Round-Trip Efficiency not less than the applicable guaranteed Round-Trip Efficiency amount set forth on Appendix D (the “Guaranteed Round-Trip Efficiency”). If the Round-Trip Efficiency of the Storage Facility in any month, as determined by the most recent Storage Contract Capacity Test, is less than the Guaranteed Round-Trip Efficiency, then the Contract Price shall be reduced by the product of (i) the total Charging Energy for such month, *multiplied by* (ii) the difference between the Guaranteed Round-Trip Efficiency and the Actual Round-Trip Efficiency, *multiplied by* (iii) [average day-ahead Intercontinental Exchange Mid-C Physical Peak (bilateral) or Mid-C Physical On-Peak (bilateral) indices](the “Guaranteed Round-Trip Efficiency Adjustment”).

7.8 **Obligation to Schedule and Deliver**

(a) **Scheduling Related and Discharging Obligations.**

(i) To the extent applicable, Seller shall designate Buyer (or an Affiliate of Buyer) as the qualified scheduling entity for the Project (the “Project QSE”) during the Delivery Term. As between Buyer and Seller, Buyer will be responsible for performing the services of a qualified scheduling entity with respect to the Project.

(ii) At least 30 days prior to the beginning of testing, Seller shall take all actions necessary to irrevocably authorize or designate Buyer as the Project QSE during the Delivery Term, effective as of the start-up, testing and commissioning of the Project. Seller shall not authorize or designate any other party to act as the Project QSE, nor shall Seller perform the duties of the Project QSE, and Seller shall not revoke Buyer’s authorization to act as the Project QSE unless agreed to by Buyer.

(iii) The following Scheduling Procedures shall apply for the Project:

(A) For each day during the Delivery Term, Buyer shall, by 12:00 p.m. PPT of the customary WECC Pre-Scheduling Day communicate to Seller’s pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the expected Charging Energy to be delivered to the Interconnection Point by Buyer and the amount of Discharging Energy the Seller shall discharge and deliver to Buyer each hour at the Delivery Point for the delivery day (“Discharge Request”).

(B) For Test Energy, Seller shall, by 5:00 a.m. PPT of the customary WECC Pre-Scheduling Day, communicate to Buyer’s pre-schedule desk via an Application Program Interface (API) or as directed by Buyer, the amount of Test Energy to be delivered each hour at the Delivery Point for the delivery day.

(C)

(iv) Subject to the Operating Procedures, Buyer may dispatch the Storage Facility for not more than [___] MWh per Contract Year. In the event Buyer dispatches the Storage Facility for more than [___] MWh in any Contract Year (or a prorata amount for any partial Contract Year), it shall not be deemed an Event of Default under this Agreement. In such event, Buyer shall pay Seller [\$___/MWh] for each additional MWh of discharge.

(v) Seller shall timely comply with any instruction received from Buyer or the Transmission Provider with respect to the operation of the Project. If Seller fails to deliver Discharging Energy in accordance with the Scheduling Procedures, which is not excused by Force Majeure or by Buyer’s failure to perform its obligations under this Agreement, Seller shall pay to Buyer for such failure to deliver the in amount of (the “Failure to Deliver Damages”):

(A) The replacement cost of the Discharging Energy, calculated by multiplying (x) the amount of Discharging Energy not delivered, by (y) the positive difference, if any, of the Replacement Price for such Discharging Energy less the Contract Price; provided, however, such amount shall not be less than zero dollars (\$0.00); *plus*

(B) The cost associated with incremental Capacity Attributes, Environmental Attributes and/or carbon emissions costs borne by the Buyer, which shall equal to the costs

incurred by Buyer to procure equivalent, Buyer-approved carbon compliance instruments;
plus

(C) Any incremental ancillary services costs and transmission costs, which shall equal the actual costs incurred by Buyer for such items; *plus*

(D) Any penalties or fines imposed by a Reliability Entity as a result of Seller's failure to deliver.

(vi) Buyer will have the right to direct the scheduling or other offering of Storage Contract Capacity in connection with any future applicable capacity market, and Seller shall pay to Buyer any amounts received on account of the Project in connection with such capacity market. Seller shall cooperate with Buyer (including the filing of any necessary documents) in order to obtain any such payments. Seller shall only discharge the Storage Facility as directed by a Discharge Request from Buyer. Each Discharge Request will be effective unless and until Buyer modifies such Discharge Request by providing Seller with an updated Discharge Request. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Discharge Requests by electronic mail, facsimile transmission or telephonically to Seller's personnel designated in Section 11.1 to receive such communications.

(b) Outage Planning.

(i) No later than ninety (90) days prior to the Commercial Operation Date, and no later than September 1 of each year during the Delivery Term, Seller shall provide to Buyer a proposed schedule of outages planned for maintenance of the Project (each such outage a "Planned Outage"). The maximum number of hours of Planned Outage permitted in a Contract Year shall be 200 hours. Seller shall not schedule any Planned Outage that reduces the Storage Facility charging or discharging capability by more than ten percent (10%) during the months of June, July, August, and September unless (i) such outage is required to avoid significant and material damage to the Storage Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with Prudent Utility Practices, or (iv) the Parties agree otherwise in writing.

(ii) 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 Heavy Load Hours and by minimizing the portion of Storage Contract Capacity subject to an Outage at any time.

(iii) Seller shall promptly provide Buyer with notice of any Unplanned Outage, including the amount of the Storage Contract Capacity that is not available because of such Unplanned Outage and the expected return date and time of such capacity. Seller shall update such report as necessary to advise Buyer of changed circumstances. Seller shall in writing confirm any oral notice of a Unplanned Outage as soon as practicable following such notice.

(c) Operation of the Project.

(i) Seller shall operate and maintain the Project in accordance with Prudent Utility Practice and Applicable Law in order to maximize the Storage Contract Capacity and the Discharging Energy available from the Project. If the Storage Facility is curtailed due to Force Majeure, by the Transmission Provider or Reliability Entity, or for any reason other than Buyer's

actions or omissions, Buyer shall not be obligated to pay for any curtailed Discharging Energy and Seller will not be liable for any failure to deliver such Discharging Energy.

(ii) Seller shall ensure that personnel capable of starting, operating, and stopping the Project are either available at the Project or capable of remotely starting, operating, and stopping the Project within 10 minutes, and capable of being physically present at the Project with no more than two hours' notice. In all cases, Seller shall ensure that personnel capable of starting, operating, and stopping the Project can be reached by phone at all times.

7.9 **Project Naming Rights and Publicity**

(a) **Marketing and Naming Rights.** Buyer has the exclusive right during the Term to name the Project including the right to use information related to the Project in connection with its and its Affiliates' marketing activities. Such rights include the right to (i) require Seller to post reasonable signage at the Project identifying Buyer (or Buyer's Customers) as a purchaser of the Products, (ii) require that Seller use the logos, trade dress, graphics, and other marks of Buyer and its Affiliates (the "PGE Marks") or of Buyer's Customers and its Affiliates (the "Customer Marks") and together with the PGE Marks, the "Marks") in connection with such signage and the name of the Project, and upon Buyer's request, on any websites, advertisements, presentations, or descriptive materials, in any medium where the Project's name would usually and customarily be employed, and (iii) use, disclose, and permit others to use and disclose, general information regarding the Project (including its name, resource type, capacity, location, and commercial operation date) and images of the Project in connection with the marketing materials (whether print, video, online, or otherwise) of Buyer, its Affiliates, and Buyer's Customers. Seller shall in good faith cooperate with Buyer to develop mutually agreeable signage and other materials that reflect the Marks.

(b) **PGE Marks and Customer Marks.** Buyer and its Affiliates are the sole owners of the PGE Marks and Buyer's Customers and its Affiliates are the sole owners of their respective Customer Marks, and Seller shall not take any actions that are inconsistent with that ownership. All goodwill arising out of the use of the Marks in connection with the Project or this Agreement will inure to the sole benefit of Buyer, its Affiliates, or Buyer's Customers, as applicable, as the owners of such Marks. Buyer grants Seller a non-exclusive, non-transferable, non-assignable, revocable right and license for the duration of the Term to use the PGE Marks in accordance with the terms of this Section 7.9. To the extent permitted to do so under any applicable right and license received by Buyer from Buyer's Customers, Buyer further grants Seller a non-exclusive, non-transferable, non-assignable, revocable sublicense for the duration of the Term to use the Customer Marks in accordance with the terms of this Section 7.9. If Buyer (or, in the case of the Customer Marks, Buyer's Customer) revokes any such right or license during the Term, Seller will have no further right or obligation under this Agreement to use the applicable Marks. Upon the termination of this Agreement or if one or both of the foregoing licenses are revoked, Seller shall immediately cease and discontinue all further use of the applicable Marks. Notwithstanding the foregoing, the use of the Marks by Seller is in all cases subject to the prior written consent of Buyer, which consent may be granted in Buyer's sole discretion.

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

Article 8
FORCE MAJEURE EVENTS

8.1 Force Majeure Events

(a) Excuse. Subject to Section 8.2 below, and except as expressly set forth herein, neither Party will be considered to have breached its obligations under this Agreement if performance of such obligations is prevented due to a Force Majeure Event.

(b) Definition. For purposes of this Agreement, “Force Majeure Event” means any event or circumstance, or combination of events or circumstances, that meets all of the following criteria:

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

Provided they meet all of the criteria described above, Force Majeure Events may include the following: acts of God, natural disasters, wildfires, earthquakes, tornadoes, lightning, floods, civil disturbances, riots, war and military invasion, physical damage to the Project caused by third parties who are not subcontractors or representatives, employees or agents of the impacted Party, national, regional and area-wide strikes and other national, regional and area-wide 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, which prevents the safe performance of work at the Site; 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 acts or omissions). Notwithstanding anything in the foregoing to the contrary, in no event shall any of the following constitute a Force Majeure Event: (i) strikes, and other labor disputes (including collective bargaining disputes and lockouts) of the labor force under the control of the Party claiming the Force Majeure Event or its Affiliates or with respect to the work by a subcontractor on the Site unless the strike is part of a more widespread or general strike extending beyond the Party, Affiliate or subcontractor; (ii) cost or shortages of labor or manpower; (iii) unavailability, late delivery, failure, breakage or malfunction of equipment or materials unless there is an independent, identifiable Force Majeure Event causing such condition; (iv) events that affect the cost of equipment or materials; (v) economic hardship (including lack of money) of any entity or its Affiliates or their respective subcontractors or suppliers; (vi) delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; (vii) any weather conditions which are not defined above as Force Majeure Events; (viii) actions of a Government Authority in respect of or in relation to or resulting from Seller’s acts or omissions; (ix) any failure by Seller to obtain and maintain any Applicable Permit it is required to obtain or maintain hereunder; (x) the unavailability of labor and supplies, disruptions of supply chains, limitations imposed by a Government Authority on allowing Personnel on the Site, or other hindrance to the Work caused by the impact of COVID-19, any of its variants or pandemics of a similar nature and intensity (xi) the failure of the EPC Contractor, ESS Supplier, or any other contractor or subcontractor to deliver, or any delay in the

delivery of, any equipment or materials critical for the construction, commissioning, operation, or maintenance of the Project, except to the extent that such failure was caused by an event or condition that would otherwise be a Force Majeure Event (and for purposes of the definition of Force Majeure Event, as if such Person were a Party); (xii) Seller's failure to timely (A) procure or otherwise arrange for financing necessary for the construction or operation of the Project, (B) enter into the Interconnection Agreement, or (C) procure energy storage systems or any other component of the Project for any reason (the risk of which is assumed by Seller); (xiii) any action or inaction of a Governmental Authority, including the enactment of any changes to Applicable Law; (xiv) any other act, omission, delay, default or failure (financial or otherwise) of a Seller subcontractor or other Seller personnel.

8.2 **Conditions; Resolution**

(a) **Claims of Force Majeure.** In addition to the conditions set forth in Section 8.1(a) above and in the definition of Force Majeure Event, a Party may rely on a claim of a Force Majeure Event for purposes of this Agreement only to the extent that such Party:

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

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

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

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

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

8.3 **Termination Due To Force Majeure Event**

If a Party is prevented from performing its material obligations under this Agreement for a period of 180 consecutive days or more 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 7.5, if applicable, neither Party will be liable to the other Party in connection with the termination of this Agreement pursuant to this Section 8.3. Notwithstanding the forgoing, this Section 8.3 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 7.5.

Article 9 DEFAULT, REMEDIES, AND TERMINATION

9.1 Events of Default Generally

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

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

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

(iii) The failure of such Party to perform any material covenant or obligation set forth in this Agreement (except (A) to the extent constituting a separate Event of Default, (B) for Seller's obligation to deliver any Environmental Attributes, the exclusive remedy for which is provided in Section 3.3(c), and (C) subject to Section 9.1(b), Seller's failure to satisfy the Guaranteed Monthly Availability, the Guaranteed Charging Rate, the Guaranteed Duration or the Guaranteed Round-Trip Efficiency, the exclusive remedies for which are provided in Section 7.7), if such failure is not remedied within thirty (30) days after the failing Party's receipt of written notice of such failure, except that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the remedy, not to exceed a total period of ninety (90) days, on the condition that a recovery plan to effect such remedy has been reviewed and accepted by the non-failing Party and the failing Party diligently pursues such remedy.

(iv) Such Party becomes Bankrupt.

(v) Such Party fails to perform any of its obligations under Article 6.

(b) Seller Events of Default. In addition to the foregoing, the occurrence with respect to Seller of any of the following events or conditions constitutes an event of default with respect to such Seller (the events and conditions set forth in Section 9.1(a) and this Section 9.1(b), each an "Event of Default"):

(i) The Project is Abandoned.

(ii) The Monthly Actual Availability of the Storage Facility fails to satisfy the Guaranteed Monthly Availability for [___] or more months within a rolling [___] month period.

(iii) The Storage Contract Capacity, as determined by the most recent Storage Contract Capacity Test, is less than the Guaranteed Storage Contract Capacity, which remains uncured for a period of thirty (30) days as shown by a new Storage Capacity Test.

(iv) The Duration as measured by the applicable Storage Contract Capacity Tests is less than [•]¹⁰ hours on average in any Contract Year.

(v) The Round-Trip Efficiency is less than the Guaranteed Roundtrip Efficiency and such failure continues for [•]¹¹ days after Seller's receipt of written notice or discovery of such failure.

(vi) 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 15 days after Seller's receipt of written notice or discovery of such failure.

(vii) 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.

9.2 **Termination for Default**

(a) **Termination for Default.** If an Event of Default occurs with respect to a Defaulting Party and is continuing, the other Party (the "Non-Defaulting Party") may, subject to Section 9.3, (i) suspend performance of its obligations under this Agreement; (ii) withhold to the extent of its damages under this Agreement the payment of any amounts due to the Defaulting Party; (iii) by delivery of written notice to the Defaulting Party, designate a date not earlier than the effective date of such notice as the early termination date in respect of this Agreement; (iv) exercise any other remedies as may be available to the Non-Defaulting Party under this Agreement or Applicable Law; or (v) exercise any combination of the foregoing.

(b) **Termination Payment.** Upon termination of this Agreement in connection with an Event of Default, the Non-Defaulting Party shall calculate, in a commercially reasonable manner without the obligation of either Party to enter into any replacement transaction in order to determine any losses, the termination payment due to such Party (each a "Termination Payment") in accordance with this Section 9.2(b).

(i) **Termination Payment Prior to Commercial Operation Date.**

(A) 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 calculated in accordance with Section 7.3(b)(ii).

(B) If termination of this Agreement due to a Buyer Event of Default occurs before the Commercial Operation Date then the Termination Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the date of termination in connection with the Project, *less* the fair market value (determined in a commercially reasonable manner) of (1) the individual assets acquired by Seller for the Project, or (2) the entire Project,

¹⁰ Note to Bidder – To be determined on a Project-by-Project basis.

¹¹ Note to Bidder – To be determined on a Project-by-Project basis.

whichever is greater, regardless of whether or not any Seller asset or the entire Project is actually sold or disposed of.

(ii) Termination Payment After the Commercial Operation Date.¹²

(A) 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.

(B) 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.

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

(d) 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.

9.3 Limitations

(a) GENERAL LIMITATION. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE

¹² **Note to PGE:** Please confirm if this payment arrangement is commensurate with your typical PPA termination structure, or if another arrangement is preferred commercially at PGE. A more aggressive approach for Termination Payments owed to Buyer is to require payment of [a flat dollar amount per MW multiplied by the Contract Capacity, which such figure represents the NPV of the entire project to the buyer] *multiplied* by [the proportion of the remaining days in the Delivery Term to the total days in the Delivery Term]. This method, however, does not recognize the reality of market prices (and their volatility).

OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED AND EXCEPT WITH RESPECT TO CLAIMS FOR INDEMNIFICATION UNDER SECTION 9.4, NEITHER PARTY IS LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES A PARTY IS REQUIRED TO PAY HEREUNDER 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 HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS AND ARE NOT A PENALTY.

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

9.4 Indemnification

To the maximum extent permitted by Applicable Law, Seller and Buyer shall defend, indemnify, and hold each other, and their respective officers, directors, employees, and agents, harmless from and against all third party claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively, "Losses") for personal injury or death to persons and damage to the physical property or facilities of any Person other than a Party to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, errors, or omissions of the indemnifying Party or any Person retained by or acting for such Party. This obligation to indemnify, defend, and hold harmless applies notwithstanding any negligent or intentional acts, errors, or omissions of the applicable indemnitee, but the indemnifying Party's liability to pay Losses to the indemnitee will be reduced in proportion to the percentage by which the indemnitees' negligent or intentional acts, errors, or omissions caused the Losses. Each Party's obligation to indemnify, defend, and hold harmless does not apply to Losses resulting from the sole negligence or willful misconduct of the indemnitee. An indemnitee that becomes entitled to indemnification or defense under this Section 9.4 must notify the indemnifying Party of any claim or proceeding in respect of which it is to be indemnified or defended as soon as reasonably practicable after the indemnitee obligated to give such notice becomes aware of such claim or proceeding. Failure to give such notice will not excuse the obligation to indemnify or defend except to the extent failure to provide notice adversely affects the indemnifying Party's interests in a material respect. The indemnifying Party shall, within thirty (30) days after the date the indemnifying Party is notified of any such claim, assume the defense thereof with counsel designated by the indemnifying Party but reasonably acceptable to the indemnitee; except that if the defendants in any such action include both the indemnitee and the indemnifying Party or if the claim seeks an order of injunctive relief or other equitable remedies, involves criminal liability, or involves any Governmental Authority, then the indemnitee will have the right to select

and be represented by separate counsel designated by the indemnitee, at the expense of the indemnifying Party. If the indemnifying Party fails to assume the defense of a claim as required under this Agreement, the indemnitee may, at the expense of the indemnifying Party, contest, settle, or pay such claim and the indemnifying Party will be bound by the results obtained by the indemnitee with respect to such claim. These indemnity provisions are not to be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

Article 10 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 Seller Representations and Warranties

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

(i) Seller is duly organized and validly existing as a [_____] under the laws of the State of [_____] , has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary.

(ii) Seller has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.

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

(iv) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of 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.

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

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

(b) Additional Seller Representations and Warranties. Seller further represents and warrants to Buyer as of each delivery of any Product under this Agreement that:

(i) Seller has the right to sell and deliver the Product to Buyer.

(ii) The Product is delivered to Buyer free and clear of any liens, other encumbrances, or defects in title; and

(iii) To the extent delivered to Buyer:

(A) any Environmental Attributes (including any RECs) delivered to Buyer meet the requirements of Applicable Law and any certifying or registering entity having jurisdiction over such Environmental Attributes as of the date of such delivery; and

(B) any Environmental Attributes have not been sold, retired, claimed, or represented as a part of any electric product or sales, or used to satisfy any renewable energy, greenhouse gas, or other environmental attributes obligation under any applicable voluntary program or Applicable Law in any jurisdiction.

10.2 **Buyer Representations and Warranties**

Buyer represents and warrants to Seller as of the Effective Date that:

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

(ii) Buyer has the legal power and authority to enter into and perform its obligations under this Agreement and such entry and performance have been duly authorized by all necessary proceedings on its part.

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

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

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

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

10.3 **Limitation on Representations**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

Article 11
MISCELLANEOUS

11.1 Notices

All written notices, requests, statements, demands, and other communications under this Agreement must, unless otherwise specified herein, be delivered in person or sent by facsimile, commercial overnight delivery service, or registered or certified mail, postage prepaid, to the address of the Party specified below. Notice by facsimile, United States mail, or hand delivery is effective at the close of business on the day actually received, if received during a Business Day, and otherwise will be effective at the beginning of the next Business Day. Notice by commercial overnight delivery service is effective on the next Business Day after it was sent. A Party may change its address for notices and other communications by providing notice to the other Party specifying its new address.

(a) If notice is to be provided to Buyer:

Address: []
Attn: []
Facsimile: []
Email: []

For purposes of scheduling:

Attention: []
Phone: []
Alternate Phone: []
Email: []

With a copy to:

Attention: []
Phone: []
Alternate Phone: []
Email: []

(b) If notice is to be provided to Seller:

Address: []
Attention: []
Phone: []
Email: []

With a copy to:

Address: []
Attention: []
Phone: []
Email: []

Billing and Payment:

Address: []

Attention: []
Phone: []
Email: []

Designated Operating Representative:

Address: []
Attention: []
Phone: []
Email: []

11.2 Regulatory Compliance

Each Party shall at all times comply with all Applicable Laws except to the extent such non-compliance is unrelated to or would not have a material adverse effect on such Party's ability to perform its obligations under this Agreement. As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

11.3 Confidentiality

(a) Obligation of Confidentiality. Each Party shall hold in confidence all Confidential Information of the other Party. The obligation of confidentiality extends to all Confidential Information, whether exchanged orally or in written or electronic form, and whether or not designated or marked as confidential at the time exchanged.

(b) Permitted Disclosure. Each Party, as the receiving Party, has the right to disclose Confidential Information of the other Party to (i) a Governmental Authority to the extent legally required by the Governmental Authority or Applicable Law or to the extent necessary for the receiving Party to enforce its rights and remedies under this Agreement, in each case on the condition that, if appropriate, the receiving Party has taken commercially reasonable efforts to receive confidential treatment by such Governmental Authority of the Confidential Information disclosed; (ii) its advisors, auditors, legal counsel, and insurers; (iii) its Affiliates and its and their respective officers, directors, members, managers, employees and agents that have a need to know such information; (iv) its service providers to the extent required in connection with the performance of the receiving Party's obligations under this Agreement; (v) its partners, investors, lenders and bona fide potential investors and lenders; (vi) bona fide potential purchasers and their representatives of an interest in the receiving Party or, with respect to Seller, the Project; and (vii) with respect to Buyer, to actual and potential Buyer's Customers, but only to the extent necessary in connection with the negotiation or administration of the agreement between such Buyer's Customer and Buyer or its Affiliate, as applicable. The right of the receiving Party to disclose Confidential Information pursuant to clauses (ii) through (vii) is subject to the condition that the recipient has agreed, or otherwise has an obligation, to maintain the confidentiality of the Confidential Information consistent with the terms hereof.

(c) Liability for Breach. Each Party, as the receiving Party, is liable for any failure by a recipient of Confidential Information disclosed by the receiving Party (other than a Governmental Authority) to maintain the confidentiality of such Confidential Information in accordance with the requirements of this Section 11.3.

(d) **Remedies.** The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations contained in this Section 11.3.

(e) **Prior Agreements.** To the extent that (i) the Parties are party to any confidentiality or non-disclosure agreement related to the subject matter of this Agreement, any such agreement between the Parties is replaced by the confidentiality provisions of this Section 11.3, and (ii) the Parties are otherwise bound by or subject to the terms of an agreement regarding confidentiality or non-disclosure, as between the Parties, such other agreement will no longer apply to this Agreement, and the obligations of the Parties regarding confidentiality will instead be replaced by the obligations under this Section 11.3.

11.4 **Assignment**

(a) **Consent Required.** Except as provided in this Section 11.4, neither Party may assign or otherwise transfer this Agreement without the other Party's prior written consent, which consent may not be unreasonably delayed, conditioned, or withheld. Any assignment or other transfer in violation of this provision is null and void. In addition, Seller shall not undergo a Change of Control unless Buyer has provided its prior written consent to such Change of Control, which consent may not be unreasonably delayed, conditioned or withheld.

(b) **Permitted Assignment.** Buyer may, without the consent of Seller, assign this Agreement to an Affiliate of Buyer, so long as such assignee has assumed in writing all of the obligations of Buyer under this Agreement and agreed to be bound by all the terms and conditions of this Agreement accruing or arising from and after the effectiveness of such assignment.

(c) **Accommodation of Project Lenders and Tax Equity Investors.** To facilitate Seller's efforts to obtain financing to construct and operate the Project, Buyer shall provide such consents to assignments, certifications, estoppels, representations, information, and other documents as may be reasonably requested by Seller, a Project Lender, or a Tax Equity Investor in connection with the financing of the Project. In responding to any such request, Buyer will have no obligation to provide any consent, or enter into any agreement, that includes terms that adversely affect any of Buyer's rights, benefits, risks, or obligations under this Agreement. Seller shall reimburse Buyer for the reasonable, out-of-pocket costs and expenses (including the fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution, or delivery of any documents requested by Seller or a Project Lender or Tax Equity Investor pursuant to this Section 11.4(c).

11.5 **Waiver of Rights**

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

11.6 **Section Headings**

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

11.7 **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.

11.8 **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).

11.9 **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.

11.10 **Dispute Resolution Process**

(a) **Avoidance and Mediation.** The Parties agree to cooperate with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Agreement (“Dispute”), within five (5) Business Days following the date of delivery of a written request by either Party, (a) each Party shall appoint as its representative a senior officer, and (b) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

(b) **Mandatory Mediation.** Any Dispute that is not resolved pursuant to Section 11.10(a) may be submitted for mediation 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 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 Information. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Article 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.

(c) If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 11.10(b), then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Oregon located in the City of Portland or the courts of the United States of America for the District of Oregon having subject matter jurisdiction. By execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, and (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Article 11.1, or at such other address of which the Parties have been notified.

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

(e) 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, 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.

11.11 **Nature of Relationship**

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

11.12 **Severability**

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

11.13 **Change in Law**

The Contract Price will not be affected by any change in any Applicable Law that alters either Buyer's or Seller's costs in connection with this Agreement, Seller's operation of the Project, or the value

of the Product, including any Environmental Attributes, delivered or transferred under this Agreement, or affects in any other material way the purpose or economics of this Agreement.

11.14 **Counterparts**

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

11.15 **Construction**

This Agreement was jointly prepared by the Parties by and through their respective legal counsel, and any uncertainty or ambiguity existing herein will not be interpreted against either Party on the basis that such Party drafted the language.

11.16 **Entire Agreement; Integration**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. Except as provided in Sections 4.1 (with respect to Schedule I), 7.1(b) and 11.1, no amendment, addition to, or modification of any provision hereof is binding upon the Parties, and neither Party will be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification, or waiver is in writing and signed by a duly authorized officer or representative of each Party.

[signature page follows]

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

BUYER:

**PORTLAND GENERAL ELECTRIC
COMPANY**

By: _____
Name: _____
Title: _____

SELLER:

[_____]

By: _____
Name: _____
Title: _____

APPENDICES AND EXHIBITS

Appendix A Operating Parameters and Operating Procedures

Appendix B Storage Contract Capacity Test

Appendix C Transmission Requirements

Appendix D Guaranteed Round-Trip Efficiency

Exhibit A Description of the Project

Exhibit B [Reserved]

Exhibit C Milestone Information

Exhibit D Insurance Requirements

Exhibit E Notice Information

Exhibit F Form of Letter of Credit

Schedule I Communications and Other Equipment

Schedule II QSE Performance Requirements

Appendix A

OPERATING PARAMETERS AND OPERATING PROCEDURES¹³

[Seller to provide]

Note to Bidders: Operating Parameters and Operating Procedures to Include Daily Dispatch Limits for the following uses:

Full Charging: [XX] times per day

Full Discharging: [XX] times per day

Partial Charging: [XX] times per day

Partial Discharging: [XX] times per day

Please describe all other applicable operating limits on charging and discharging from the Storage Facility, if any.

Maximum annual dispatch quantity: [_____]MWh

¹³ Note – Seller to include proposed Minimum Usable State of Charge and proposed Maximum Usable State of Charge as part of this Exhibit.

Appendix B

STORAGE CONTRACT CAPACITY TEST

Appendix C

TRANSMISSION REQUIREMENTS

Buyer must be able to designate the Storage Facility as a network resource and Seller must have requested NRIS interconnection for Storage Facility Output. In such case, except in the event of Seller's Failure to Deliver or a Seller breach, Buyer will be responsible for all costs associated with the delivery of energy to the Delivery Point.

Appendix D

GUARANTEED ROUND-TRIP EFFICIENCY

Contract Year	Guaranteed Round-Trip Efficiency
1	90.0%
2 - XX	<i>[Seller to fill out rest of table]</i>

Exhibit A

DESCRIPTION OF THE PROJECT

Project Name: [_____]

Guaranteed Storage Contract Capacity: [_____]

Seller: [_____]

Location: [_____]

Operator: [_____]

Map: See attached

Description of the Site: [_____]

Description of Equipment: [_____]

Exhibit B

[RESERVED]

Exhibit C

MILESTONE INFORMATION¹⁴

Milestone	Date
Execution of the Interconnection Agreement for the Project	[_____] [__], 202[__]
Closing of tax equity and construction financing for the Project	[_____] [__], 202[__]
Commercial Operation Date	[_____] [__], 202[__]

¹⁴ **Note to Bidder** – Parties to agree on relevant milestones based on Project requirements.

Exhibit D

SELLER INSURANCE REQUIREMENTS

1. Acceptable Insurers. All insurance required herein must be obtained from insurers duly authorized to do business in Oregon and which maintain a minimum financial strength rating of “A- VIII” by the A. M. Best Key Rating Guide.
2. Required Insurance and Minimum Limits. During the term of this Agreement, Seller must obtain and maintain, at its sole expense, the following insurance coverage:

A. Workers’ Compensation and Employer’s Liability Insurance

i. Scope. Workers’ Compensation and Employer’s Liability to cover claims under applicable State or Federal workers’ compensation laws. Coverage must include Employer’s Liability to cover claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of the applicable workers’ compensation law.

ii. Minimum Required Limit.

Workers’ Compensation:	Statutory
Employer’s Liability:	\$2,000,000 each accident, bodily injury by
accident	
	\$2,000,000 each employee, bodily injury by
disease	
	\$2,000,000 policy limit, bodily injury by disease

iii. Navigable Waters. If any Work or Services under this Agreement involve work in, over or alongside any navigable waters, then Seller’s workers’ compensation coverage must cover liability under U.S. Longshoremen and Harbor Workers’ Compensation Act, The Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

B. Commercial General Liability Insurance

i. Scope. Commercial General Liability Insurance written on the current ISO occurrence form (or a substitute form providing equivalent coverage) and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If any Work or Services under this Agreement involve or require blasting, explosive conditions, or underground operations, the coverage must not

contain any exclusion relative to blasting, explosion, collapse of buildings, or damage to underground structures.

ii. Minimum Required Limit. \$2,000,000 Each Occurrence

iii. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

iv. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured.

v. Completed Operations. Seller must purchase completed operations coverage for a period of two (2) years after termination or expiration of this Agreement.

C. Automobile Liability Insurance

i. Scope. Automobile Liability insurance to cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work or Services under this Agreement.

ii. Minimum Required Limit. \$2,000,000 Each Accident

iii. Pollution. If Seller is transporting chemicals, hazardous materials, or similar pollutants, then the Automobile Liability Insurance must include pollution liability coverage at least as broad as the coverage provided under the ISO endorsement CA 99 48 "Pollution Liability—Broadened Coverage For Covered Autos".

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

vi. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

D. Professional Liability Insurance (Errors and Omission Insurance)

i. Scope. If Work or Services under this Agreement involves the rendering of professional services then Seller must obtain and maintain Professional Liability (Errors and Omissions) insurance to cover claims arising from Seller's acts, errors or omissions. Seller will require Professional Liability (Errors and Omissions) insurance in the same amounts from any and all third parties Seller utilizes in performing its design responsibilities under this Agreement.

ii. Minimum Required Limit. \$1,000,000 Per Claim

iii. Extended Reporting Period. The insurance must contain an extended reporting period of five (5) years.

E. Pollution Legal Liability

i. Scope. If the Work under this Agreement includes cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants, Seller shall provide at its expense Pollution Legal Liability Insurance appropriate to cover such activities against the risk of bodily injury and property damage. Such policy must be endorsed to specifically provide coverage for Work performed under this Agreement and must extend to all Subcontractors engaged in cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants.

ii. Minimum Required Limit. \$5,000,000 Per Claim

iii. Additional Insured. To the fullest extent permitted by law, the insurance must include PGE, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance or self-insurance afforded to such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

iv. Waiver of Subrogation. To the fullest extent permitted by law, the insurance must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.

F. Aircraft Liability

i. Scope: **PRIOR TO USING AN AIRCRAFT OF ANY KIND IN PERFORMING THE WORK UNDER THIS AGREEMENT, SELLER SHALL NOTIFY PGE AND OBTAIN ITS PRIOR WRITTEN CONSENT.** If an aircraft is to be used in performing the Work under this Agreement, Aircraft Liability insurance covering fixed wing and rotorcraft aircraft whether owned, hired or non-owned.

ii. Minimum Required Limit: \$10,000,000 Each Occurrence

G. Network Security & Privacy Liability

i. Scope: If the Work or Services under this Agreement involves the rendering of IT services including, but not limited to software, software or hardware or systems development or consulting services; internet/application services (e.g., web hosting); providing content; connected to PGE network(s); or if Seller in any way collects, obtains, maintains or in any way uses PGE customer information, then Seller shall maintain Network Security & Privacy Liability, including Technology Errors & Omissions.

ii. Minimum Required Limit: \$5,000,000 Each Claim

H. Cargo/Transit

i. Scope: If the Work or Services involves the transportation of PGE property, by any form of conveyance, Seller shall maintain Cargo and/or Transit coverage for the duration of such transportation.

ii. Minimum Required Limit: Full replacement value of the shipment

3. Excess or Umbrella Insurance. The required minimum limits may be met through any combination of primary and excess insurance policies.
4. Certificates of Insurance. Prior to commencement of the Work or Services, Seller must furnish PGE with a Certificate of Insurance evidencing compliance with these requirements. Without penalty or default, PGE has the right, but not the obligation, to prohibit commencement of the Work or Services until such Certificate of Insurance or other evidence satisfactory to PGE is received and approved by PGE. The Certificate of Insurance must list as the certificate holder:

Portland General Electric Co.
c/o Global Risk Management Solutions
4447 N. Central Expressway, Suite 110-433
Dallas, TX 75205
5. No Waiver. PGE's failure to demand the Certificate of Insurance or to identify a deficiency from the Certificate of Insurance or other evidence provided will not be deemed a waiver of PGE's rights or Seller's obligations. Furthermore, these insurance requirements must not be construed in any manner as waiving, restricting or limiting PGE's rights or Seller's obligations under this Agreement.
6. Primary Insurance: The insurance required of Seller under this Exhibit shall be primary and may not seek contribution from any insurance or self-insurance maintained by PGE.
7. Notice of Cancellation. No insurance policy may be canceled or materially modified unless Seller or insurer(s) provide at least thirty (30) days prior written notice to PGE.
8. Failure to Maintain Required Insurance. If at any time during the term of this Agreement Sellers fails to maintain any required insurance, PGE may, at its sole discretion, either suspend the Work or Services or terminate this Agreement.
9. Seller Responsible for Deductibles or Retentions. With respect to any insurance required herein, Seller must bear all costs of all deductibles or Self-Insured Retentions.
10. No Representation of Coverage Adequacy. PGE does not represent that coverage and limits required herein will be adequate to protect Seller. Seller remains responsible for any liability not paid by insurance.
11. Seller's Property. Seller is responsible for any loss or damage to its property, however caused, and any insurance covering such property will be at Sellers expense and must provide that the insurer waives all rights to recover any payments made from PGE, its affiliates, and their respective officers, directors, agents and employees.
12. No Violation of Insurance Policies. Seller must not knowingly violate or knowingly permit any violation of any warranties, representations, declarations or conditions contained in the policies of insurance.

13. No Claims. As of the execution date of this Agreement, Seller is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance required herein.
14. Other Insurance. If there is any material change to the nature or scope of the Work or Services under this Agreement, PGE may require Seller to obtain and maintain additional insurance.
15. Subcontractors. If subcontractors or third parties are used in the performance of any Work or Services, then Seller must cause each of its subcontractors or third parties to comply with the same insurance requirements imposed on Seller herein. If requested by PGE, Seller must furnish certificates of insurance evidencing compliance with these requirements for each subcontractor or third party.
16. Owner's Insurance

A. In order to protect Owner, Seller and any other party to the extent of their respective financial interests, Owner will procure and maintain in effect or cause to be maintained All Risk Insurance or Builder's All Risk Insurance (BAR). The BAR policy may include the following requirements:

- i. Owner may provide Seller with proof of insurance at least thirty (30) days prior to the scheduled commencement of the Work;
- ii. The policy will be in effect from the planned start of any Work at the Project Site through the date of Substantial Completion;
- iii. The policy will include as additional insured, Seller, any additional parties to the Contract and all Subcontractors (regardless of tier) of Seller performing Work at the Project;
- iii. The policy will cover risks of physical loss or damage to the Project not otherwise excluded, including mechanical and electrical breakdown during the course of construction, start-up, testing and commissioning, including materials, equipment and furnishings which will become part of the Project, up to the value of the Project.

Consistent with Article 1.7 Risk of Loss, Seller shall be responsible for the deductible under the BAR policy; provided, however, that Seller's responsibility shall not exceed .5% of the project value, subject to a minimum deductible responsibility of five thousand dollars (\$5,000.00).

Exhibit E

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Exhibit F

Form of Letter of Credit

[to be attached]

Schedule I

COMMUNICATIONS AND OTHER EQUIPMENT¹⁵

¹⁵**Note to Bidders:** To be developed in light of Project specifications

Schedule II

QSE PERFORMANCE REQUIREMENTS¹⁶

[Note: The SCA shall include charging and discharging protocols based on the technology and software communication available to the Seller, but at a minimum the Buyer shall communicate intraday adjustments no later than one-hundred and twenty (120) minutes prior to the flow hour.]

¹⁶**Note to Bidders:** To be developed in light of Project specifications