Revised 7-28-2014



**2013 LCR PRO FORMA**

**RESOURCE ADEQUACY PURCHASE AGREEMENT**

(**ENERGY STORAGE OPTION)**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER]***

***[Date]***

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**RESOURCE ADEQUACY PURCHASE AGREEMENT**

**(ENERGY STORAGE OPTION)**

**Between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**And**

**[SELLER]**

This Resource Adequacy Purchase Agreement (Energy Storage Option), together with the Appendices (collectively, the “Agreement”) is made and entered into as of this *[\_\_\_\_]* day of *[Month]*, *[Year]* (“Effective Date”) by **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“SCE” or “Buyer”), and *[****SELLER****]*, a *[Seller’s business registration]* (“*[Seller’s Shortname]*” or “Seller”). SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”. All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

**RECITALS**

This Agreement is made with reference to the following facts, among others:

1. SCE is an investor-owned electric utility serving customers in central and southern California.
2. Seller is proposing to construct and own the Project located in *[insert description of location]*, and considered to be within the area described as the *[Western Los Angeles Basin or Moorpark Sub-Area]* in CPUC Decision 13-02-015 as a *[Western LA Basin Project or Moorpark Sub-Area Project]*.
3. Seller wishes to sell and deliver exclusively to SCE, and SCE wishes to purchase, the Product under the conditions set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, 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.

# PURCHASE AND SALE of PRODUCT

## Purchase and Sale of Product.

 During the Delivery Period, Seller shall deliver and sell, and SCE shall receive and purchase, the Resource Adequacy Benefits associated with the Project, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.01. During the Delivery Period, Seller shall not substitute or purchase any Resource Adequacy Benefits from any other generating resource or from the market for delivery hereunder. In addition, Seller shall, for any Contact Year, have the option of delivering and selling to SCE, and upon Seller’s exercise of such option SCE shall purchase and receive, the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project on the terms and conditions of this Agreement (the “Energy Put Option”). Seller may exercise its Energy Put Option for any Contract Year by delivering Notice of such exercise to SCE at least two years before the start of such Contract Year, but in no event more than three years before the start of any Contract Year, provided that Seller must exercise its Energy Put Option for the first Contract Year at least two years (and no more than three years) before the Expected Initial Delivery Date as of the Effective Date, and its Energy Put Option for the second Contract Year at least one year (and no more than two years) before the Expected Initial Delivery Date as of the Effective Date. Upon exercise of such option, the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project shall be included in the Product delivered and sold by Seller to SCE under this Agreement for such Contract Year, and Seller shall not substitute or purchase any Capacity, Energy, Ancillary Services, or Ancillary Service Capacity from any other generating resource, non-generator resource, or storage device or from the market for delivery hereunder.

1. Resource Adequacy Benefits. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SCE the full Capacity of the Project in order for SCE to meet its RA Compliance Obligations under any Resource Adequacy Rulings. Seller represents, warrants and covenants to SCE that Seller (i) has not used, granted, pledged, assigned or otherwise committed, and (ii) will not use, grant, pledge, assign or otherwise commit any Capacity of any Storage Unit to meet the RA Compliance Obligations of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE. Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with the preceding sentence throughout the Delivery Period; *provided, however*, that no such action shall require Seller to modify the Project or to operate the Project in a manner that is inconsistent with the Operating Restrictions. Such actions may include: (i) amending this Agreement and complying with all current and future Tariff provisions and decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties; (ii) ensuring that the Project’s Capacity is certified by the CAISO as being fully deliverable as of the Initial Delivery Datefor the purposes of counting all of the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* towards SCE’s RA Compliance Obligations; and (iii) executing all documents or instruments; but excluding, in each case, any action which is inconsistent with any Applicable Law or any permit applicable to the Project.
2. Capacity. During any Put Delivery Period, SCE shall have the exclusive right to the Capacity from the Project.
3. Energy. During any Put Delivery Period, except for Energy resulting from a Non-SCE Dispatch, Seller dedicates the Energy of the Project to SCE, and SCE shall have the exclusive rights to all Energy stored by the Project, including pursuant to a forward schedule or an Imbalance Energy instruction from the CAISO.
4. Ancillary Services. During any Put Delivery Period, SCE shall have the exclusive rights to all Ancillary Services Capacity and Associated Ancillary Services Energy from the Project, subject only to the limitations set forth in Appendix 1.01.
5. Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.
6. Exclusive Rights. During the Delivery Period (and, during any Put Delivery Period, except only as a result of a Non-SCE Dispatch), SCE shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, sale or marketing of the Product.

## Storage Units.

1. CAISO Test Results. Seller shall provide all CAISO Certification test results for each Storage Unit within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term.
2. Delivery of Energy. During any Put Delivery Period, energy from each Storage Unit shall be delivered to the Energy Delivery Point.
3. Station Use. The Storage Unit(s) will not serve Station Use and Seller shall separately meter Station Use with the Station Use Metering Equipment and be responsible for all costs related to Station Use. The Storage Unit(s) is/are expected to use *[number #]* MWh per year for Station Use. *[SCE note: insert description of Station Use]*
4. [Intentionally omitted].
5. Location of Site. *[Project Address]*, as further described in Appendix 1.02.

## Delivery Points.

1. Energy Delivery Point. The Energy Delivery Point shall be the *[description],* as specified in Appendix 1.03(a).
2. Point of Interconnection. The Point of Interconnection is *[insert substation name and location]*, as specified in Appendix 1.03(a).
3. Interconnection Queue Position. *[Number(s) to be inserted]*

# TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD

## Term.

The “Term” of this Agreement shall commence upon the Effective Date, and shall continue until the expiration of the Delivery Period.

## Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.

 The “Approval Date” is the date that all the following conditions are satisfied:

1. Final CPUC Approval. Final CPUC Approval shall have been obtained. SCE shall seek Final CPUC Approval expeditiously and in good faith. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining Final CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for Final CPUC Approval with conditions or modifications unacceptable to SCE.
2. Delivery of Documents. Seller shall have delivered to SCE all documents and information required under this Agreement to be delivered prior to the Approval Date.

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Final CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred sixty-five (365) days after SCE files its request for Final CPUC Approval and a Notice of termination is given on or before the three hundred ninety-fifth (395th) day after SCE files the request for Final CPUC Approval.

If either Party exercises its termination right pursuant to this Section 2.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

## Expected Initial Delivery Date.

Subject to adjustment made under Section 2.06(b), the Expected Initial Delivery Date for the Project is *[Date]*.

## Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the date that the Project achieves its Initial Delivery Date, and shall continue until the earlier of: (i) midnight on the date that is *[number of years]* years after the Expected Initial Delivery Date, (ii) an Early Termination Date designated in accordance with Section 3.03, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

The “Initial Delivery Date” shall be the first day of the first full month after all of the following conditions have been satisfied for the Project:

1. Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Sections 5.01(a) through 5.01(g) (and Section 5.01(h), if Seller has exercised its Energy Put Option for the first Contract Year), inclusive, in order to bring the Project into full operation as contemplated by this Agreement;
2. Each Storage Unit has achieved Commercial Operation;
3. Seller has received its Market-Based Rate Authority to sell the Product to SCE under the terms of this Agreement, operate the Project, and sell energy from the Project, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
4. Seller has executed a Participating Generator Agreement and/or Participating Load Agreement, as applicable, Meter Service Agreement For CAISO Metered Entities, and any other forms or agreements required by the CAISO with respect to the Project, and delivered true and complete copies of all such forms and agreements to SCE;
5. If Seller has exercised its Energy Put Option for the first Contract Year, Seller has taken all actions and executed all documents and instruments, required to authorize SCE to act as Scheduling Coordinator under this Agreement, and SCE is authorized to act as Scheduling Coordinator;
6. Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the PTO’s electric system and CAISO Grid;
7. Seller has deposited with SCE the applicable Performance Assurance amounts as set forth in Section 13.02(c);
8. Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article Thirteen;
9. Seller has provided SCE with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a *[SCE Comment: number of years based on technology]* year design life in accordance with Prudent Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
10. Seller has delivered to SCE all insurance documents required under Section 30.15;
11. Seller has obtained CAISO Certification for each Storage Unit;
12. Seller has taken all actions necessary to ensure that the Project is fully deliverable in an amount equal to the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]*, as determined by the CAISO, for RA Compliance Obligations, and Seller has delivered to SCE a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of counting all of the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* towards SCE’s RA Compliance Obligations;
13. Seller has paid to SCE the full amount of the Excess Network Upgrade Costs, if applicable;
14. Seller has taken all actions and executed all agreements, documents and instruments required to charge the Storage Unit(s) with electric energy, and is in compliance in all material respects with all obligations under such agreements, documents and instruments;
15. SCE shall have obtained or waived Final CPUC Approval; and
16. Seller has obtained a Unit NQC and Unit EFC for each Storage Unit.

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation providing Outage Schedules and Supply Plans in advance of the Initial Delivery Date and, if Seller has exercised its Energy Put Option for the first Contract Year, Seller delivering an Availability Notice for the Initial Delivery Date, and SCE delivering a Dispatch Notice and scheduling the Project’s energy requirements for the Initial Delivery Date. The Parties shall cooperate with each other in order for SCE to be able to utilize the Project beginning on the Initial Delivery Date and, if Seller has not exercised its Energy Put Option for the first Contract Year, Seller agrees to cause each Storage Unit’s SC to cooperate in order to achieve the same.

The Parties further agree that, in order for the Parties to transition between RA Delivery Periods and Put Delivery Periods, the Parties may have to perform certain of their obligations in advance of such transition, including without limitation providing Supply Plans and delivering Availability Notices, Charging Notices and Dispatch Notices. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product between such transitions, and, if applicable, Seller agrees to cause each Storage Unit’s SC to cooperate in order to achieve the same.

Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not occur later than *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*.

## Put Delivery Period; RA Delivery Period.

Any portion of the Delivery Period for which Seller has exercised its Energy Put Option shall be a “Put Delivery Period,” and any portion of the Delivery Period for which Seller has not exercised its Energy Put Option shall be a “RA Delivery Period.” During any RA Delivery Period, Seller shall have the right to dispatch and sell the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project to any third party.

## Delayed Initial Delivery Date.

1. Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SCE the Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date up to the number of remaining days until *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*. SCE shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Delivery Date Security.
2. Delays Due to Force Majeure. Subject to Section 3.02(f) and Seller’s compliance with its obligations as the Claiming Party under Section 23.02, if Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure.

## No Liability of SCE.

SCE shall have no liability to Seller, regardless of cause (including any act or omission of SCE, including as Buyer under this Agreement, retail provider of electric energy, or as a PTO) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller’s Monthly Capacity Payments resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, or (c) a reduction in the Term or the Delivery Period.

## Seller’s Queue Position.

Seller must not withdraw the Interconnection Queue Position identified in Section 1.03(c) or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without SCE’s prior written consent.

# EVENTS OF DEFAULT; REMEDIES; TERMINATION

## Events of Default.

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

1. The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
2. Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
3. The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for any failure to obtain all Required Permits on or before the Required Permit Date), if such failure is not remedied within five (5) Business Days of receipt of Notice; or
4. Such Party becomes Bankrupt.

## Seller Events of Default.

An “Event of Default” shall mean, with respect to Seller (as the “Defaulting Party”), the occurrence of any of the following:

1. Seller fails to comply with any of its affirmative covenants under Section 24.03 or its negative covenants under Section 24.04, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
2. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without SCE’s written consent, which consent may be granted or withheld in SCE’s sole discretion;
3. Seller fails to comply with its obligations under Article Thirteen, including failing to post or maintain the Delivery Date Security or applicable Performance Assurance, within three (3) Business Days after SCE provides Notice of the failure;
4. Seller makes any material misrepresentation or omission in any report, including status and metering report, or the Milestone Schedule or any Availability Notice (including the log, records and reports required under Sections 8.01(b), 8.01(c), 8.01(d) , 20.01, 22.01 and 24.03(j), Appendix 6.01(A), Appendix 6.01(B) and Appendix 20.01) required to be made or furnished by Seller pursuant to this Agreement;
5. Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than SCE or the CAISO during the applicable portion of the Delivery Period;
6. Seller fails to achieve the Initial Delivery Date for the Project by *[Date that is three hundred sixty-five days after the Expected Initial Delivery Date]*, whether due to Force Majeure or otherwise;
7. Seller starts-up, operates, charges, or discharges or permits or causes any third party to start-up, operate, charge or discharge any Storage Unit other than as specifically permitted under Section 2.05, Article Seven, Article Sixteen, or Article Eighteen;
8. A termination of, or cessation of service under, any agreement necessary for Seller to (i) interconnect the Project to the PTO’s electric system, (ii) charge or discharge the electric energy on or from the PTO’s electric system, (iii) comply with the CAISO Tariff; *provided*, if termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have ten (10) days from such termination or cessation to cure such default;
9. The stock, equity ownership interest in Seller or assets of Seller is directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than to Lender without SCE’s prior written consent, which consent may be granted or withheld in SCE’s reasonable discretion;
10. Seller fails to maintain its PGA, PLA or MSA during the Delivery Period and such failure is not cured within ten (10) days of termination of the PGA, PLA or MSA, as applicable; *provided*, that during any Put Delivery Period, the Storage Unit shall be deemed not available for purposes of Section 10.01 from the first day of the failure until such PGA, PLA or MSA is fully reinstated or replaced;
11. By the Required Permit Date, Seller fails to obtain all of the Required Permits, or all applicable appeal periods for such approvals or permits have not expired;
12. Except as permitted under Article Fourteen, Seller does not own or otherwise have control of the Project;
13. Seller fails to comply with its obligations under Section 8.02(a) with respect to the Prevention Equipment;
14. Seller fails to comply with any of its obligations under Sections 8.02(b), 8.02(c) or 8.02(f);
15. Seller fails to comply with any of its obligations under Sections 8.02(d);
16. Seller fails to comply with its obligations under Section 16.02;
17. Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
18. Seller intentionally or knowingly delivers, or attempts to deliver, Product for sale under this Agreement that was not associated with or stored by the Project;
19. Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SCE’s sole benefit as specified under Section 1.01(a);
20. Seller violates SCE’s Storage Unit Removal Right by marketing, dispatching, charging, storing or conveying Product from the applicable Storage Unit(s) to SCE or any other party; or
21. Seller removes from the Site equipment upon which the Contract Capacity or Capacity of the Storage Unit(s) has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SCE.

## Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement in whole or in part, as provided herein, as of such Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement which shall be due and payable as of such Early Termination Date, (c) withhold or set-off any payments due to the Defaulting Party under this Agreement, and (d) suspend performance pending termination of this Agreement. The Non-Defaulting Party shall also have the right to pursue any other remedies available at law or in equity, including, where appropriate, specific performance or injunctive relief to the extent permitted under Article Twenty-Seven.

## Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the “Termination Payment” in accordance with this Section 3.04.

1. Termination Payment Prior to Initial Delivery Date. If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(a).
2. If Seller is the Defaulting Party, then the Termination Payment shall be owed to SCE and shall be equal to the entire Delivery Date Security amount. SCE shall be entitled to immediately retain for its own benefit those funds held as Delivery Date Security, and any amount of Delivery Date Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE. There will be no amounts owed to Seller. The Parties agree that SCE’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(i) are a reasonable approximation of SCE’s harm or loss.
3. If SCE is the Defaulting Party, 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 Early Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) all the Project’s assets individually, or (B) the entire Project, whichever is greater, regardless of whether or not any Project asset or the entire Project is actually sold or disposed of; *provided*, in no case shall such Termination Payment be greater than fifty percent (50%) of the present value (as of the Early Termination Date, and calculated using the Interest Rate as of the Early Termination Date) of the total expected Monthly Energy Capacity Payments for the entire Term under this Agreement assuming that (A) the Initial Delivery Date would have occurred on its Expected Initial Delivery Date, (B) Seller exercised its Energy Put Option for each and every Contract Year, and (C) the Monthly Energy Capacity Payments are not subject to any reduction, change or adjustment under Article Ten, or be less than zero dollars ($0). There will be no amount owed to SCE. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SCE’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(ii) are a reasonable approximation of Seller’s harm or loss.
4. Termination Payment After the Initial Delivery Dates Occurs. If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(b).

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

In addition, if SCE is the Non-Defaulting Party and SCE reasonably expects to incur monetary penalties or fines from the CPUC or the CAISO (or any other Governmental Authority having jurisdiction) because SCE will not be able to include the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* in its then applicable Compliance Showing as a result of Seller’s Event of Default, then SCE may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties or fines are finally ascertained. SCE shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SCE be required to use or change the utilization of its owned or controlled assets or market positions to minimize the fines and penalties. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Agreement and shall continue until after those penalties or fines are finally ascertained.

## Notice of Termination Payment.

As soon as practicable after an Early 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 the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. If the Termination Payment is owed to the Defaulting Party, then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through mediation and arbitration as provided in Article Twenty-Seven.

## Limitation on Seller’s Ability to Make or Agree to Third Party Sales from the Project/Storage Units after Early Termination Date.

If the Agreement is terminated by SCE prior to the Initial Delivery Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Resource Adequacy Benefits associated with or attributable to a Storage Unit or the Project to a party other than SCE for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Resource Adequacy Benefits, or entering into the agreement to sell, market or deliver such Resource Adequacy Benefits to a party other than SCE, Seller or Seller’s Affiliates provides SCE with a written offer to sell the Resource Adequacy Benefits which provides SCE the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and SCE fails to accept such offer within forty-five (45) days of SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 3.06 apply, unless the transferee agrees to be bound by the terms set forth in this Section 3.06 pursuant to a written agreement approved by SCE.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 3.06.

## Effect of Termination.

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

# interconnection

# Interconnection Studies.

Seller represents and warrants that, as of the Effective Date, Seller has provided SCE with true and correct, up-to-date copies of all of the Interconnection Studies to enable delivery of the Storage Unit(s)’ output to the Point of Interconnection pursuant to Applicable Law. Seller shall be responsible for all fees and costs associated with the following:

1. Obtaining all Interconnection Studies;
2. Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;
3. Funding for any Network Upgrades associated with or attributable to the Storage Unit or the Project (any refund of such fees and costs will be consistent with the Tariff);
4. Any Interconnection Facilities that are installed for the purpose of interconnecting the Project with existing transmission or distribution systems; and
5. All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any WDAT interconnection agreement between Seller and SCE under which Energy from the Project is transmitted to the CAISO Grid.

## SCE Termination Right – Excess Network Upgrade Costs.

SCE has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study or interconnection agreement tendered to Seller (including any agreement tendered for interconnecting, or establishing service for, the Project for purposes of charging the Project with electric energy) by the PTO if:

1. Such Interconnection Study or agreement as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to SCE, or any PTO under the jurisdiction of the CAISO, including costs reimbursed by SCE, or any PTO under the jurisdiction of the CAISO, to Seller (“Aggregate Network Upgrade Costs”), may in the aggregate exceed *[dollar amount text]* dollars ($*[Number]*) (“Network Upgrades Cap”), irrespective of any subsequent amendments of such Interconnection Study or agreement or any contingencies or assumptions upon which such Interconnection Study or agreement is based; or *{SCE Note: Monetary threshold to be based upon transmission-related costs allocated to the Project that SCE would incur as estimated in the most recent Interconnection Study.}*
2. SCE must procure transmission service from any other participating transmission owner to allow SCE to Schedule electric energy from the Project and the cost for such transmission service is not reimbursed or paid by Seller.

Notwithstanding anything to the contrary in this Section 4.02, SCE shall have no right to terminate this Agreement under this Section 4.02, if Seller, concurrently with its provision of the relevant Interconnection Study or agreement pursuant to Section 6.02(a), irrevocably agrees that Seller shall owe to SCE (i) the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Costs”), and (ii) any costs for transmission services specified in Section 4.02(b); *provided*, with respect to clause (i), and solely for the purpose of calculating Excess Network Upgrade Costs, Aggregate Network Upgrade Costs shall be updated to reflect the latest interconnection agreement (including any amendments or modifications thereto) tendered to Seller; *provided* *further,* under no circumstance shall the calculation of Excess Network Upgrade Costs be less than zero dollars ($0). If Seller elects to pay, without reimbursement, for the Excess Network Upgrade Costs pursuant to this Section 4.02, in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights in connection with the development of the Project or the delivery of Product to SCE pursuant to this Agreement.

If SCE exercises its termination right pursuant to this Section 4.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

The Parties agree and acknowledge that there may be an Interconnection Study and interconnection agreement for charging electric energy to the Project, and a separate Interconnection Study and interconnection agreement for discharging electric energy from the Project. In the event that there are two separate studies and agreements for charging and discharging electric energy, the Parties agree that for purposes of Section 4.02(a), the Aggregate Network Upgrade Costs shall reflect the aggregate maximum cost estimates for the total cost of transmission upgrades or new transmission facilities to SCE, or any PTO under the jurisdiction of the CAISO, including costs reimbursed by SCE, or any PTO under the jurisdiction of the CAISO, to Seller for both the Interconnection Study and/or interconnection agreement, as applicable, for charging and discharging electric energy.

## Establishment of Charging Energy Service.

Seller shall take all action necessary, including, if applicable, requesting and obtaining retail electrical service, to enable the delivery of electric energy to the Storage Unit(s) for purposes of charging the Storage Unit(s). Seller shall be responsible for all fees and costs associated with and arising from the establishment of the ability to deliver electric energy to the Storage Unit(s) for purposes of charging the Storage Unit(s).

## Acknowledgment.

Seller acknowledges and agrees that nothing in this Article Four is intended to abrogate, amend or modify the terms of any other agreement between it and SCE, including without limitation, the interconnection agreement, and that no breach under such other agreement shall excuse a Party’s nonperformance under this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

# DESIGN AND CONSTRUCTION OF STORAGE UNITS

## Seller’s Obligations.

At no cost to SCE, Seller shall:

1. Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
2. Within *[number] [#]* days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the “Required Permits”), including permits to construct from the applicable Air Pollution Control District, or a Facility and Site Certification from the California Energy Commission (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and obtain all Required Permits on or before *[Date]* (the “Required Permit Date”);
3. As applicable, complete all environmental impact assessments or studies conducted by or for Governmental Authorities pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
4. As required to achieve Commercial Operation for each Storage Unit, furnish and install all Protective Apparatus as SCE reasonably determines to be necessary for proper and safe operation of the Project in parallel with the PTO’s electric system or CAISO Grid;
5. Furnish and install all equipment necessary to prevent, suppress and contain any fire, flooding, explosion, leak of hazardous material or other injury or damage at the Site (“Prevention Equipment”);
6. Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project;
7. Provide to SCE, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SCE and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Prudent Electrical Practices; and
8. At least thirty (30) days prior to the start of any Put Delivery Period, Seller shall provide a completed Master File for the Project to SCE (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information).

## Changes in Operational Characteristics.

Seller shall provide to SCE Notice of any changes in the operational characteristics of the Project, for SCE’s review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made. Seller acknowledges that provision of Notice under this Section 5.02 is for SCE’s information only and that by receiving such Notice, SCE makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

## EPC Contractor.

Seller shall provide SCE with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Approval Date, Seller shall provide SCE with a shortlist of candidates by the Approval Date.

# CONSTRUCTION PERIOD AND MILESTONES

## Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Appendix 6.01(A) (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, or within five (5) days of SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Appendix 6.01(B) (“Construction Report”), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for each Storage Unit and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by SCE. In addition, Seller shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

## Provision of Information.

During the Term, Seller shall promptly provide SCE copies of:

1. Within ten (10) Business Days of receipt thereof, any Interconnection Study or the interconnection agreement tendered to Seller by the PTO and, concurrently with the provision of the first Interconnection Study or interconnection agreement tendered to Seller by the PTO that may give rise to a termination right of SCE under Section 4.02, Seller shall also provide SCE a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Costs pursuant to Section 4.02, with a failure to provide such an election deemed to be an election not to exercise such rights;
2. All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
3. Any reports, studies, or assessments done for Seller by an independent engineer; and
4. No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
5. SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.02(d).
6. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SCE in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.02(d).

## Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to inspect the Project and otherwise inspect or audit Seller’s EPC Contracts and its books and records in order to verify Seller’s compliance with the Milestone Schedule and other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors to, provide SCE with access to the Site and all applicable documents and records in order to permit SCE to determine whether:

1. Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SCE’s ability to charge or discharge, or store energy in, the Project as provided for in this Agreement;
2. All contracts described in Section 6.02(a) have been entered into and become effective on a timely basis and Seller is not in default thereunder;
3. All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Article Four, electrical, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder; and
4. All contracts or other arrangements necessary to deliver electric energy to the Storage Unit(s) for purposes of charging the Storage Units have been entered into and become effective on a timely basis and Seller is not in default thereunder.

# COMMISSIONING AND TESTING

## Initial Commercial Operation Test.

1. At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall schedule and complete an Initial Commercial Operation Test for each Storage Unit. Such Initial Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation of each Storage Unit by the Expected Initial Delivery Date and SCE will reasonably cooperate with Seller to meet such deadline. The Initial Commercial Operation Test shall establish the Contract Capacity for purposes of calculating the Monthly Capacity Payment, and Appendix 1.01 and Appendix 9.02 shall be deemed to be amended to reflect the Contract Capacity certified during such test by SCE test personnel.
2. This test shall be deemed a Seller Initiated Test.

## Periodic Testing.

1. Seller Testing. Seller shall schedule and complete any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws. Seller may also elect to test any Storage Unit at any time, subject to Section 7.03.
2. SCE RA Capacity Qualification Testing. Once per each Contract Year during a RA Delivery Period (after the initial Contract Year), upon SCE’s request, Seller shall, or shall cause each Storage Unit’s SC to, schedule and complete, at Seller’s cost, an RA Capacity Qualification Test for each Storage Unit and provide all information required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for each Storage Unit to obtain an updated Unit NQC and Unit EFC. In connection with such a request, SCE may request that Seller shall cause each Storage Unit’s SC to propose to the CAISO that the Unit NQC or Unit EFC for any Storage Unit be changed. Seller agrees that in such a case Seller shall, or shall cause each Storage Unit’s SC to, take all actions required under the Tariff to obtain a new Unit NQC and Unit EFC for such Storage Units, including providing any documentation necessary to justify and support such request in accordance with the Tariff.
3. SCE Contract Capacity and Ancillary Services Testing. Once per each Contract Year during a Put Delivery Period (after the initial Contract Year), Seller shall, upon SCE’s request, schedule and complete a Contract Capacity & Ancillary Services Test in accordance with Appendix 7. This test shall be deemed a Buyer Dispatched Test.
4. No Adjustment to Contract Capacity. Notwithstanding any other provision in this Agreement, the Contract Capacity *[SCE Note: for a two hour product add “or RA Contract Capacity”]* shall not be adjusted to conform to the results of any RA Capacity Qualification Test or Contract Capacity & Ancillary Services Test.

## Testing Costs.

1. RA Capacity Qualification Tests. Seller is responsible for all costs associated with all RA Capacity Qualification Tests conducted pursuant to this Article Seven and all costs associated with providing any information related to all RA Capacity Qualification Tests.
2. Buyer Dispatched Test. During a Put Delivery Period, if Seller testing is conducted during a Settlement Interval in which Seller receives a Dispatch Notice or Charging Notice for the Storage Unit(s) being tested, but only if such testing does not interfere with the Storage Unit(s) ability to meet the applicable Dispatch Notice or Charging Notice, or SCE orders Seller to initiate such testing (each, a “Buyer Dispatched Test”), Seller shall not (other than as set forth in Article Sixteen, or pursuant to any Energy Adjustment Payment or Energy Efficiency Capacity Reduction Payment) be obligated to pay for Charging Energy Costs relating to such Buyer Dispatched Test, and Energy shall be treated as dispatched by SCE hereunder.
3. Seller Initiated Test. During a Put Delivery Period, if Seller schedules or conducts a test during any Settlement Intervals in which Seller has not received a Dispatch Notice or Charging Notice, or such test interferes with any Storage Unit’s ability to meet a Dispatch Notice or Charging Notice, for the Storage Unit(s) being tested (“Seller Initiated Test”), Seller shall pay for all costs (including Charging Energy Costs needed to conduct the Seller Initiated Test and Charging Energy Costs needed to charge the Storage Unit(s) to the same State of Charge such Storage Unit was prior to such Seller Initiated Test) relating to such Seller Initiated Test and, if SCE is the SC for the Project during the Seller Initiated Test, SCE shall pay to Seller, in the month following SCE’s receipt of CAISO revenues associated with such Seller Initiated Test, such revenues net of any (i) resource specific charge codes, (ii) Charging Energy Costs, (iii) penalties, or (iv) sanctions associated with the Energy charged or discharged during such Seller Initiated Test. Moreover, there shall be no Qualifying Delivered Energy, Variable O&M Payment, Energy Adjustment Payment, SDD Charge, SDD Administrative Charge for any Settlement Interval during which a Seller Initiated Test takes place. To the extent such Seller Initiated Test prevents SCE from charging or discharging the applicable Storage Units(s) as would have occurred absent such test, then, in accordance with Article Ten, such Storage Unit(s) will be deemed unavailable. Except as otherwise provided in Sections 7.01 and 7.02(c) and Appendix 7, Seller must notify SCE of any test at least eight (8) days in advance of the Trading Day for the date on which Seller proposes to conduct such test. For purposes of clarification, any test performed before the Initial Delivery Date is a Seller Initiated Test. With respect to any test performed after the Initial Delivery Date, Seller shall return any applicable Storage Unit(s) at the end of the Seller Initiated Test to the same State of Charge immediately prior to the Seller Initiated Test set forth in this Section 7.03(c), and the Test shall not be deemed completed until the Storage Unit has been returned to such State of Charge.
4. Additional Seller Obligations. When requesting a Seller Initiated Test during a Put Delivery Period, Seller shall also enter information into the Outage Management System, as well as provide Availability Notices reflecting such Seller Initiated Test, as set forth in Article Twenty.

## CAISO Certification.

Pursuant to Section 2.04(k), Seller is required to obtain CAISO Certification of the Project; *provided*, nothing in this Agreement, including the Appendices, shall be amended to reflect the outcome of this CAISO Certification. Notwithstanding the preceding sentence, SCE has the right during any Put Delivery Period to discharge and charge the Storage Unit(s) within the parameters established by the CAISO Certification of the Storage Units and to the Storage Unit(s)’ PMAX if enough energy is stored in the Storage Unit to meet its PMAX.

## Additional Requirements for RA Capacity Qualification Tests.

1. Testing Notification and Attendance. Seller shall provide SCE with at least seven (7) Business Days’ Notice of Seller’s proposed dates for all RA Capacity Qualification Tests, including any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws. SCE shall be entitled to have at least one (1) representative from SCE and one (1) independent third party witness present to witness each RA Capacity Qualification Test and such persons shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for test data acquisition prior to commencement of any test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the SCE representative and the third party, if any.
2. Testing Results Notification. Seller shall provide all RA Capacity Qualification Tests results for each Storage Unit within three (3) Business Days of Seller’s receipt for any such test throughout the Term. Within fifteen (15) Business Days after the completion of any RA Capacity Qualification Test, Seller shall prepare and submit to SCE a written report of such test. At a minimum, the report shall include: (i) a record of any unusual or abnormal conditions or events that occurred during such test and any actions taken in response thereto, and (ii) the measured data.
3. Updated Unit NQC or Unit EFC. Seller shall notify SCE within three (3) Business Days after it, or the Storage Unit’s SC, receives notice from the CAISO, or Seller or the Storage Unit’s SC becomes aware, that the Unit NQC or Unit EFC of any Storage Unit has changed, regardless of whether there is an increase or decrease in any such Unit NQC or Unit EFC.

# SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

## Seller’s Operation Obligations.

1. Seller shall operate the Project in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3, if applicable, and enforced by the CPUC, and CAISO mandated standards, as amended from time to time (collectively, “Industry Standards”).
2. Seller shall maintain all records applicable to each Storage Unit, including the electrical characteristics of the Storage Unit(s) and settings or adjustments of the Storage Unit(s) control equipment (including the power conversion system) and protective devices, and a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of each Storage Unit. In addition, for any Put Delivery Period, Seller shall maintain a daily operations log for each Storage Unit which shall include information on charging and discharging (including charging and discharging efficiency), electric energy consumption and efficiency, State of Charge, and availability (including availability to charge and discharge and its ability to store energy). Information maintained pursuant to this Section 8.01(b) shall be provided to SCE, within fifteen (15) days of SCE’s request.
3. Seller shall maintain and provide to SCE, within fifteen (15) days of SCE’s request, accurate records with respect to each Storage Unit(s)’ Initial Commercial Operation Test, RA Capacity Qualification Tests, and Contract Capacity & Ancillary Services Tests, including the outcomes of such tests.
4. Seller shall maintain and make available to SCE and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Prudent Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards, including CPUC General Order (“GO”) 167, if applicable. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Applicable Laws, Permit Requirements, or Industry Standards.
5. At SCE’s request, during any Put Delivery Period, Seller shall make all reasonable efforts to deliver Energy to the Energy Delivery Point at an average rate of delivery at least equal to the Contract Capacity during periods of CAISO-declared system emergency for as long as necessary to respond to the CAISO-declared system emergency.
6. SCE or the CAISO may require Seller, at Seller’s expense, to demonstrate to SCE’s reasonable satisfaction the correct calibration and operation of Seller’s Protective Apparatus any time SCE or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the PTO’s electric system or CAISO Grid.

## Seller’s Maintenance and Repair Obligations.

1. Seller shall inspect, maintain, and repair the Project and, if necessary, replace, each Storage Unit and Prevention Equipment, and any portion thereof, in accordance with applicable Industry Standards and Prudent Electrical Practices. Seller shall maintain, and deliver to SCE upon request, maintenance and repair records of each Storage Unit.
2. Subject to Section 8.02(c), Seller shall promptly make all necessary repairs to the Project or, if necessary, replacement of each Storage Unit, and any portion thereof, and take all actions necessary in order to provide the Product to SCE in accordance with the terms of this Agreement.
3. In the event that:
	1. an equipment failure (regardless of when such equipment failure occurs) with respect to any single Storage Unit results in the Expected Contract Quantity for such Storage Unit being less than or equal to seventy-five percent (75%) of the applicable *[SCE Note: for a two hour product “SU RA Contract Capacity”; for a four hour product “SU Contract Capacity”]* for such Storage Unit on average for a period of time exceeding forty-five (45) consecutive days during any RA Delivery Period,
	2. a Contract Capacity & Ancillary Service Test demonstrates that, during any Put Delivery Period:
		1. the Discharging Capacity of any single Storage Unit is less than or equal to *[TBD]* percent *[(#%)]* of the applicable SU Contract Capacity,
		2. the Charging Capacity of any single Storage Unit is less than or equal to *[TBD]* percent *[(#%)]* of the applicable SU Contract Capacity, or
		3. the Storage Capacity of any single Storage Unit is less than or equal to *[TBD]* percent *[(#%)]* of the applicable Maximum Storage Level,
	3. an equipment failure (regardless of when such equipment failure occurs) with respect to any single Storage Unit results, during any Put Delivery Period, in:
		1. the Discharging Capacity of such Storage Unit being, less than or equal to *[TBD]* percent *[(#%)]* of the applicable SU Contract Capacity on average for a period of time exceeding seven (7) consecutive days,
		2. the Charging Capacity of such Storage Unit being, less than or equal to *[TBD]* percent *[(#%)]* of the applicable SU Contract Capacity on average for a period of time exceeding seven (7) consecutive days,
		3. the Storage Capacity of such Storage Unit being, less than or equal to *[TBD]* percent *[(#%)]* of the applicable Maximum Storage Level on average for a period of time exceeding seven (7) consecutive days,

Seller shall repair or replace such Storage Unit in accordance with Prudent Electrical Practices and the procedure set forth in this Section 8.02. Within fourteen (14) days of any such failure, Seller shall complete a Successful Repair or present to SCE a description of the reason for the failure and a plan and schedule for completing a Successful Repair (the “Repair Plan”).

1. If SCE and Seller disagree about the Repair Plan, SCE may, at its expense, hire an independent third party engineering firm reasonably acceptable to Seller (the “Independent Engineer” or “IE”), to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ Notice by SCE, Seller shall grant the IE and SCE personnel access to the Storage Unit(s) and all relevant information including log books, maintenance records and reports, and other applicable materials. If, after seven (7) days of the delivery to Seller of the IE’s engineering report, Seller fails, in any material respect to meet the IE’s recommendations (as such recommendations may be updated from time to time by the IE) for the Successful Repair, or make sufficient progress in effecting same, in each case as determined and reported by the IE, consistent with Industry Standards and Prudent Electrical Practices, SCE shall have the right in its sole discretion to (i) exercise its Storage Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(o). Until a Successful Repair is demonstrated: (x) for any Put Delivery Period, the Storage Unit will be deemed unavailable for purposes of Article Ten; *provided*, upon Seller’s demonstration of a Successful Repair, the Storage Unit will be deemed available retroactive to the hour that such Successful Repair was completed, and (y) for any RA Delivery Period, the Expected Contract Quantity will be deemed zero (0) for purposes of Section 9.02(a).
2. If an Event of Default pursuant to Sections 3.02(n) has occurred, then SCE shall have the right in its sole discretion to (i) exercise its Storage Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(n).
3. During any Put Delivery Period, Seller shall not allow the Charging Capacity or Discharging Capacity of any Storage Unit to fall below *[TBD]* percent *[(#%)]* of the applicable SU Contract Capacity, or the Storage Capacity of any single Storage Unit to fall below *[TBD]* percent *[(#%)]* of the applicable Maximum Storage Level, on average for a period of:
	1. six (6) months (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) due to Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Storage Unit prior to the expiration of such six (6) month period (or longer cure period identified in the IE’s written report); or
	2. sixty (60) days (whether or not consecutive) within a rolling twelve (12) month period (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) for any reason or circumstance, including Forced Outage, but excluding Planned Outage and Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Storage Unit prior to the expiration of such sixty (60) day period (or longer cure period identified in the IE’s written report).
4. For the avoidance of doubt, all repair obligations under this Section 8.02 that arose during a RA Delivery Period or Put Delivery Period shall remain after any transition between any RA Delivery Period and any Put Delivery Period.

# MONTHLY CAPACITY PAYMENTS AND OTHER COMPENSATION

## Compensation.

1. RA Delivery Period. Compensation to Seller for the Product for any RA Delivery Period shall consist of a Monthly RA Capacity Payment calculated in accordance with Section 9.02(a). Payments will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the RA Delivery Period. Other payments and costs will be allocated during the RA Delivery Period in accordance with Section 9.03.
2. Put Delivery Period. Compensation to Seller for the Product for any Put Delivery Period shall consist of (a) a Monthly Energy Capacity Payment or Reduced Monthly Energy Capacity Payment calculated in accordance with Section 9.02(b) and Article Ten; and (b) a Variable O&M Payment calculated in accordance with Section 9.04. The Parties may also be liable for an Energy Adjustment Payment in accordance with Section 9.06. Payments will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the Put Delivery Period.

## Monthly Capacity Payment.

1. RA Delivery Period. SCE shall make a Monthly RA Capacity Payment, payable monthly after the applicable Showing Month, in arrears, to Seller for each Showing Month of the RA Delivery Period, provided that such Monthly RA Capacity Payment is subject to reduction in accordance with this Agreement. The Monthly RA Capacity Payment for each Showing Month of the RA Delivery Period is calculated as set forth below,

“Monthly RA Capacity Payment” = (A x B x 1,000)

where:

*A* = applicable Monthly RA Capacity Price for that Showing Month

*B =* $\sum\_{i}^{n}[(C\_{i}-D\_{i}) ×(\frac{1}{n})]$

*C* = Expected Contract Quantity provided by Seller to SCE pursuant to and consistent with Section 12.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in MWs) provided on any particular day of any Showing Month may not exceed the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* during such day

D = Aggregate megawatts of Shortfall Capacity associated with the applicable day of the Showing Month; *provided*, Shortfall Capacity may not exceed *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]*

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly RA Capacity Payment calculation shall be rounded to two decimal places.

1. Put Delivery Period. For each Storage Unit, SCE shall make a Monthly Energy Capacity Payment, payable in arrears, to Seller for each month of the Put Delivery Period. The Monthly Energy Capacity Payment for each Storage Unit for each month of a Put Delivery Period is set forth in Appendix 9.02 and is subject to reduction in accordance with this Agreement. If the Monthly Energy Capacity Payment is reduced in accordance with this Agreement, SCE shall make the Reduced Monthly Energy Capacity Payment in lieu of the Monthly Energy Capacity Payment.

## Allocation of Other Payments and Costs During RA Delivery Periods.

With respect to any RA Delivery Period:

1. Seller shall retain any revenues it may receive from and pay all costs, charges, fees or penalties charged by the CAISO or any other third party with respect to the Storage Units for (i) charging, discharging and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.
2. Buyer shall be entitled to receive and retain all revenues associated with the Product (including any capacity revenues from (i) RMR Contracts for the Storage Units, (ii) the Capacity Procurement Mechanism, or its successor, associated with the Storage Units, and (iii) RUC Availability Payments, or its successor, but excluding payments described in Section 9.03(a)(i)-(iv)).
3. In accordance with Section 9.02(a) and Article Eleven of this Agreement,

(i) all such Buyer revenues described in this Section 9.03, but received by Seller, or a Storage Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Storage Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Eleven of this Agreement against any future amounts Buyer may owe to Seller under this Agreement. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Product; and

(ii) all such Seller, or a Storage Unit’s SC, owner, or operator revenues described in this Section 9.03, but received by Buyer shall be remitted to Seller.

1. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.
2. Seller bears sole responsibility for establishing and compensating its SC. Seller shall be responsible for (i) managing, purchasing, scheduling, and transporting all Charging Energy Requirements, (ii) all costs for the Storage Units’ Charging Energy Requirements except for those costs set forth in Section 9.03(f), (iii) any Governmental Charges associated with the Charging Energy Requirements, and (iv) if applicable, returning the Storage Units at the start of any Put Delivery Period to the same State of Charge the Storage Units were at as of the end of the previous Put Delivery Period.
3. Except as set forth in Section 9.03(e), SCE shall be responsible for all costs for the Storage Units’ Charging Energy Requirements that are measured on a Charging Capacity or Discharging Capacity (MW) basis.

## Variable O&M Payment During Put Delivery Periods.

For any Put Delivery Period, SCE shall pay Seller a “Variable O&M Payment” for each Storage Unit, calculated as follows:

Variable O&M Paymentm =
Variable O&M Chargey \*  Qualifying Delivered Energyi

where:

m = the relevant month within the Put Delivery Period being calculated

y = the Contract Year corresponding to month “m”

n = the number of Settlement Intervals in month “m”

i = the Settlement Interval in month “m”

## Energy from Start-Up During Put Delivery Period.

In addition to all Energy discharged after a Start-Up, all Energy discharged prior to the Storage Unit achieving a Start-Up during the respective start-up cycle during any Put Delivery Period shall be for SCE’s account.

## Energy Adjustment Payment.

If, in a month during a Put Delivery Period, a Storage Unit’s Actual Efficiency Factor is less than or greater than the Energy Efficiency Tolerance Band, then an Energy Adjustment Payment for the Storage Unit for that month will be calculated as follows:

1. The “Actual Efficiency Factor” for month “*m*” is given by:

$$AEF\_{m}= \frac{\sum\_{i}^{N}Discharge\_{i} +Available Energy\_{end}-Available Energy\_{beg}}{\sum\_{i}^{N}Charge\_{i}} $$

where:

*m* = the relevant month within the Put Delivery Period being calculated

*N* = the number of Settlement Intervals in month “*m*”

*i =* the Settlement Interval in month “*m*”

$Discharge\_{i}$ = the amount of energy (in MWh) discharged by the Storage Unit for the Settlement Interval “*i*” in month “*m*”

$Charge\_{i}$ = the amount of energy (in MWh) used to charge the Storage Unit for the Settlement Interval “*i*” in month “*m*”

*Available Energybeg =* the amount of energy (in MWh) stored in the Storage Unit available for discharge at the end of the last Settlement Interval in the month preceding month “*m,*” but excluding all months during any RA Delivery Period

*Available Energyend =* the amount of energy (in MWh) stored in the Storage Unit available for discharge at the end of the last Settlement Interval in month “*m*”

“Calculable Month” shall mean a month where $\sum\_{i}^{N}Charge\_{i}$*>* 0 and 0 ≤ *AEFm* ≤ 1

; *provided*, if for month “m”

(i) $\sum\_{i}^{N}Charge\_{i}$*=* 0,

(ii) *AEFm* > 1, or

(iii) *AEFm* < 0,

then

(x) there shall be no Energy Adjustment Payment for such month,

(y) the Actual Efficiency Factor and the Energy Adjustment Payment calculated for the next month that is a Calculable Month (the “Calculated Month”) shall be based on all of the *Dischargei* and *Chargei* Settlement Interval data for the period after the most recent Calculable Month that is not the Calculated Month until the end of the Calculated Month, but excluding all months during any RA Delivery Period, (the “Energy Adjustment Period”) and the *Available Energybeg* shall be the amount of energy (in MWh) stored in the Storage Unit available for discharge at the end of the last Settlement Interval in the month preceding the first month of the Energy Adjustment Period, but excluding all months during any RA Delivery Period, and *Available Energyend* shall be the amount of energy (in MWh) stored in the Storage Unit available for discharge at the end of the last Settlement Interval of the Calculated Month, and

(z) no Energy Efficiency Capacity Payment Reduction shall be applied to the Reduced Monthly Energy Capacity Payment for such month until an Actual Efficiency Factor can be calculated pursuant to subsection (y), and such Actual Efficiency Factor shall be used to calculate the Energy Efficiency Capacity Payment Reduction, if any, for each month in the Energy Adjustment Period and shall be applied to the Reduced Monthly Energy Capacity Payment for each month in the Energy Adjustment Period. Any adjustment made under this subsection (z) shall be made retroactively pursuant to Section 11.03.

1. The deviation from the Guaranteed Efficiency Factor Min for month “*m”* is:

$$δ\_{Min}= \frac{AEF\_{m}-GEF^{Min} }{GEF^{Min}}$$

where:

*m* = the relevant month within the Put Delivery Period being calculated

$GEF^{Min}$ = the applicable Guaranteed Efficiency Factor Min for the Storage Unit as set forth in Appendix 1.01

1. The deviation from the Guaranteed Efficiency Factor Max for month “*m*” is:

$$δ\_{Max}= \frac{AEF\_{m}-GEF^{Max} }{GEF^{Max}}$$

where:

*m* = the relevant month within the Put Delivery Period being calculated

$GEF^{Max }$= the applicable Guaranteed Efficiency Factor Max for the Storage Unit as set forth in Appendix 1.01

1. The “Energy Efficiency Tolerance Band” is from $GEF^{Min}$to $GEF^{Max}$, inclusive.
2. The “Energy Adjustment Payment” for month “m” shall be as follows:

If $GEF^{Min }\leq AEF\_{m}\leq GEF^{Max }$, then the Energy Adjustment Payment shall be zero dollars ($0).

If$ AEF\_{m}<GEF^{Min }$, then the Energy Adjustment Payment will be negative and will result in a payment to SCE from Seller, calculated as follows:

$$Energy Adjustment Payment =\left(\sum\_{i}^{N}Charge\_{i}\right)\*δ\_{Min}\*p\_{m}^{w}$$

where:

*m* = the relevant month within the Put Delivery Period being calculated

*N* = the number of Settlement Intervals in month “*m*”

*i =* the Settlement Interval in month “*m*”

$δ\_{Min}$= the deviation from the Guaranteed Efficiency Factor Min calculated above for month *“m”*

$p\_{m}^{w}$ = the weighted-average price over all the Settlement Intervals for month “*m*” calculated as:

$p\_{m}^{w}= \sum\_{i}^{N}P\_{i}\* \frac{Charge\_{i}}{Total Charge}$

where:

*i* = the Settlement Interval in month “*m*”

*N* = the number of Settlement Intervals in month “*m*”

Pi = the price of the energy used to charge the Storage Unit for Settlement Interval “*i*”

$Charge\_{i}$ = the amount of energy (in MWh) used to charge the Storage Unit for the Settlement Interval “*i*” in month “*m*”

$Total Charge= \sum\_{i}^{N}Charge\_{i}$, for month *“m”*

If $ AEF\_{m}>GEF^{Max}$, then the Energy Adjustment Payment will be positive and result in a payment to Seller from SCE, calculated as follows:

$$Energy Adjustment Payment =\left(\sum\_{i}^{N}Charge\_{i}\right)\*δ\_{Max}\*p\_{m}^{w}$$

where:

*m* = the relevant month within the Put Delivery Period being calculated

*N* = the number of Settlement Intervals in month “*m*”

*i =* the Settlement Interval in month “*m*”

$δ\_{Max}$ = the deviation from the Guaranteed Efficiency Factor Max calculated above for month *“m”*

$p\_{m}^{w}$ = the weighted-average price over all the Settlement Intervals for month “*m*” calculated as:

$p\_{m}^{w}= \sum\_{i}^{N}P\_{i}\* \frac{Charge\_{i}}{Total Charge}$

where:

*i* = the Settlement Interval in month “*m*”

*N* = the number of Settlement Intervals in month “*m*”

Pi = the price of the energy used to charge the Storage Unit for Settlement Interval “*i*”; *provided*, Pi shall be no greater than the “energy charge” rate (under the column headers “Delivery Service” and “Generation”) set forth in SCE Tariff Rate Schedule TOU-8 Time-of-Use-General Service-Large for “Service Metered and Delivered at Voltages above 50 kV”, or successor, that corresponds to Settlement Interval “*i*”

$Charge\_{i}$ = the amount of energy (in MWh) used to charge the Storage Unit for the Settlement Interval “*i*” in month “*m*”

$Total Charge= \sum\_{i}^{N}Charge\_{i}$, for month “m”

# Allocation of Standard capacity product payments and charges; ADJUSTMENTS TO MONTHLY ENERGY CAPACITY PAYMENT

## Availability.

1. Allocation of Standard Capacity Product Payments and Charges. During the Delivery Period, if the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under the Tariff, or any similar standards, charges or payments that may be implemented for resources providing flexible capacity resource adequacy attributes or other types of Resource Adequacy Benefits, any Availability Incentive Payments and other resulting payments will be for the benefit of Seller and for Seller’s account and any Non-Availability Charges and other resulting charges will be the responsibility of Seller and for Seller’s account.
2. RA Capacity Reduction. If, at any time during any Put Delivery Period, any of the Storage Unit’s Net Qualifying Capacity does not equal its *[SCE Note: for a two hour product “SU RA Contract Capacity”; for a four hour product “SU Contract Capacity”]*, then a RA Adjustment for such Storage Unit shall be calculated in the following manner:

RA Adjustment = Net Qualifying Capacity of the Storage Unit / the applicable *[SCE Note: for a two hour product “SU RA Contract Capacity”; for a four hour product “SU Contract Capacity”]*;

*provided*, if the RA Adjustment is greater than one (1), then the RA Adjustment for such Storage Unit shall equal one (1). For each applicable Storage Unit, the RA Adjustment shall be applied to the calculation of the Reduced Monthly Energy Capacity Payment for such Storage Unit under Section 10.03.
3. Rated Power Capacity Payment Reduction. If, regardless of cause including without limitation by reason of Force Majeure, Forced Outage or Planned Outage, (A) the Available Discharging Capacity, Available Charging Capacity, or Available Storage Capacity of a Storage Unit is less than its SU Contract Capacity in any Settlement Interval in a month during any Put Delivery Period, or (B) (1) the Actual Efficiency Factor calculated pursuant Section 9.06 for the applicable month is greater than the $GEF^{Min}$ and (2) the Qualifying Delivered Energy from a Storage Unit is less than the Performance Tolerance Band Lower Limit in any Settlement Interval in a month during any Put Delivery Period, then the Rated Power Capacity Payment Reduction for the affected Storage Unit for that month will be calculated as follows:
	1. For each Settlement Interval in the month, the “Price-Weighted Capacity Availability” is calculated as follows:

Price-Weighted Capacity Availabilityi = (AMCPh(i) \* Capacity Availabilityi) / AMCPavg(m)

where:

*i* = the Settlement Interval in month “m”

*AMCP* = 

*h(i)* = the Trading Hour corresponding to Settlement Interval “i” being calculated

*avg(m)* = the simple average over all Settlement Intervals in month “m”

For purposes of such calculation, Capacity Availability for any Settlement Interval shall not exceed the applicable SU Contract Capacity.

* 1. Using the Price-Weighted Capacity Availability calculated above, the “Price-Weighted Monthly Capacity Availability” for month “m” is calculated as follows:

Price-Weighted Monthly Capacity Availabilitym =  Price-Weighted Capacity Availabilityi

where:

*m* = the relevant month within the Put Delivery Period being calculated

*n* = the number of Settlement Intervals in month “m”

*i* = the Settlement Interval in month “m”

* 1. Using the Price-Weighted Monthly Capacity Availability calculated above, the “Capacity Price Adjustment Factor” for month “m” is calculated as follows:

Capacity Price Adjustment Factorm = Price-Weighted Monthly Capacity Availabilitym / (Q \* n)

where:

*m* = the relevant month within the Put Delivery Period being calculated

*Q* = the SU Contract Capacity

*n* = the number of Settlement Intervals in month “m”

* 1. Finally, using the Capacity Price Adjustment Factor calculated above, the “Rated Power Capacity Payment Reduction” for month “m” is calculated as follows:

Rated Power Capacity Payment Reductionm = 0.50 \* Monthly Energy Capacity Payment \* (1 – Capacity Price Adjustment Factor)

For purposes of calculating the Rated Power Capacity Payment Reduction in this subsection (iv), the Monthly Energy Capacity Payment is the Monthly Energy Capacity Payment applicable to the Storage Unit as set forth in Appendix 9.02.

1. A/S Capacity Payment Reduction. If, regardless of cause including without limitation by reason of Force Majeure, Forced Outage or Planned Outage, for each Ancillary Service listed in Appendix 1.01, the A/S Availability of a Storage Unit is less than the applicable A/S Maximum Capacity quantity specified in Appendix 1.01 in any Settlement Interval of a month during any Put Delivery Period, then the A/S Capacity Payment Reduction for the Storage Unit for that month will be calculated as follows:
2. The “Monthly Available A/S Capacity” for month “m” is calculated as follows:

Monthly Available A/S Capacitym =  A/S Availabilityi,k

where:

*m* = the relevant month within the Put Delivery Period being calculated

*n* = the number of Settlement Intervals in month “m”

*i* = the Settlement Interval in month “m”

*k* = the applicable Ancillary Service

For purposes of such calculation, for each Ancillary Service, A/S Availability for any Settlement Interval shall not exceed the applicable A/S Maximum Capacity quantity specified in Appendix 1.01.

1. Using the Monthly Available A/S Capacity calculated above, the “A/S Price Adjustment Factor” for month “m” is calculated as follows:

A/S Price Adjustment Factorm = Monthly Available A/S Capacitym/ ( A/S Maximum Capacityk \* n)

where:

The applicable A/S Maximum Capacity is set forth in Appendix 1.01

*m* = the relevant month within the Put Delivery Period being calculated

*n* = the number of Settlement Intervals in month “m”

*k* = the applicable Ancillary Service

1. Using the A/S Price Adjustment Factor calculated above, the “A/S Capacity Payment Reduction” for month “m” is calculated as follows:

A/S Capacity Payment Reductionm = 0.50 \* Monthly Energy Capacity Payment \* (1 – A/S Price Adjustment Factor)

For purposes of calculating the A/S Capacity Payment Reduction in this subsection (iii), the Monthly Energy Capacity Payment is the Monthly Energy Capacity Payment applicable to the Storage Unit as set forth in Appendix 9.02.

## Energy Efficiency Capacity Payment Reduction.

If, in a month during a Put Delivery Period, a Storage Unit’s Actual Efficiency Factor is less than the Guaranteed Efficiency Factor Min, then the Energy Efficiency Capacity Payment Reduction for the Storage Unit for that month will be calculated as follows:

*AEFm*= Actual Efficiency Factor for month “*m”* calculated pursuant Section 9.06(a)

$GEF^{Min }$ = the applicable Guaranteed Efficiency Factor Min for the Storage Unit as set forth in Appendix 1.01

If $GEF^{Min }\leq AEF\_{m}$, then no adjustment is made.

If $ AEF\_{m}<GEF^{Min }$, then the “Energy Efficiency Capacity Payment Reduction”, using the deviation from the Guaranteed Efficiency Factor Min ($δ\_{Min}$) for month *m* calculated pursuant to Section 9.06(b), is calculated as follows:

Energy Efficiency Capacity Payment Reduction m = (Monthly Energy Capacity Payment – (Rated Power Capacity Payment Reduction + A/S Capacity Payment Reduction)) \* $δ\_{Min}$ \*-1.

For purposes of calculating the Energy Efficiency Capacity Payment Reduction in this Section 10.02, the Monthly Energy Capacity Payment is the Monthly Energy Capacity Payment applicable to the Storage Unit as set forth in Appendix 9.02.

## Reduced Monthly Energy Capacity Payment.

The “Reduced Monthly Energy Capacity Payment” for each Storage Unit shall be calculated as follows:

Reduced Monthly Energy Capacity Payment = (the applicable Monthly Energy Capacity Payment - (the applicable Rated Power Capacity Payment Reduction + the applicable A/S Capacity Payment Reduction + the applicable Energy Efficiency Capacity Payment Reduction)) \* the applicable RA Adjustment.

# PAYMENT AND BILLING

## Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, *provided* that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded (the “Obligation Month”), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder. An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 11.03, below. If an invoice is not rendered within twenty-four (24) months after the close of the Obligation Month, the right to any payment for that Obligation Month under this Agreement is waived.

## Timeliness of Payment.

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 the month in which the owing Party receives the invoice, or the tenth (10th) day after the owing Party’s receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date, including amounts in dispute pursuant to Section 11.03, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

## Disputes and Adjustments of Invoices.

A Party may adjust any invoice rendered by it for an Obligation Month to correct any arithmetic or computational error, include additional charges or claims, or make an adjustment pursuant to Section 9.06(a)(z) within twelve (12) months after the close of such Obligation Month. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing Notice to the other Party within the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twelve (12) months after the close of the Obligation Month. Failure to provide such Notice within the time frames set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it shall pay the undisputed portion of the invoice when due, but shall have the option, in its sole discretion, to withhold payment of the disputed amount; *provided,* such Party must provide Notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is paid in full. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment.

## Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement against payment of any amounts owed to SCE by Seller arising out of, or related to, this Agreement and any other SCE agreement, tariff, obligation or liability. Nothing in this Section 11.04 limits SCE’s rights under applicable tariffs, other agreements or Applicable Law.

# product delivery obligations (RA Delivery periodS)

12.01 Product.

Seller shall provide Buyer with the Product each day of each Showing Month that is part of a RA Delivery Period in accordance with this Article Twelve.

12.02. Adjustments to Product Provided.

(a) Planned Outages: Seller’s obligation to deliver the Product for each day of each Showing Month of a RA Delivery Period may be reduced by the amount of any Planned Outages which exist with respect to any portion of any Storage Unit during the applicable Showing Month for the applicable days of such Planned Outages. Seller shall notify, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month, of the amount of Product (in MWs) from the Storage Units that Buyer is permitted to include in Buyer’s Compliance Showings applicable to that month as a result of such Planned Outage.

(b) Reductions in Net Qualifying Capacity: Subject to Section 8.02, Seller’s obligation to deliver the Product for each Showing Month during a RA Delivery Period may also be reduced in the event any of the Storage Units experiences a reduction in its Net Qualifying Capacity after the Initial Delivery Date as determined by the CAISO.

12.03. Delivery of Product.

Seller shall provide Buyer with the Expected Contract Quantity for each day of each Showing Month that is part of a RA Delivery Period consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Storage Unit’s SC to submit, Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Expected Contract Quantity provided to Buyer for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

(b) Seller shall or shall cause the Storage Unit’s SC to (i) submit written notification to Buyer, no later than fifteen (15) Business Days before the applicable Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Contract Quantity for each day of such Showing Month in the Storage Unit’s SC Supply Plan so that the credited Expected Contract Quantity for each day of the Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

12.04. Indemnities for Failure to Deliver Expected Contract Quantity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Expected Contract Quantity for any portion of the RA Delivery Period;

(b) Seller’s failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the RA Delivery Period as required under Section 12.03;

(c) A Storage Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the RA Delivery Period; or

(d) A Storage Unit SC’s failure to submit accurate Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the RA Delivery Period.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse SCE for those penalties, fines or costs, then SCE may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

12.05. Buyer’s Re-Sale of Product.

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement for any RA Delivery Period (“Resold Product”), Seller agrees, and agrees to cause the Storage Unit’s SC, to follow Buyer’s instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause the Storage Unit’s SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Storage Unit’s SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 12.04, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

12.06. Post-Showing Replacement Capacity.

For any month of the RA Delivery Period, if CAISO determines, in accordance with the Tariff, that any portion of the Expected Contract Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showings requires outage replacement in accordance with Section 40.7 of the Tariff (“Shortfall Capacity”), Seller’s Monthly RA Capacity Payment will be reduced in accordance with Section 9.02(a) above and, neither Seller, nor the Storage Unit’s SC, shall have the right to provide Buyer with RA Replacement Capacity with respect to such Shortfall Capacity.

12.07. Holdback Capacity.

For any month of the RA Delivery Period, and no later than five (5) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Storage Unit’s SC not to list, a portion or all of a Storage Unit’s applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 12.03 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 9.02(a) and calculating any amounts due pursuant to Section 12.04. Seller shall, or shall cause each Storage Unit’s SC to, comply with Buyer’s request under this Section 12.07.

# CREDIT AND COLLATERAL

## Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP, the International Financial Reporting Standards (“IFRS”), or any successor to either of the foregoing (“Successor”):

1. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
2. Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is a SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party is not a SEC reporting company.

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the requirements of this Section 13.01. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

## Seller’s Credit Requirements.

1. Credit Requirement After Effective Date. Seller shall post and thereafter maintain delivery date security collateral (“Delivery Date Security”) equal to forty-five dollars ($45) for each kilowatt of the total Expected Contract Capacity. Seller shall post the Delivery Date Security in accordance with the following terms and conditions:
2. Seller shall post one-half of the Delivery Date Security within two (2) Business Days following the Effective Date, with the remainder to be posted within two (2) Business Days after Final CPUC Approval is obtained or waived by SCE in its sole discretion;
3. The Delivery Date Security shall be held by SCE as collateral security for Seller’s obligation to meet the Expected Initial Delivery Date;
4. The Delivery Date Security must be in the form of either a cash deposit or a Letter of Credit;
5. If Seller posts any Delivery Date Security in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 13.03(a) of this Agreement; and
6. If Seller provides the Delivery Date Security by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 13.03(b).

In the event SCE draws Daily Delay Damages from the Delivery Date Security, Seller shall not be required to replenish the drawn amount.

1. Return of Delivery Date Security. Within five (5) Business Days following the Initial Delivery Date, or upon termination of this Agreement pursuant to Section 2.02 or Section 4.02, SCE shall return to Seller the Delivery Date Security, less any Daily Delay Damages SCE has retained if the Initial Delivery Date is after the Expected Initial Delivery Date. If Seller achieves an Initial Delivery Date for the Project by the Expected Initial Delivery Date, SCE shall return to Seller the entire amount of the Delivery Date Security held by SCE.
2. Credit Requirements During Delivery Period.

During the Delivery Period, Seller shall post and maintain Performance Assurance in an amount equal to ten percent (10%) of the sum of the estimated Monthly Capacity Payments for all of the Storage Unit(s) for the lesser of (i) the current month and all remaining months of the Delivery Period, or (ii) the current month and the next thirty-five (35) months, with estimated Monthly Capacity Payments for any Contract Year for which Seller has not exercised its Energy Put Option to be equal to the estimated Monthly Energy Capacity Payments for such period, and such estimated Monthly Capacity Payments not being subject to reduction, change or adjustment pursuant to Article Nine, Article Ten, or Article Twelve, or any other provision in this Agreement. Seller shall post the Performance Assurance in accordance with the following terms and conditions:

* + - 1. Performance Assurance must be in the form of either a cash deposit or a Letter of Credit;
			2. Performance Assurance shall be posted to SCE and maintained at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement;
			3. If Seller posts any Performance Assurance in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 13.03(a) of this Agreement; and
			4. If Seller provides Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 13.03(b).

Notwithstanding any other provision in this Agreement, SCE is not required to provide Performance Assurance to Seller.

## Administration of Performance Assurance.

1. Interest Payments on Cash. Performance Assurance posted in cash shall earn Simple Interest. Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third (3rd) Business Day (so long as no Event of Default has occurred and is continuing with respect to Seller):
2. of the first (1st) month after the month to which the invoice relates; or
3. after the day on which such invoice is received.

On or after the occurrence of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder for so long as such Event of Default is continuing or the obligations of Seller under this Agreement have not been satisfied.

1. Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 13.03(b), issued by a Qualified Institution acceptable to SCE, and subject to the following provisions:
2. Each Letter of Credit shall be maintained for the benefit of SCE. Seller shall:
3. renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
4. if the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
5. if the Qualified Institution issuing a Letter of Credit fails to honor SCE’s properly documented request to draw on an outstanding Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in its sole discretion, within one (1) Business Day after such refusal;

*provided,* if Seller fails to perform in accordance with (A), (B), or (C) above, Seller shall be deemed to have failed to meet its obligation to provide Performance Assurance or Delivery Date Security.

1. Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies);
2. Upon, or at any time after SCE has determined that Seller (A) has forfeited all or part of its Delivery Date Security, or (B) owes Daily Delay Damages pursuant to Section 2.06(a), then SCE may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be for the account of SCE.
3. Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SCE may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller’s obligations to SCE under this Agreement and SCE shall have the rights and remedies set forth in Section 13.04 with respect to such cash proceeds. Notwithstanding SCE’s receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (A) for any failure to provide sufficient Performance Assurance or (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
4. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

## First Priority Security Interest.

To secure Seller’s performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right of setoff against), and assignment of the Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE’s Security Interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE may do any one or more of the following:

1. Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
2. Exercise any of its rights of setoff against any and all property of Seller in SCE’s possession;
3. Draw on any outstanding Letter of Credit issued for its benefit; and
4. Liquidate all Performance Assurance then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article Thirteen and Article Three, neither Party:

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

## Consolidation of Seller’s Financial Statements.

1. Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller’s financial statements with Buyer’s financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, “Consolidation of Variable Interest Entities” (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the “Financial Consolidation Requirement”).
2. If the Financial Consolidation Requirement is applicable, then:
3. Within 20 days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.
4. Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.
5. If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller’s regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
6. If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer’s independent registered public accounting firm such access to Seller’s records and personnel, as reasonably required so that Buyer’s independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer. If Buyer’s independent registered public accounting firm during or as a result of the audits permitted in this Section 13.06(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller’s internal controls over financial reporting, then within 90 days of Seller’s receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided*, *however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller’s true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
7. Buyer shall treat Seller’s financial statements and other financial information provided under the terms of this Section 13.06 in strict confidence and, accordingly:

1. Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company’s financial condition or to obtain credit ratings;
2. Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer’s or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Article Twenty Nine; and

1. Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 13.06, (2) use such information solely for purposes of conducting the audits described in this Section 13.06, and (3) disclose any information received only to personnel responsible for conducting the audits.
2. If the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
3. If, after consultation and review, the Parties do not agree on issues raised by Section 13.06(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party’s respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 3.01. If the independent audit firm associated with Buyer still determines, after review by the third party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided*, *however*, that in addition to the protections in Section 13.06(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

# COLLATERAL ASSIGNMENT

## Consent to Collateral Assignment.

Subject to the provisions of this Article Fourteen, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project; *provided*, Seller shall be responsible for SCE’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including without limitation attorneys’ fees. SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

1. SCE shall give Notice of an Event of Default by Seller, to the persons to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default.
2. Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report setting forth:
3. the status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
4. impediments to the cure plan or its development;
5. if a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
6. any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days of Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured.

1. Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement; *provided*, such cure period may, in SCE’s sole discretion, be extended by no more than an additional one hundred eighty (180) days.
2. Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default.
3. Lender shall receive prior Notice of, and the right to approve, material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned.
4. In the event Lender, directly or indirectly, takes possession of, or title to the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller’s obligations arising under the Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement). Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date; *provided,* if, prior to such assumption, SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the assumption date in order to avoid the exercise by SCE (in its sole discretion) of SCE’s right to terminate the Agreement in respect of such Event of Default, then Lender, at its option and in its sole discretion, may elect to either (i) cause such Event of Default to be cured, or (ii) assume Seller’s obligations under the Agreement and all related agreements, including the pre-assumption payment obligations that are otherwise excluded.
5. If Lender elects to sell or transfer the Project (after Lender directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience at least equivalent to Seller as of the Effective Date, as determined by SCE in its sole discretion.
6. If this Agreement is rejected in Seller’s bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in *lieu* of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its bankruptcy case that would, in SCE’s judgment, materially impact the rights or obligations of SCE under such agreement.
7. Seller shall reimburse, or shall cause Lender to reimburse, SCE for all reasonable and direct third party expenses (including the reasonable fees and expenses of counsel of SCE’s choice) incurred by SCE in the preparation, negotiation, execution and/or delivery of any documents required under this Article Fourteen, or otherwise requested by Seller or Lender in connection with this Article Fourteen.

# GOVERNMENTAL AND ENVIRONMENTAL CHARGES

## Governmental Charges.

For any Put Delivery Period, Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority (“Governmental Charges”) on or with respect to the Product at or before the Energy Delivery Point, and SCE shall pay or cause to be paid all Governmental Charges on or with respect to Product after the Energy Delivery Point. In the event Seller is required by Applicable Laws to remit or pay Governmental Charges which are SCE’s responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges. If SCE is required by Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Seller under Article Eleven of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

## Compliance with Laws and Indemnification.

Seller shall be responsible for obtaining and maintaining all Required Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term, including any new or revised Required Permits or Applicable Laws that become effective during the Term. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller’s failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to SCE and Seller shall indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs or expenses (including attorneys’ fees) incurred by or brought against SCE in connection with all Required Permits and compliance with Applicable Laws and Permit Requirements.

## Environmental Costs and Indemnification.

Seller is solely responsible for all Environmental Costs, all GHG Charges, any AB 32 Compliance Obligation, and all other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with AB 32 or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by an authorized Governmental Authority) with respect to the Storage Unit(s) and/or Seller, if applicable. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs and/or expenses (including, without limitation, attorneys’ fees) incurred by or brought against Buyer in connection with such Environmental Costs, GHG Charges, AB 32 Compliance Obligation, and other such costs.

# CHARGING ENERGY MANAGEMENT AND PAYMENTS (PUT DELIVERY PERIODS)

## SCE’s Charging Energy Management Responsibilities.

Except as set forth in Section 16.03 or as expressly set forth in this Agreement, during any Put Delivery Period, SCE shall be responsible for managing, purchasing, scheduling, and transporting all of the Charging Energy Requirements of each Storage Unit to the Energy Delivery Point.

## Seller Charging Energy Responsibilities.

Seller shall take any and all action necessary to deliver the Charging Energy Requirements to the Storage Unit(s) in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy Requirements to the Storage Unit(s).

## Charging Energy Costs, Charges, and Payments.

Except as set forth in Section 4.03, with respect to charging the Storage Unit(s) during any Put Delivery Period, SCE shall be responsible for the electric energy costs associated with providing the Charging Energy Requirements to the Energy Delivery Point (“Charging Energy Costs”); *provided*, that Seller shall be responsible for all costs arising out of or pertaining to (i) any Energy Adjustment Payment and Energy Efficiency Capacity Reduction Payment, (ii) a Non-SCE Dispatch, and (iii) a Non-SCE Charge.

If SCE pays any electric energy costs which are Seller’s responsibility under this Agreement, SCE may deduct the amount of such electric energy costs from any amounts due to Seller pursuant to the terms of this Agreement.

## Charging Notice.

SCE will have the right to charge each Storage Unit during any Put Delivery Period, seven days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement. Each Charging Notice will be effective unless and until SCE modifies such Charging Notice by providing Seller with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond SCE’s control, SCE may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller’s personnel designated in Appendix 20.05 to receive such communications.

## Non-SCE Charge.

Seller shall not charge any Storage Unit during any Put Delivery Period other than pursuant to a Charging Notice, or in connection with a Seller Initiated Test. If, during any Put Delivery Period, Seller (i) charges any Storage Unit to a State of Charge greater than the State of Charge provided for in the Charging Notice, or (ii) charges a Storage Unit without a Charging Notice (each, a “Non-SCE Charge”), then (x) Seller shall be responsible for all energy costs associated with such charging of such Storage Unit(s), (y) such energy shall not be included in the calculation of any Energy Adjustment Payment or Energy Efficiency Capacity Reduction Payment, and (z) SCE shall be entitled to discharge such energy and entitled to all of the benefits associated with such discharge. For purposes of Section 3.02(g), a Non-SCE Charge shall not be considered a permitted charge under this Article Sixteen.

Seller shall be responsible and pay for any charges, sanction, or penalties associated with a Non-SCE Charge, any failure to charge any Storage Unit(s) consistent with a Charging Notice, and any deviations from a Charging Notice or charging instruction or award.

# STORAGE OF ELECTRIC ENERGY (PUT DELIVERY PERIODS)

## Storage of Electric Energy.

During any Put Delivery Period, SCE shall be entitled to all benefits resulting from the stored electric energy, excluding any electric energy used for and during a Non-SCE Dispatch.

## Title, Possession, and Risk of Loss.

During a Put Delivery Period, SCE shall hold title to, possession of, and risk of loss of the (i) Charging Energy Requirements up to the Energy Delivery Point, and (ii) the Energy from the Product after the Energy Delivery Point.

During a Put Delivery Period, Seller shall have title to, possession of, and risk of loss of the (x) Charging Energy Requirements at and after the Energy Delivery Point, and (y) Energy from the Product up to and at the Energy Delivery Point.

1. Seller Holds Title for SCE’s Benefit. Notwithstanding this Section 17.02, during a Put Delivery Period, Seller shall at all times hold title to the Charging Energy Requirements, excluding electric energy used for a Non-SCE Dispatch, for the benefit of SCE.
2. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when control and title to the Charging Energy Requirements is vested in such Party in accordance with Section 17.02.

# CAISO AND NON-SCE DISPATCHES (PUT DELIVERY PERIODS)

## CAISO Dispatch.

Except in order to effectuate a Seller Initiated Test, any award, instruction to charge, or dispatch of any Storage Unit by the CAISO during a Put Delivery Period for any reason (whether pursuant to an RMR Contract, must offer obligations, Energy dispatches or otherwise), shall be deemed to be a dispatch or request to charge by SCE for purposes of this Agreement. The Energy dispatched shall be for SCE’s benefit hereunder, and SCE shall pay the costs of such CAISO awards, instruction to charge, and dispatches in accordance with the terms of this Agreement as if such dispatches or instruction to charge were directed by SCE. SCE shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, including any availability payments under an RMR Contract for any Storage Unit. Except in order to effectuate a Seller Initiated Test, a dispatch by the CAISO during a Put Delivery Period shall not be considered a Non-SCE Dispatch pursuant to this Agreement. CAISO dispatches following any Seller Initiated Test pursuant to Article Seven shall not obligate SCE for any associated costs incurred in starting any Storage Unit for, or operation during, such testing period.

## Non-SCE Dispatch.

During any Put Delivery Period, Seller shall not start-up or discharge any Storage Unit other than (a) pursuant to a Dispatch Notice or (b) pursuant to a Non-SCE Dispatch. Seller shall, to the extent possible, notify SCE no later than 5:00 a.m. PPT at least two (2) Business Days in advance of the Trading Day of any start-up or discharge pursuant to a Non-SCE Dispatch, and shall, except as otherwise required by Applicable Law, delay such start-up or operation if requested by SCE. Seller shall indemnify, defend, and hold SCE harmless against the costs or losses of SCE resulting from a Non-SCE Dispatch, including all (i) charges, sanctions, and penalties imposed by CAISO, and (ii) the Charging Energy Requirements. Imbalance Energy revenues net of any charges, sanctions, and penalties imposed by CAISO for a Non-SCE Dispatch shall be for Seller’s account.

# SCHEDULING COORDINATOR (pUT DELIVERY PERIODS)

## SCE as Scheduling Coordinator.

At least thirty (30) days prior to the beginning of a Put Delivery Period, Seller shall take all actions and execute and deliver to SCE and the CAISO all documents necessary to authorize or designate SCE as Scheduling Coordinator (“SC”) for the Project with the CAISO effective as of the beginning of the Put Delivery Period. If SCE is not fully authorized as the SC for the Project as of the beginning of the Put Delivery Period and such delay is:

1. due solely to Seller’s failure to comply with the terms of this Agreement and the Tariff related to authorizing SCE as SC, then until SCE is fully authorized as the SC for the Project, (i) SCE shall be entitled to the Product but (ii) Seller shall not be entitled to any payment under this Agreement;
2. due solely to SCE’s failure to comply with the terms of this Agreement and the Tariff related to authorizing SCE as SC, then, until SCE is fully authorized as the SC for the Project, (i) SCE shall not be entitled to the Product; and (ii) the Storage Unit(s) shall be deemed to be available for the amount of the Contract Capacity that is unavailable or undeliverable due to such failure; or
3. due to either (i) CAISO failure to perform the actions necessary to authorize SCE as SC, or (ii) the failure of both Parties to comply with the terms of this Agreement and the Tariff with respect to authorizing SCE as SC, then, until SCE is fully authorized as the SC for the Project, (x) SCE shall not be entitled to the Product, and (y) Seller shall not be entitled to any payment under this Agreement.

During a Put Delivery Period, Seller shall not authorize or designate any other party to act as SC, nor shall Seller perform for its own benefit the duties of SC, and Seller shall not revoke SCE’s authorization to act as SC unless agreed to in writing by SCE. SCE shall submit bids and schedules to the CAISO in accordance with the Tariff and, subject to Article Twenty below, the Operating Restrictions. Seller shall reasonably cooperate with SCE in performing any actions necessary prior to the start of any Put Delivery Period to allow each Storage Unit to be (i) charged or dispatched (or otherwise scheduled to operate) for the first day of the Put Delivery Period and (ii) reported to or scheduled with the CAISO pursuant to the Tariff, either through SLIC or as otherwise required by the CAISO, as being in an outage at the commencement of the Put Delivery Period. All CAISO costs and revenues (including credits and other payments) associated with a dispatch or charge of the Storage Unit(s) on the first day of a Put Delivery Period that are received by Seller or their SC on the day prior to the Put Delivery Period shall be for SCE’s account.

Furthermore, no later than two (2) weeks prior to the first day of a Put Delivery Period, Seller shall take all actions necessary with the CAISO and SCE to ensure that by the day immediately prior to the first (1st) day of the Put Delivery Period, the Master File and, if applicable, the RMR Contract reflect the values that SCE deems appropriate based on the Operating Restrictions under this Agreement. If, at any time prior to the termination of this Agreement, any action or inaction of Seller, or a condition of any Storage Unit that could result in a revision to the Master File or to the operating restrictions set forth in an RMR Contract, then Seller shall promptly give Notice to SCE and shall use all reasonable efforts to maintain the Operating Restrictions exactly as they existed on the Effective Date.

Seller is responsible for and shall pay SCE an “SC Set-Up Fee” equal to the initial costs (including the costs of SCE employees or agents) SCE incurs, as determined in SCE’s sole discretion, as a result of SCE being designated as the Project’s Scheduling Coordinator for the first Put Delivery Period, including the costs associated with the registration of the Project with the CAISO, and the installation, configuration, and testing of all equipment and software necessary for SCE to act as Scheduling Coordinator, Schedule the Project, or charge or discharge the Storage Unit(s); *provided*, the SC Set-up Fee shall not exceed fifty thousand dollars ($50,000.00) and shall not be applicable to any other Put Delivery Period other than the first.

## CAISO Notices.

Subject to Seller complying with its obligations under this Agreement, SCE, as SC during a Put Delivery Period, shall submit all notices and updates required under the Tariff regarding each Storage Unit’s status to the CAISO. Seller will comply with Article Twenty of this Agreement in providing such notices and updates.

## CAISO Settlements.

As SC during a Put Delivery Period, SCE shall be responsible for all settlement functions with the CAISO related to the Project, including, if applicable, as RMR settlement coordinator in accordance with the terms of this Agreement. Seller shall cooperate with SCE in SCE’s performance of any settlement functions, and Seller shall promptly deliver to SCE all Project data and any correspondence or communications with CAISO related to the Project, including any invoices or settlement data, in the format reasonably requested by SCE.

## SDD Charge and SDD Administrative Charge.

Prior to UDP Implementation, (i) if the Qualifying Delivered Energy is not equal to Scheduled Energy in any Settlement Interval during a Put Delivery Period, Seller may be subject to a Scheduling and Delivery Deviation Charge (“SDD Charge”) or Scheduling and Delivery Deviation Administrative Charge (“SDD Administrative Charge”) calculated as set forth in Sections 19.04(a) and 19.04(b) below, and (ii) all CAISO payments and credits resulting from Uninstructed Imbalance Energy during a Put Delivery Period shall be for SCE’s account.

1. Calculation of SDD Charge. Seller shall pay SCE an SDD Charge if during any Settlement Interval during a Put Delivery Period the Qualifying Delivered Energy is less than the Performance Tolerance Band Lower Limit for such Settlement Interval. The SDD Charge is calculated as follows:

If A < B, then SDD Charge = 0.5 \* (B – A) \* C

where:

A = Qualifying Delivered Energy for the Settlement Interval;

B = Performance Tolerance Band Lower Limit; and

C = SDD Price.

Upon CAISO’s implementation of UDP, or any subsequent changes regarding the calculation of UDP, the Parties agree to negotiate in good faith to amend the SDD Charge calculation as necessary to maintain the economic balance of benefits and burdens contemplated under this Section 19.04.

1. Calculation of SDD Administrative Charge. Seller shall pay SCE an SDD Administrative Charge if during any Settlement Interval during a Put Delivery Period, Delivered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, for such Settlement Interval. The SDD Administrative Charge is calculated as follows:

SDD Administrative Charge = Absolute Value (E – D) \* F

where:

D = Delivered Energy for the Settlement Interval;

E = Scheduled Energy for the Settlement Interval; and

F = SDD Admin Price.

## Duties Related to Resource Adequacy Resources.

If a Storage Unit is designated as a Resource Adequacy Resource during a Put Delivery Period, the following will apply:

1. Seller shall take all actions necessary in order to allow SCE to perform its duties as an SC for a Resource Adequacy Resource, including, but not limited to, (i) providing all information needed for SCE to include the Project on SCE’s Supply Plan, and (ii) providing any information requested by SCE related to the Project that is required to be provided to the CAISO or CPUC in order for SCE to comply with the Tariff or other Applicable Laws; and
2. SCE shall use the Resource Adequacy Availability Management (“RAAM”) software, or any successor application, to allow Seller to utilize the substitution rules found in Section 40.9.4.2.1 of the Tariff (“Substitution Rules”), *provided*, (i) SCE is not required to use or change its utilization of SCE owned or controlled assets or market positions, to allow Seller to utilize the Substitution Rules, (ii) Seller, at its own expense, provides substitute capacity that complies with the Substitution Rules, (iii) Seller provides, as soon as practicable, but no later than 5:00 a.m. PPT the day bids are due in the IFM for the day Seller seeks to substitute capacity for, all information to SCE needed to substitute capacity pursuant to the Substitution Rules, including, but not limited to, the substitution start and end dates, the Resource ID for the substitute unit, a short description of the outage, the outage ID from SLIC application, and the amount of capacity to be substituted, (iv) SCE’s duties to take action under this subsection (b) are solely limited to inserting one (1) substitution request through RAAM per day; and (v) Seller causes, and is responsible for, the SC of the storage or generating unit Seller seeks to substitute with to cooperate with SCE in making a substitute request and SCE is not responsible or liable for any costs, damages, penalties, charges, or liabilities (“Substitution Costs”) associated with such SC’s failure to cooperate or take the proper action; *provided*, further, if the CAISO develops a tool, application, or other means, for Seller to submit its own substitution request, then SCE shall not be required to take any action under this Section 19.05(b) to allow Seller to utilize the Substitution Rules. In no event shall SCE be responsible or liable for any Substitution Costs associated with Seller’s inability to utilize the Substitution Rules or rejection by the CAISO of any substitute capacity for any reason, including, but not limited to, any RAAM software limitations or failures, unless SCE is required to take action and such Substitution Costs or rejection result solely from SCE’s actions.

Seller shall provide the information set forth in Section 19.05 through the Outage Management System. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide such information through (in order of preference) electronic mail, facsimile transmission or, if such submissions are not available, then telephonically to the SCE personnel designated to receive such communications as identified in Appendix 20.05 followed by an electronic mail or facsimile transmission of such information as soon as practicable.

SCE may list the Resource Adequacy capacity associated with the Project as Non-Specified RA Replacement Capacity or Specified RA Replacement Capacity.

## Allocation of Charges Related to Generator Replacement Tariff Provisions.

If the Storage Unit(s) are designated as a Resource Adequacy Resource during a Put Delivery Period and Seller requests to place the Storage Unit(s) on a Planned Outage, SCE, as the SC, will submit a request to the CAISO for such a Planned Outage, and if either a Governmental Authority or the Tariff requires that the Storage Unit(s) be replaced with a resource that is not a Resource Adequacy Resource in order for the Planned Outage being requested to be approved, Seller shall be responsible for replacing the Storage Unit(s) with a resource that is not a Resource Adequacy Resource. SCE agrees that in such a circumstance, upon the request of Seller, SCE will take reasonable administrative actions to facilitate such a replacement by Seller; *provided* SCE shall not be required to take any action, or use or change its utilization of its owned or controlled assets or market positions, to allow Seller to replace the Storage Unit(s) with a resource that is not a Resource Adequacy Resource.

## Terminating SCE’s Designation as SC.

At least thirty (30) days prior to the expiration of a Put Delivery Period, or, in the event of an Early Termination Date being declared, two (2) Business Days prior to the Early Termination Date, the Parties will take all actions necessary to terminate the designation of SCE as SC as of the hour ending 12:00 a.m. PPT on the final date of the Put Delivery Period (“SC Replacement Date”). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new SC to replace SCE effective as of the SC Replacement Date, and (ii) cause its newly designated SC to submit a letter to the CAISO accepting the designation; and (b) SCE shall submit a letter to the CAISO resigning as SC effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement SC.

# DISPATCH NOTICES AND OPERATING RESTRICTIONS (PUT DELIVERY PERIODS)

## Availability Notice.

For each Operating Day during a Put Delivery Period, Seller shall provide to SCE using the SCE-provided web-based system (“Outage Management System”) an hourly schedule of the Available Capacity (including Energy and Ancillary Services) that each Storage Unit is expected to have for each hour of such Operating Day, no later than two (2) Business Days before the Trading Day applicable to such Operating Day (the “Availability Notice”). Seller must update SCE immediately using the Outage Management System if the Available Capacity of any Storage Unit changes or is likely to change after the Availability Notice is submitted. Seller must follow up all such updates through the Outage Management System with telephonic updates to SCE’s personnel designated in Appendix 20.05 to receive such communications. Seller shall accommodate SCE’s reasonable requests for changes in the time or form of delivery of the Availability Notices. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide Availability Notices using the form attached in Appendix 20.01 by (in order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to SCE’s personnel designated in Appendix 20.05 to receive such communications.

## Dispatch Notices.

During a Put Delivery Period, SCE will have the right to dispatch each Storage Unit up to PMAX, seven days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Seller electronically (in the form attached in Appendix 20.02 or other available form agreeable to SCE), and subject to the requirements and limitations set forth in this Agreement. Subject to Section 20.04, each Dispatch Notice will be effective unless and until SCE modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond SCE’s control, SCE may provide Dispatch Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller’s personnel designated in Appendix 20.05 to receive such communications. In addition to any other requirements set forth in this Agreement, all Dispatch Notices will be made in accordance with market notice timelines as specified in the Tariff.

## Start-Up Notices.

If a Dispatch Notice includes a Start-Up, Seller shall notify SCE electronically when a Storage Unit has initiated a start, and is synchronized and at Minimum Load ready to be dispatched to the required output. Seller shall provide an electronic or facsimile copy of a completed Start-Up Notice, in the form attached to this Agreement in Appendix 20.03, to SCE within twenty-four (24) hours of the Start-Up. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Grid Control Center.

## Operating Restrictions.

1. Subject to Section 7.04, all Operating Restrictions associated with the Product are specified on Appendix 1.01. In providing a Dispatch Notice or Charging Notice, SCE shall use reasonable efforts to comply with the applicable Operating Restrictions. If SCE submits a Dispatch Notice or Charging Notice that does not conform with the Operating Restrictions, then Seller shall immediately notify SCE of the non-conformity and SCE will modify its Dispatch Notice or Charging Notice to conform to the applicable Operating Restrictions. Until such time as SCE submits a modified Dispatch Notice or Charging Notice, Seller shall, as applicable, deliver the Product in accordance with the Operating Restrictions or charge the Storage Unit(s) in accordance with the Operating Restrictions, and the Storage Unit will not be deemed to be unavailable nor will SDD Administrative Charges, if applicable, be applied for the failure to deliver in accordance with the non-conforming Dispatch Notice or Charging Notice, but only to the extent such Storage Unit was otherwise available but could not be dispatched or charged because of its inability to operate outside of the Operating Restrictions.
2. Notwithstanding anything to the contrary in this Agreement, Section 20.04(a), or the Operating Restrictions, if enough energy is stored in the Storage Unit to meet its PMAX, SCE is permitted to issue a Dispatch Notice that dispatches a Storage Unit to its PMAX and SCE is not required to modify any non-conforming Dispatch Notice that dispatches a Storage Unit to its PMAX; *provided*, in instances where the PMAX is greater than the maximum discharge capability set forth in the Operating Restrictions, Seller shall deliver the Product in accordance with the Operating Restrictions, and the Storage Unit will not be deemed to be unavailable nor will SDD Administrative Charges be applied for the failure to dispatch, but only to the extent such Storage Unit was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Restrictions.

## Communication Protocols.

The Parties shall agree to the communication protocols outlined in Appendix 20.05 to facilitate the exchange of information between the Parties.

## Writing Requirements.

In documenting and confirming Dispatch Notices and Charging Notices, conversations between the Parties’ personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any “writing” requirements under Applicable Laws.

# METERING, COMMUNICATIONS AND TELEMETRY (PUT dELIVERY pERIODS)

## SCE Access.

All communication, metering, telemetry, and associated operation equipment will be centralized into the Project’s Distributed Control System (“DCS”). Seller shall configure each Storage Unit’s DCS so that SCE may access it during any Put Delivery Period via the Generation Management System (“GMS”) from SCE’s Generation Operations Center (“GOC”). Seller shall ensure that the access link will provide a monitoring and control interface to enable automatic control for charging and discharging of each Storage Unit and provide real-time information regarding each Storage Unit(s)’ State of Charge to SCE. Seller shall link the systems via an approved SCE communication network, utilizing existing industry standard network protocol, as approved by SCE. The connection will be bidirectional in nature and used by the Parties to exchange all data points to and from the GOC.

## Control Logic.

Seller will ensure that each Storage Unit’s DCS control logic will be configured to control the Storage Unit in multiple configurations. Each Storage Unit’s control logic will incorporate control signals from multiple locations to perform Energy dispatch, charging, Ancillary Services, and Supplemental Energy functions. Control logic will perform all coordinated megawatt control and Automatic Generation Control (“AGC”) independently for each Storage Unit.

## Delivery of Data.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall provide SCE with all facility and metering information necessary to communicate with SCE as may be requested by SCE, including, but not limited to, the information set forth in Appendix 21.03.

## Satellite Communication System.

Seller is responsible for installing, testing, commissioning and maintaining the Satellite Communications System (“SCS”) at the Project in accordance with instructions provided by SCE and the SCS vendor. Seller shall grant SCE reasonable access to the Site for routine calibration and maintenance of the SCS during a Put Delivery Period.

## SCE Access.

Seller shall take all actions and execute all documents reasonably necessary to grant SCE access to the metering, communications, and telemetry systems specified in this Article Twenty-One during a Put Delivery Period,.

# OUTAGES

## Planned Outages.

Two (2) years prior to the Expected Initial Delivery Date, and thereafter no later than January 1, April 1, July 1 and October 1 of each calendar year during the Term, Seller shall submit to SCE each Storage Unit’s proposed schedule of Planned Outages (“Outage Schedule”), via the Outage Management System, covering every day of the following twenty-four months that is within the Delivery Period. If the Outage Management System is not available or the obligation to submit such schedule occurs during a RA Delivery Period, Seller shall submit the Outage Schedule in substantially the form set forth in Appendix 22.01. Within twenty (20) Business Days after its receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, if consistent with Prudent Electrical Practices, accommodate SCE’s requests regarding the timing of any Planned Outage; *provided* that the CAISO agrees to such changed timing. In the event that SCE’s request to change the timing of any Planned Outage would result in Seller incurring incremental costs, or reduction in Monthly Capacity Payments, in excess of what would have been incurred without the Planned Outage timing change requested by SCE, within five (5) Business Days after receipt of SCE’s request Seller shall provide reasonable documentation to SCE of the costs and/or revenue impact that would be incurred by Seller and SCE may either agree to reimburse (subject to audit by SCE) Seller for such costs and revenue impact or withdraw its request for such change in Planned Outage timing. Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO in compliance with the Tariff. Seller will communicate to SCE all changes to a Planned Outage and estimated time of return of each Storage Unit as soon as practicable after the condition causing the change becomes known to Seller. Planned Outages that will equal more than one hundred sixty-eight (168) hours in any calendar month, must be agreed to and coordinated in advance between the Parties.

## No Planned Outages During Summer Months.

Unless agreed and coordinated in advance by the Parties, no outages shall be scheduled or planned from each May 1 through September 30 during the Delivery Period. In the event that Seller has a previously Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

## Notice of Forced Outages during Put Delivery Periods.

Seller shall communicate the occurrence of any Forced Outage during a Put Delivery Period utilizing SCE’s Outage Management System to enter outage information as required by the Tariff, within ten (10) minutes of the commencement of the Forced Outage. Seller shall telephone SCE’s Generation Operations Center, within twenty (20) minutes of the Forced Outage, at the telephone number(s) listed in Appendix 20.05. If the CAISO imposes a sanction or penalty upon SCE as Seller’s SC due to Seller’s failure to timely provide SCE with a report of a Forced Outage or Planned Outage, Seller shall be responsible for such sanction or penalty.

## Reports of Forced Outages or Planned Outages during Put Delivery Periods.

Seller shall promptly prepare and provide to SCE, using SCE-provided software or forms, all reports of Forced Outages or Planned Outages during Put Delivery Periods that SCE may reasonably require for the purpose of enabling SCE to comply with CAISO requirements or any Applicable Laws.

## Inspection during Put Delivery Periods.

In the event of a Forced Outage during a Put Delivery Period, SCE shall have the right to inspect any Storage Unit and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with SCE during any such inspection.

# FORCE MAJEURE

## No Default for Force Majeure.

Subject to Section 8.02(f), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; *provided*, (a) a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused, and (b) there shall be no Available Capacity or A/S Availability for purposes of calculating any Reduced Monthly Energy Capacity Payment even if the unavailability is due to Force Majeure.

## Force Majeure Claim.

Subject to Section 8.02(f), if, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; *provided*:

1. the Claiming Party, no more than five (5) Business Days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
2. the Claiming Party, within five (5) Business Days, of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
3. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
4. as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

## Termination.

Either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days and materially and adversely affects the operations of the Claiming Party.

# REPRESENTATIONS, WARRANTIES AND COVENANTS

## Representations and Warranties of Both Parties.

As of the Effective Date and the Approval Date, each Party represents and warrants to the other Party that:

1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
2. Except as provided in Section 2.02 and Article Five, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
3. The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action (other than regulatory approval as set forth in Section 2.02) and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws applicable to it;
4. This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
5. It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it becoming Bankrupt;
6. There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
7. No Event of Default with respect to it has occurred and is continuing and no such Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;
8. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement;
9. It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
10. It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product, as applicable, under this Agreement.

## Representations and Warranties of Seller.

Seller represents and warrants to SCE that:

1. As of the Approval Date, Seller has Site Control.
2. As of the Effective Date and the Approval Date, to the best of Seller’s knowledge, each specification and description of each Storage Unit and the Project and the Product in Article One (and related Appendices) is true and correct.
3. As of the Initial Delivery Date, the Project is a New Resource.

## Seller’s Affirmative Covenants.

1. Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
2. Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of SCE with respect to its Security Interest furnished pursuant to this Agreement.
3. Seller shall ensure that no less than twenty percent (20%) of Seller’s aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than *[TBD]*. The foregoing shall not impose any obligations that survive the Initial Delivery Date, *provided* that if SCE determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SCE retains all rights under this Agreement, including, without limitation under Article Three, with respect to such occurrence.
4. Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for SCE’s sole benefit through the Delivery Period.
5. Seller shall obtain, maintain and remain in compliance with all permits, agreements (including interconnection agreements) and rights (including transmission rights) necessary to operate the Project and provide the Product to SCE in accordance with this Agreement.
6. Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
7. Seller shall maintain Site Control throughout the period beginning on the Approval Date and ending on the last day of the Term.
8. Seller shall, throughout the Term, promptly provide SCE with Notice of any change in any of the specifications or descriptions set forth in Article One (and related Appendices).
9. Throughout any RA Delivery Period (i) Seller shall, and shall cause each Storage Unit’s SC to promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Project as CPM Capacity, and (ii) in the event the CAISO makes such a designation Seller shall, and shall cause each Storage Unit’s SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation, provided that Buyer shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity.
10. With respect to any RA Delivery Period, Seller shall notify the SC of each Storage Unit that (i) Seller has transferred the Product to Buyer with respect to each day of each Showing Month, and that such SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Agreement, (ii) Seller is obligated to cause each Storage Unit’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadlines for each Compliance Showing, the applicable Expected Contract Quantity of such Storage Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period, and (iii) Buyer is entitled to the revenues set forth in Section 9.03, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
11. With respect to any RA Delivery Period, Seller shall (i) provide all information needed for the Product to be shown on Supply Plans and Compliance Showings and to be used to satisfy RA Compliance Obligations, including, without limitation providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and Compliance Showing and (ii) provide any information requested by SCE related to the Project that is required to be provided to the CAISO or CPUC in order for SCE to comply with the Tariff or other Applicable Laws.

## Seller’s Negative Covenants.

1. Seller shall not issue any Disqualified Stock, other than Disqualified Stock issued in connection with the funding of the development, construction, operation, reconstruction, restoration or refinancing of the Project.
2. Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller’s interest in the Site, the Project, or any part thereof or interest therein. Seller shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller’s interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller’s interest in the Site, the Project, or any part thereof or interest therein.
3. Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction and operation of the Project.
4. Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
5. During any period during which a Seller is a Defaulting Party, Seller shall (i) not declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller, or (ii) otherwise make any distribution or equivalent payment to any Affiliate of Seller.
6. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, the Required Permits as collateral to any party other than to Lender or Lender’s agent without SCE’s prior written consent, which consent may be granted or withheld in SCE’s sole discretion.
7. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, any ownership interest in Seller if such pledge or assignment would have a material adverse effect on the Project or on Seller’s ability to perform its obligations under this Agreement. Seller shall provide SCE with written Notice of any direct or indirect pledge or assignment of any ownership interest in Seller at least ten (10) Business Days prior to such pledge or assignment.

# LIMITATIONS

## Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 27.04, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE TWENTY-EIGHT (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID 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.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY DELIVERY DATE SECURITY OR PERFORMANCE ASSURANCE.

## No Representation by SCE.

Any review by SCE of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SCE’s information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by SCE of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by SCE, constitutes any such representation by SCE. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

# RECORDS

## Performance Under this Agreement.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

## Other Regulatory and Governmental Requirements.

At SCE’s request, Seller shall maintain and deliver to SCE copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

## Audit Rights.

SCE shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SCE to audit the documents, records or data of SCE related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SCE before examining SCE’s documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 26.03 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 26.03 shall survive the termination of this Agreement for a period of two (2) years.

## California Climate Action Registry.

If applicable, in accordance with CPUC Rulemaking 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow energy storage (as applicable) facility-specific registration, Seller shall promptly (i) register with the California Climate Action Registry, (ii) send SCE Notice of such registration and (iii) remain a member of the California Climate Action Registry throughout the entire Term.

# DISPUTES

## Dispute Resolution.

Other than requests for provisional relief under Section 27.04, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 27.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 27.03 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article Twenty-Seven shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article Twenty-Seven with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

## Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 30.02 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator (“Mediator”) from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. (“JAMS”), its successor, or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided,* evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

## Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 30.02 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 27.02, above. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 27.02 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the Dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party’s demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq*. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in Los Angeles County, California.

Also notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

1. Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
2. The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
3. Discovery may commence at any time after the Parties’ initial disclosure;
4. The Parties will not be permitted to propound any interrogatories or requests for admissions;
5. Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
6. Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
7. Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
8. Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
9. Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
10. Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Twenty-Five, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. Judgment on the award may be entered in any court having jurisdiction.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 1.01, 3.06, 12.01, 12.03, 19.05, 24.02(a), and 24.03(k) and Article Twenty-Nine of this Agreement.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator’s decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator’s decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter’s fees.

## Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 1.01, 3.06, 12.01, 12.03, 19.05, 24.02(a), or 24.03(k) or Article Twenty-Nine of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other Disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 27.01. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party’s right to seek other remedies for the breach of the provisions specified above in accordance with Section 27.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if the Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

## WAIVER OF JURY TRIAL.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT.

## Consolidation of Matters.

The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, arbitration or other dispute resolution proceedings arising pursuant to this Article Twenty-Seven that arise from or relate to the same act, omission or issue.

# INDEMNIFICATION

## SCE’s Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.01, SCE releases, and shall indemnify, defend and hold harmless Seller, and Seller’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by SCE of its representations and warranties in Section 24.01.

This indemnity applies notwithstanding Seller’s active or passive negligence. However, Seller will not be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

## Seller’s Indemnification Obligations.

In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.02, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:

1. any breach made by Seller of its representations and warranties in Sections 24.01 and 24.02;
2. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 1.01(a) and 19.05 and Article Twelve;
3. Penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category against SCE, except to the extent solely due to SCE’s negligence in performing its role as Seller’s Scheduling Coordinator during any Put Delivery Period;
4. injury or death to persons, including SCE employees, and physical damage to property, including SCE property, where the damage arises out of, is related to, or is in connection with, Seller’s construction, ownership or operation of the Project, or obligations or performance under this Agreement;
5. injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 30.15; *provided*, the inclusion of this subsection (e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 30.15;
6. any breach by Seller of the covenants set forth in Sections 24.03 and 24.04;
7. the Storage Unit(s), or any equipment, software, applications or programs (or any portion of same) used in connection with the Storage Unit(s) or the Project result in an infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party;
8. any material violation of any Applicable Law by Seller or its subcontractors; or
9. any (i) release of a Hazardous Material by Seller its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors, or (iii) action reasonably necessary to abate, investigate, remediate or prevent a violation or threatened violation of any environmental law by Seller or its EPC Contractor or any of Seller’s or its EPC Contractor’s subcontractors.

This indemnity applies notwithstanding SCE’s active or passive negligence. However, SCE will not be indemnified under Section 28.02(a) - (d) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

## Indemnification Claims.

All claims for indemnification by a Party entitled to be indemnified under this Agreement (an “Indemnified Party”) by the other Party (the “Indemnitor”) will be asserted and resolved as follows:

1. If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Indemnitor; *provided*, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.
2. Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party’s approval.
3. Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

## Resource Adequacy.

Seller agrees to indemnify SCE for any monetary penalties or fines assessed against SCE by the CPUC or the CAISO or any other entity having jurisdiction, resulting from Seller’s willful or negligent failure to provide SCE with the full *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* for the Project for purposes of meeting SCE's RA Compliance Obligations. The Parties shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize the fines and penalties.

## NERC Standards Compliance Penalties.

During the Delivery Period, Seller shall be (i) responsible for complying with any NERC Reliability Standards applicable to the Storage Units, including registration with NERC as the Generator Operator for the Storage Units or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, WECC, CAISO or other Governmental Authority for compliance with the NERC Reliability Standards; and (ii) liable for all penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category. However, if Seller learns that FERC, NERC (through WECC or otherwise) or other Governmental Authority is considering or intends to assess Seller with a penalty that Seller believes is attributable to SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the potential assessment, Seller shall provide SCE with sufficient notice to allow SCE to take part in administrative processes, discussions or settlement negotiations with FERC, NERC, WECC, or other Governmental Authority arising from or related to the alleged violation or possible penalty. If the penalty is nonetheless assessed in spite of SCE’s participation in the processes, discussions or settlement negotiations, or SCE waives its right to take part in the processes, discussion or settlement negotiations with FERC, NERC, WECC, or other Governmental Authority, SCE shall reimburse Seller for the penalty to the extent that (a) it was solely caused by SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the violation; and (b) Seller can establish to SCE’s reasonable satisfaction that the penalty was actually assessed against Seller by FERC, NERC (through WECC or otherwise) or other Governmental Authority and paid by Seller to the applicable entity. If SCE took part in and agreed to the terms of settlement, SCE shall also reimburse Seller for any payment made by Seller in settlement of a claim of violation by or on behalf of FERC, NERC (through WECC or otherwise) or other Governmental Authority, to the extent that (x) the claim being settled was solely caused by SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the claim; and (y) Seller can establish to SCE’s reasonable satisfaction that Seller actually made the payment to the applicable entity under the settlement.

## Survival.

All indemnity rights shall survive the termination of this Agreement.

# CONFIDENTIALITY/REGULATORY DISCLOSURE

## Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 29.02 and 29.03, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided,* a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller’s obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

## Permitted Disclosures.

1. SCE may disclose Confidential Information to the Independent Evaluator. SCE and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SCE’s Procurement Review Group (the “PRG”), a group of non-market participants including members of the CPUC, and SCE’s Cost Allocation Mechanism Group (“CAM”), and other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.
2. SCE and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 29.02(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.
3. The Parties may disclose Confidential Information to the extent necessary to comply with any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 29.02(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
4. Buyer may disclose the Product or any applicable portion of the Product, including any amounts of Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Product and the applicable Expected Contract Quantity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month during any RA Delivery Period under this Agreement to the SC of each Storage Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.01(f), Buyer shall be permitted to disclose to the other party to such transaction all such information necessary to effect such transaction.

## Duty to Seek Protection.

1. In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 29.02(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
2. If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 29.03(a) compelled to make disclosure in response to a requirement described in Section 29.03(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

## Ownership and Return of Information.

All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article Twenty-Nine.

# MISCELLANEOUS

## General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if one Party seeks to amend any applicable wholesale power sales tariff during the term of this Agreement without the prior written consent of the other Party, such amendment will not in any way affect either Party’s obligations under the Agreement. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

## Notices.

Unless otherwise provided in this Agreement, any notice or request (“Notice”) shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after the postmarked date. Notice by United States mail shall be effective on the third (3rd) Business Day after it was sent. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 30.02.

 If to SCE: Southern California Edison Company

 2244 Walnut Grove Avenue

 Rosemead, California 91770

 Attn: Vice President, Energy Contracts

 Facsimile No.: (626) 302-3254

 Copy: Southern California Edison Company

 2244 Walnut Grove Avenue

 Rosemead, California 91770

 Attn: Director and Managing Attorney, Power
 Procurement

 Facsimile No.: (626) 302-1935

 If to Seller: *[Seller]*

 Address

 Address Line 2

 City, State Zip

 Attn:

 Facsimile No.:

 Copy: *[Seller]*

 Address Line 1

 Address Line 2

 City, State Zip

 Attn:

 Facsimile No.:

## Governing Law; Venue.

This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the COUNTY of Los Angeles, California.

## Amendment.

This Agreement can only be amended by a writing signed by both Parties.

## Assignment.

Neither Party shall assign, transfer, delegate, mortgage, hypothecate, pledge or encumber its rights, title or interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; *provided,* Seller may collaterally assign this Agreement in accordance with Article Fourteen.

## Waiver.

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

## Obligations Surviving Termination.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, remedies, limitation of liabilities, posting of Performance Assurance and Delivery Date Security, dispute resolution, and limitations on third party sales, shall so survive.

## Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary to carry out the terms of this Agreement.

## No Agency.

Except as otherwise provided explicitly herein, inperforming their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.

## No Third Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement or any third party which acquires rights under this Agreement).

## Independent Contractors.

The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties or to impose any partnership obligation or liability on either Party in anyway.

## Severability.

If any term, Section, provision or other part of this Agreement, or the application of any term, Section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, Sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

## Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that they are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

## Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956) , and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008).

Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

## Insurance Requirements.

Throughout the Term and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best’s Insurance Rating of not less than A-:VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller’s defense and indemnity obligations.

1. Workers’ Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller’s employees;
2. Employer’s Liability Insurance with limits of not less than:
3. Bodily injury by accident – One Million dollars ($1,000,000) each accident
4. Bodily injury by disease – One Million dollars ($1,000,000) policy limit
5. Bodily injury by disease – One Million dollars ($1,000,000) each employee
6. Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 30.15(c)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than *[TBD (or) $1,000,000, per occurrence and $2,000,000 annual aggregate]*, exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions and no explosion, collapse, or underground exclusions.

If Seller elects, with SCE’s written concurrence, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:

1. The retroactive date of the policy must be prior to the Effective Date; and
2. Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.
3. Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
4. Pollution Liability Insurance, (which, except with the prior written consent of SCE and subject to Sections 30.15(e)(i) and (ii) below, shall be written on an “occurrence,” not a “claims-made” basis) with limits of not less than *[TBD (or) $5,000,000, per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the Project, including but not limited to, coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs.

If Seller elects, with SCE’s written concurrence, to use a “claims made” form of Pollution Liability Insurance, then the following additional requirements apply:

1. The retroactive date of the policy must be prior to the Effective Date; and
2. Either the coverage must be maintained for a period of not less than three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than three (3) years after this Agreement terminates.
3. Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than *[TBD (or) $10,000,000, per occurrence and in the annual aggregate]* per occurrence and in the annual aggregate. The insurance requirements of this Section 30.15 can be provided by any combination of Seller’s primary and excess liability policies.
4. SCE as Insured. The insurance required in Section 30.15 shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability, Pollution Liability and Umbrella/Excess Liability insurance required above shall name SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller’s obligations under this Agreement.
5. Certificates of Insurance. At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SCE certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SCE with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. SCE’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 30.15 and shall not constitute a waiver of any of the requirements in this Section 30.15.
6. Failure to Comply. If Seller fails to comply with any of the provisions of this Section 30.15, Seller, among other things and without restricting SCE’s remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Pollution Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

## Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

## Entire Agreement.

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

|  |  |  |
| --- | --- | --- |
| ***[SELLER’S NAME]*,***a [Seller’s jurisdiction of organization and type of organization]*. |  | **SOUTHERN CALIFORNIA EDISON COMPANY,**a California corporation. |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Name]**[Title]* |  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[Name]**[Title]* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APPENDIX A**

**DEFINITIONS**

“AB 32” means the California Global Warming Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder (including, without limitation, the GHG Regulations) by any authorized Governmental Authority.

“AB 32 Compliance Obligation” has the meaning set forth for “Compliance Obligation” in the GHG Regulations as it relates to Seller.

“Actual Efficiency Factor” or “AEF” has the meaning set forth in Section 9.06(a).

“ADS” has the meaning set forth in the Tariff.

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

“Aggregate Network Upgrade Costs” has the meaning set forth in Section 4.02(a).

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

“Air Pollution Control District” means a district as defined by Section 39025 of the California Health and Safety Code, Division 26, Air Resources.

“Ancillary Service Regional Limits” has the meaning set forth in the Tariff.

“Ancillary Services” or “A/S” means Spinning Reserve, Non-Spinning Reserve, replacement reserves, Regulation Up or Regulation Down or any other ancillary service defined in the Tariff.

“Ancillary Services Capacity” or “A/S Capacity” means Capacity associated with Spinning Reserve, Non-Spinning Reserve, Regulation Up or Regulation Down, as well as any other interconnected operation services as the CAISO develops as or deems to be ancillary services, available from any Storage Unit during a Put Delivery Period.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project or the terms of this Agreement including, without limitation, the Tariff.

“Approval Date” has the meaning set forth in Section 2.02.

“Arbitrator” has the meaning set forth in Section 27.03.

“A/S Availability” means the amount of Ancillary Services Capacity available to SCE under this Agreement from a Storage Unit during any Settlement Interval during a Put Delivery Period.

“A/S Capacity Payment Reduction” has the meaning set forth in Section 10.01(d)(iii).

“A/S Price Adjustment Factor” has the meaning set forth in Section 10.01(d)(ii).

“A/S Maximum Capacity” is as set forth in Appendix 1.01 for each applicable Ancillary Service, the maximum capacity for a particular region in which such Ancillary Service is available.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours expressly associated with the Ancillary Service Capacity made available from any Storage Unit at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours or kilowatt-hours dispatched under this Agreement.

 “Automatic Generation Control” or “AGC” means the remote signal control of a Storage Unit’s output.

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

“Availability Notice” has the meaning set forth in Section 20.01.

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

“Available Capacity” means, collectively, Available Charging Capacity, Available Discharging Capacity, and Available Storage Capacity.

“Available Charging Capacity” means the amount of Charging Capacity that a Storage Unit is capable of providing under this Agreement during any Settlement Interval during a Put Delivery Period.

“Available Discharging Capacity” means the amount of Discharging Capacity that a Storage Unit is capable of providing under this Agreement during any Settlement Interval during a Put Delivery Period.

“Available Storage Capacity” means the Storage Capacity amount of a Storage Unit for the applicable Settlement Interval during a Put Delivery Period. For purposes of this definition, the amount of Available Storage Capacity shall be expressed in megawatts according to the following:
Available Storage Capacity = (Storage Capacity / Maximum Storage Level) \* SU Contract Capacity

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit or creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bid” has the meaning set forth in the Tariff.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday.

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

“Buyer Dispatched Test” has the meaning set forth in Section 7.03(b).

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all participating transmission owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the Tariff, including certification and testing for all ancillary services and PMAX and PMIN.

“CAISO Grid” means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the CAISO’s operational control.

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

“CAISO Uninstructed Deviation Penalty” or “UDP” has the meaning set forth in the Tariff.

“Calculable Month” has the meaning set forth in Section 9.06(a).

“Calculated Month” has the meaning set forth in Section 9.06(a)(y).

“California Climate Action Registry” or “CCAR” means the registry contemplated in CPUC Rulemaking 06-04-009 (April 13, 2006).

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, *et seq*).

“Capacity” means, collectively, Charging Capacity, Discharging Capacity, and Storage Capacity.

“Capacity Availability” means, for each Settlement Interval during a Put Delivery Period, the lesser of the following for each Storage Unit:

1. the Available Storage Capacity;
2. the Available Charging Capacity; or
3. (i) the Available Discharging Capacity, or (ii) if such Storage Unit operates below the Performance Tolerance Band Lower Limit, the Available Discharging Capacity, less the product of (x) the difference between (A) Scheduled Energy and (B) Qualifying Delivered Energy, and (y) the number of Settlement Intervals in one hour,; *provided*, if Scheduled Energy exceeds Contract Capacity Energy in a Settlement Interval, then, for the purpose of calculating Capacity Availability under this subsection (c) of this definition (including the determination of the Performance Tolerance Band Lower Limit), Scheduled Energy shall be deemed to equal Contract Capacity Energy for that Settlement Interval; *provided further*, that for any particular month, subsection (c)(ii) of this definition shall only apply if the Actual Efficiency Factor calculated pursuant Section 9.06(a) for such month is greater than the $GEF^{Min}$.

In no event shall the Capacity Availability be less than zero (0) MW or greater than SU Contract Capacity.

“Capacity Price Adjustment Factor” has the meaning set forth in Section 10.01(c)(iii).

“Capacity Procurement Mechanism” has the meaning set forth in the Tariff.

“Charging Capacity” means the maximum dependable operating capability of any storage resource to charge electric energy into a storage device, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and charge energy.

“Charging Energy Costs” has the meaning set forth in Section 16.03.

“Charging Energy Requirements” means the electric energy requirements of a Storage Unit that is withdrawn from the PTO’s electrical system or the CAISO Grid to be stored by the Storage Unit and discharged at a later time. Under no circumstances does Charging Energy Requirements include Station Use.

“Charging Notice” means the operating instruction, and any subsequent updates, given by SCE or the CAISO to Seller, directing the applicable Storage Unit to charge at a specific megawatt rate to a specified State of Charge. Charging Notices may be communicated electronically, via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both SCE and Seller upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by SCE or awarded by the CAISO in order to effectuate a Seller Initiated Test shall not be considered a Charging Notice.

“Claiming Party” means the Party claiming a Force Majeure under Article Twenty-Three.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.01.

“Commercial Operation” means that a Storage Unit has (i) successfully completed the demonstration set forth in Appendix 7, (ii) has met the requirements of Appendix 7, Part II.C., and (iii) SCE has accepted the test results.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load-serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the Tariff, or to any Governmental Authority having jurisdiction.

“Confidential Information” means any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including Dispatch Data, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, and the terms and conditions and other facts with respect to this Agreement. Confidential Information does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, *provided*, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate that the information has been independently developed without a violation of this Agreement.

“Congestion Revenue Right” has the meaning set forth in the Tariff.

“Construction Report” has the meaning set forth in Section 6.01.

“Contract Capacity” means the aggregate Capacity of each Storage Unit set forth in Appendix 1.01. As of the Effective Date, the Contract Capacity shall equal the aggregate of the Expected Contract Capacity for each Storage Unit as set forth in Appendix 1.01. Pursuant to Article Seven and Appendix 7, Contract Capacity shall be adjusted upon SCE’s acceptance of the Initial Commercial Operation Test, in accordance with Part III.E. of Appendix 7. Appendix 1.01 shall be automatically amended to reflect the updated Contract Capacity achieved by the Storage Unit(s) pursuant to such Test; *provided*, that in no event may the Contract Capacity, as determined pursuant to Article Seven, exceed the aggregate Expected Contract Capacity of the Storage Unit(s).

“Contract Capacity Energy” means the amount of Energy capable of being discharged, expressed in megawatt hours, by a Storage Unit based on its SU Contract Capacity.

“Contract Capacity & Ancillary Services Tests” means the testing procedures, requirements, and protocols set forth in Appendix 7.

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. The second (2nd) Contract Year would be from January 1st through December 31st of the year immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

“Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

“Cost Allocation Mechanism Group” or “CAM” means the advisory group established by the CPUC in Decision 07-12-052.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product. With respect to SCE, Costs shall be based on replacing the Product with product from energy storage technology in the *[Western LA Basin or Moorpark Sub-Area]*.

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

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Credit Rating” means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its unsecured, senior long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Daily Delay Damages” means liquidated damages in the amount of the product of $123.29/MW and the Expected Contract Capacity of all of the Storage Unit(s) for each day of delay.

“Day-Ahead” has the meaning set forth in the Tariff.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Defaulting Party” has the meaning set forth in Sections 3.01 and 3.02.

“Delivered Energy” means, in respect of a Storage Unit during a Put Delivery Period, the amount of Energy discharged by such Storage Unit and delivered during each Settlement Interval at the Energy Delivery Point as measured by the Energy Metering Equipment, and subject to adjustments identified in this Agreement. The Delivered Energy in any hour is equal to the sum of the Delivered Energy for each Settlement Interval during such hour.

“Delivery Date Security” has the meaning set forth in Section 13.02(a).

“Delivery Period” has the meaning set forth in Section 2.04.

“Discharging Capacity” means the maximum dependable operating capability of any storage resource to discharge energy, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store and discharge energy.

“Dispatch Data” means data, information or other material in any way related to any schedule, dispatch, charging, discharges or instruction of a Storage Unit, including any schedules, dispatches, Dispatch Notices, discharges, charges, Charging Notice, settlement statements, Ancillary Services dispatches or awards, if applicable.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by SCE to Seller, directing the applicable Storage Unit to discharge at a specified megawatt output or a dispatch given by the CAISO. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both SCE and Seller upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by SCE or awarded by the CAISO in order to effectuate a Seller Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of (i) the number of hours required to complete the test, or (ii) the Storage Unit(s)’ Minimum Run Time.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

“Disqualified Stock” means any capital stock that, by its terms (or by the term of any security instrument into which it is convertible, or for which it is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the last day of the Term.

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

“Early Termination Date” has the meaning set forth in Section 3.03.

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

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means all electrical energy discharged and stored by the Project or a Storage Unit, measured in kilowatt-hours or multiples units thereof. Energy shall include without limitation, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Adjustment Payment” has the meaning set forth in Section 9.06.

“Energy Adjustment Period” has the meaning set forth in Section 9.06(a)(y).

 “Energy Delivery Point” has the meaning set forth in Section 1.03(a).

“Energy Efficiency Capacity Reduction Payment” has the meaning set forth in Section 10.02.

“Energy Efficiency Tolerance Band” has the meaning set forth in Section 9.06(d).

“Energy Metering Equipment” means, for the Project, a CAISO approved revenue quality meter or meters, CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy discharged by the Storage Unit(s) and used to charge the Storage Unit(s), excluding Station Use.

“Energy Put Option” has the meaning set forth in Section 1.01.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project.

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

“Event of Default” has the meaning set forth in Sections 3.01 and 3.02.

“Excess Network Upgrade Costs” has the meaning set forth in Section 4.02.

“Existing Zone” has the meaning set forth in the Tariff.

“Existing Zone Generation Trading Hub” has the meaning set forth in the Tariff.

“Expected Contract Capacity” means the expected capability of each Storage Unit to discharge energy as measured in megawatts at the Energy Delivery Point available for daily planning and operation purposes during the summer conditions at the Site based on historical weather data for the last 30 years, and as set forth in Appendix 1.01.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of a RA Delivery Period, the Product (in MWs) for such day of such Showing Month, less any reductions to the amount of Product (in MWs) that must be provided for such day as specified in Section 12.02.

“Expected Flexible Capacity” means the expected Unit EFC for any particular Storage Unit as set forth for such Storage Unit in Appendix 1.01.

“Expected Initial Delivery Date”is the date set forth in Section 2.03.

“Federal Funds Effective Rate” means the rate for that day opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Final CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion; and (iii) finds that any procurement pursuant to this Agreement satisfies the requirement to procure energy storage resources under CPUC Decision 13-02-015. ***[SCE INTERNAL DRAFTING NOTE. DO NOT INCLUDE IN THE TURN OF THE PPA: Please note that SCE must have sole discretion in determining whether Final CPUC Approval has occurred. Given the complications around the new put option and cost allocation we need to make sure that SCE has the right to terminate in the event the CPUC does not provide the proper cost allocation treatment of this contract.]***

“Financial Consolidation Requirement” has the meaning set forth in Section 13.06(a).

“Fitch” means Fitch Ratings Ltd. or its successor.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as droughts, floods, earthquakes, (b) adverse geological or underground conditions that could not have been discovered through a reasonably prudent geophysical site survey, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes, and (d) industry-wide or general (i.e. not directed specifically at or by the party claiming Force Majeure) strikes, lockouts or other labor disputes. Force Majeure shall not include (i) a failure of performance of any other entity, including any entity providing electric transmission service to the Project, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event, (ii) failure to timely apply for or obtain permits, or (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure).

“Forced Outage” has the meaning set forth in the Tariff.

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.

If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be Zero dollars ($0).

The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“GADS” means the Generating Availability Data System, or its successor.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Gains shall be based on replacing the Product with product from energy storage technology in the *[Western LA Basin or Moorpark Sub-Area]*. For purposes of determining Gains, Seller shall be deemed to have exercised its Energy Put Option for each and every remaining Contract Year of the Term.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.

“Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor, dispatch, and control each Storage Unit.

“Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.

“Generator Operator” means the entity that operates Storage Unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“Generator Owner” means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of storage units as set forth in the NERC Reliability Standards.

“GHG Charges” means any taxes, charges or fees imposed on the Storage Unit(s) or Seller by a Governmental Authority for Greenhouse Gas emitted by and attributable to the Storage Unit(s) during the Delivery Period, but excluding the AB 32 Compliance Obligation.

“GHG Regulations” means Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, exchange or grid control operator having or asserting jurisdiction over a Party, any Storage Unit, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 15.01.

“Greenhouse Gas” has the meaning set forth in the GHG Regulations.

“Grid Control Center” means the location of the personnel responsible for operating the applicable transmission grid and/or coordinating same with the CAISO.

“Guaranteed Efficiency Factor Max” has the meaning set forth in Section 9.06(c) and Appendix 1.01.

“Guaranteed Efficiency Factor Min” has the meaning set forth in Section 9.06(b) and Appendix 1.01.

“HASP” has the meaning set forth in the Tariff or any other successor process that replaces HASP.

“Hazardous Material” means any substance, waste, or material which has been designated as hazardous or toxic by the United States Environmental Protection Agency, the federal Occupational Safety and Health Administration (“OSHA”), California OSHA, the California Environmental Protection Agency, the California Office of Environmental Health Hazard Assessment, the California Department of Toxic Substances Control, the California State Water Resources Control Board, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“IFM” has the meaning set forth in the Tariff.

“IFRS” has the meaning set forth in Section 13.01.

“Imbalance Energy” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources.

“Indemnified Party” has the meaning set forth in Section 28.03.

“Indemnitor” has the meaning set forth in Section 28.03.

“Independent Engineer” or “IE” has the meaning set forth in Section 8.02(d).

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

“Industry Standards” has the meaning set forth in Section 8.01(a).

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product which are not eligible to satisfy Flexible RAR. Inflexible Capacity is also known as ‘generic capacity’.

“Initial Commercial Operation Test” means, the testing procedures, requirements, and protocols set forth in Appendix 7.

“Initial Delivery Date” has the meaning set forth in Section 2.04.

“Interconnection Facilities” means all apparatus installed between a Storage Unit and the Point of Interconnection on the PTO’s system, other participating transmission owner’s system, or the CAISO Grid, to interconnect the Project to make the Product available to SCE and to charge and discharge the Storage Unit(s), including connection, Tie-Line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PTO’s electric system (or other participating transmission owner’s system to which the PTO’s electric system is connected, including the CAISO Grid) and SCE’s customers from faults occurring at the Storage Unit(s), and (b) the Storage Unit(s) from faults occurring on the PTO’s electric system or on other participating transmission owner’s system to which the PTO’s electric system is connected.

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.03(c).

“Interconnection Study” or “Interconnection Studies” means (a) any of the studies defined in the Tariff or any PTO’s tariff that reflect methodology and costs to interconnect the Project to the PTO’s electric grid, and (b) any of the studies performed by the PTO, retail electric service provider, or CAISO pursuant to Applicable Law that reflect the costs to interconnect, or establish service for, the Project for purposes of charging the Project with electric energy.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by Applicable Law.

“JAMS” means Judicial Arbitration and Mediation Services, Inc.

“kW” means kilowatt or kilowatts.

“kWh” means kilowatt-hour or kilowatt-hours.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, or other form of financing or refinancing, or other credit support, relating to the Project.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a Qualified Institution, which letter of credit shall be substantially in the form of Appendix 13.03(b) and reasonably acceptable to SCE. All Letter of Credit costs shall be borne by Seller.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit fails to be a Qualified Institution; (b) the issuer of such Letter of Credit fails to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (d) such Letter of Credit fails or ceases to be in full force and effect at any time; or (e) the issuer of such Letter of Credit becomes Bankrupt; *provided*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“LMP” has the meaning set forth in the Tariff.

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

“Local RAR” means the local resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Losses shall be based on replacing the Product with product from energy storage technology in the *[Western LA Basin or Moorpark Sub-Area]*. For purposes of determining Losses, Seller shall be deemed to have exercised its Energy Put Option for each and every remaining Contract Year of the Term.

Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

“Market-Based Rate Authority” means authority granted by FERC to charge market-based rates for electrical power pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

“Market Clearing Price” or “MCP” means for each Settlement Interval, the Day-Ahead Market price for the hour in which such Settlement Interval falls for SP-15.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (*see* 42 U.S.C. § 7651b.(a) to (f)).

“Master File” has the meaning set forth in the Tariff.

“Maximum Charge” has the meaning set forth in Appendix 1.01.

“Maximum Discharge” has the meaning set forth in Appendix 1.01.

 “Maximum Storage Level” means the MWh amount under “Stored Energy” as set forth in Appendix 1.01.

“Mediator” has the meaning set forth in Section 27.02.

“Meter Service Agreement For CAISO Metered Entities” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the completed schedule in the form of Appendix 6.01(A), setting forth Seller’s engineering, permitting, procurement, contract, financing, and construction milestones.

“Minimum Down Time” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources; *provided*, it shall only apply to the Storage Unit(s)’ ability to discharge energy and for instances where the Storage Unit(s) are discharging energy.

“Minimum Load” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources; *provided*, it shall only apply to the Storage Unit(s)’ ability to discharge energy and for instances where the Storage Unit(s) are discharging energy.

“Minimum Operating Limit” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources; *provided*, it shall only apply to the Storage Unit(s)’ ability to discharge energy and for instances where the Storage Unit(s) are discharging energy.

“Minimum Run Time” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources; *provided*, it shall only apply to the Storage Unit(s)’ ability to discharge energy and for instances where the Storage Unit(s) are discharging energy.

“Monthly Available A/S Capacity” has the meaning set forth in Section 10.01(d)(i).

“Monthly Capacity Payment” means, as applicable, the Monthly RA Capacity Payment or the Monthly Energy Capacity Payment.

“Monthly Capacity Price” means, as applicable, the Monthly RA Capacity Price or the Monthly Energy Capacity Price.

“Monthly Energy Capacity Payment” has the meaning set forth in Section 9.02(b).

“Monthly Energy Capacity Price” means, for any month during a Put Delivery Period, the “Monthly Energy Capacity Price” applicable to such month set forth in Appendix 9.02.

“Monthly RA Capacity Payment” has the meaning set forth in Section 9.02(a).

“Monthly RA Capacity Price” means, for any Showing Month during a RA Delivery Period, the “Monthly RA Capacity Price” applicable to such Showing Month set forth in Appendix 9.02.

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

“Moorpark Sub-Area High Voltage Substations” means the following substations located in the CAISO Control Area: Goleta, Moorpark, Santa Clara, Mandalay, and Ormond Beach.

“Moorpark Sub-Area Project” means a storage facility that directly connects to a (i) Moorpark Sub-Area High Voltage Substation, or (ii) lower voltage substation that electricallyconnects to a Moorpark Sub-Area High Voltage Substation. *[SCE Note: if applicable]*

“MW” means megawatt or megawatts.

“MWh” means megawatt-hours.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC/GADS Protocols” means the NERC Generating Availability Data System protocols, as may be updated from time to time.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website.

“NERC Reliability Standards” means those reliability standards applicable to a generating or storage facility, or to the Generator Owner or the Generator Operator with respect to the generating or storage facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Network Upgrades” means all apparatus, modifications, and upgrades to the PTO’s electric system, CAISO Grid or, if applicable, participating transmission owner’s system that are required at or beyond the Point of Interconnection to accommodate the Project’s output.

“Network Upgrades Cap” has the meaning set forth in Section 4.02(b).

“New Resource” means that the Project (a) has a remaining design life of at least *[ # ]* years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SCE in its sole discretion) licensed by the State of California; (b) will provide incremental capacity to the region of the CAISO’s control area known as SP15; and (c) is a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

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

“Non-Defaulting Party” has the meaning set forth in Section 3.03.

“Non-SCE Charge” has the meaning set forth in Section 16.05.

“Non-SCE Dispatch” means a dispatch by Seller either (a) pursuant to a Seller Initiated Test or (b) as required by Applicable Laws.

“Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

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

“Notice” has the meaning set forth in Section 30.02.

“Obligation Month” has the meaning set forth in Section 11.01.

“Operating Day” means a day within a Put Delivery Period on which the Project operates.

“Operating Reserve Ramp Rate” has the meaning set forth in the Tariff.

“Operating Restrictions” means, subject to Section 20.04(b), limitations on SCE’s ability to schedule and use Capacity, Ancillary Services, and Energy during a Put Delivery Period that are identified in Appendix 1.01.

“Outage” has the meaning set forth in the Tariff.

“Outage Management System” has the meaning set forth in Section 20.01.

“Outage Schedule” has the meaning set forth in Section 22.01.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Load Agreement” or “PLA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” or “PTO” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Seller from the Project to the Point of Interconnection.

“Party” or “Parties” has the meaning set in the preamble.

“Performance Assurance” means collateral, including Delivery Date Security, in the form of cash, or Letter of Credit.

“Performance Tolerance Band” means the lesser of (a) three percent (3%) of a Storage Unit’s PMax divided by the number of Settlement Intervals in an hour, (b) five (5) MW divided by the number of Settlement Intervals in an hour, or (c) the applicable Regulation Award divided by the number of Settlement Intervals in an hour. If, at any time, the CAISO implements changes to the Performance Tolerance Band, then the Parties agree to negotiate in good faith to amend this definition to maintain the economic benefits and burdens contemplated under this Agreement.

“Performance Tolerance Band Lower Limit” means the quantity of Energy determined for a Settlement Interval equal to Scheduled Energy minus the Performance Tolerance Band.

“Performance Tolerance Band Upper Limit” means the quantity of Energy determined for a Settlement Interval equal to Scheduled Energy plus the Performance Tolerance Band.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credits or Marketable Emission Trading Credits; or any other operational restriction or specification related to compliance with any Applicable Laws.

“Planned Outage” has the meaning set forth in the Resource Adequacy Rulings as applied to storage units as if such storage units were generation resources, namely a planned outage for the routine repair or maintenance of any of the Storage Unit, or for the purposes of new construction work, and does not include any outage designated as forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

“PMAX” or “Pmax” means the applicable CAISO-certified maximum operating level of a Storage Unit.

“PMIN” or “Pmin” means the applicable CAISO-certified operating level of a Storage Unit.

“PNode” has the meaning set forth in the Tariff.

“Point of Interconnection” has the meaning set forth in Section 1.03(b).

“Prevention Equipment” has the meaning set forth in Section 5.01(e).

“Procurement Review Group” or “PRG” has the meaning set forth in Section 29.02(a).

“Product” means (a) during any Put Delivery Period, any and all Energy, Capacity, Ancillary Services, Ancillary Service Capacity and Resource Adequacy Benefits, or any other benefits associated therewith, associated with the Project under the terms of this Agreement, and (b) during any other portion of the Delivery Period, all Resource Adequacy Benefits associated with the Project, provided that:

(i) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Resource Adequacy Benefits related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of the Project related to Flexible RAR, that results in a decrease or increase in the amount of Resource Adequacy Benefits related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Project subsequently qualifies for a Local Capacity Area, the Product shall include all Resource Adequacy Benefits related to such Local Capacity Area; and

(iv) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of any Storage Unit related to Flexible RAR whereby any Storage Unit, or a portion of any Storage Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Resource Adequacy Benefits of all Storage Units related to Flexible RAR, including any Resource Adequacy Benefits related to Flexible RAR with respect to any portion of the Storage Units which previously were not able to satisfy Flexible RAR.

“Project” means the Storage Unit(s), Interconnection Facilities (owned by Seller or Seller’s Affiliate) up to the Point of Interconnection, Prevention Equipment, and Protective Apparatus together with all materials, equipment systems, structures, features and improvements necessary to store, charge and discharge electric energy at the facility, excluding the Site, land rights and interests in land and as more fully described in Appendix 1.02. *[SCE Comment: may require additional description in addition to Appendix 1.02]*

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreement or related agreement for the Project.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy storage facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that should reasonably have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Laws.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the needs of the Project;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Storage Units properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and Transmission Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the PTO’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy storage facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“Put Delivery Period” has the meaning set forth in Section 2.05.

“Qualified Institution” means either (A) a commercial bank or financial institution (that is not an Affiliate of Seller) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, and, with respect to both entities identified in clause (A) and (B), (i) (a) a Credit Ratings of at least “A-” by S&P, “A-” by Fitch and “A3” by Moody’s, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least ”A-” by S&P, if such entity is rated by S&P, “A-” by Fitch, if such entity is rated by Fitch, and “A3” by Moody’s, if such entity is rated by Moody’s; or (c) a Credit Rating of at least ”A-” by S&P or “A3” by Moody’s, or “A-” by Fitch if such entity is rated by only one Ratings Agency, and (ii) having shareholder equity (determined in accordance with GAAP) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).

“Qualifying Delivered Energy” means the lesser of Delivered Energy or the Performance Tolerance Band Upper Limit for each Settlement Interval during a Put Delivery Period. Qualifying Delivered Energy shall be zero (0) (i) during a Seller Initiated Test; (ii) during a Non-SCE Dispatch; or (iii) during a Start-Up.

“RA Adjustment” has the meaning set forth in Section 10.01(b).

“RA Contract Capacity” means, prior to SCE’s acceptance of the Initial Commercial Operation Test in accordance with Part III.E of Appendix 7, fifty percent (50%) of the Contract Capacity. After the acceptance of the Initial Commercial Operation Test, RA Contract Capacity has the meaning set forth in PART III.E. of Appendix 7. *[SCE Note: add definition for a two hour product]*

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for a Storage Unit to obtain, maintain or update a Unit NQC and Unit EFC, including without limitation, testing for PMAX.

“RA Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“RA Delivery Period” has the meaning set forth in Section 2.05.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“RAR” means the resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Rated Power Capacity Payment Reduction” has the meaning set forth in Section 10.01(c)(iv).

“Ratings Agency” means any of S&P, Moody’s, and Fitch (collectively, the “Ratings Agencies”).

“Real-Time Market” has the meaning set forth in the Tariff.

“Reduced Monthly Energy Capacity Payment” has the meaning set forth in Section 10.03.

“Regulation Award” for each Settlement Interval, shall mean either (i) with respect to the Performance Tolerance Band Upper Limit, the greater of the fifteen-minute HASP Regulation Up awards for the period within such Settlement Interval falls, or (ii) with respect to the Performance Tolerance Band Lower Limit, the greater of the fifteen-minute HASP Regulation Down awards for the period within such Settlement Interval falls.

“Regulation Down” has the meaning set forth in the Tariff.

“Regulation Ramp Rate” has the meaning set forth in the Tariff.

“Regulation Up” has the meaning set forth in the Tariff.

“Reliability Must-Run Contract” or “RMR Contract” has the meaning set forth in the Tariff.

“Repair Plan” has the meaning set forth in Section 8.02(c).

“Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SCE, includes the Independent Evaluator.

“Required Permits” has the meaning set forth in Section 5.01(b).

“Required Permit Date” means the date set forth in Section 5.01(b).

“Resold Product” has the meaning set forth in Section 12.05.

“Resource Adequacy” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Availability Management” or “RAAM” has the meaning set forth in Section 19.05(b).

“Resource Adequacy Benefits” means, with respect to any Storage Unit, any and all of the following, in each case which are attributed to or associated with the Storage Unit at any time throughout the Delivery Period:

* + - * 1. resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
				2. resource adequacy attributes or other locational attributes for the Storage Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Storage Unit within the CAISO Control Area, that can be counted toward a Local RAR;
				3. flexible capacity resource adequacy attributes for the Storage Unit, including, without limitation, the amount of Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR; and
				4. other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“Resource ID” has the meaning set forth in the Tariff.

“Resource-Specific Settlement Interval LMP” has the meaning set forth in the Tariff.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

“Retest” has the meaning set forth in Appendix 7, PART II. G.

“RUC Availability Payments” has the meaning set forth in the Tariff.

 “Satellite Communications System” or “SCS” means a system provided to Seller by SCE at SCE’s cost for emergency voice communications between SCE and Seller’s operating staff for the Project.

“S&P” means Standard & Poor’s Financial Services LLC, or its successor.

“SC” has the meaning set forth in the Tariff.

“SC Replacement Date” has the meaning set forth in Section 19.07.

“SC Set-Up Fee” has the meaning set forth in Section 19.01.

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

“Schedule” means the action of SCE in submitting Bids to the CAISO and receiving all CAISO Markets results from the CAISO.

“Scheduled Energy” means, the Energy from a Storage Unit expected to be delivered during each Settlement Interval to the Energy Delivery Point pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions during a Put Delivery Period, including (i) Supplemental Energy bids or (ii) Ancillary Services exercised. If, in any Settlement Interval, the expected energy normally published by CAISO is unavailable, incomplete, or does not conform to the Operating Restrictions of the Storage Unit, then for settlement purposes for that Settlement Interval only, the Scheduled Energy shall be deemed to be the Delivered Energy. In the case where PMax and Scheduled Energy are greater than the SU Contract Capacity, then for settlement purposes for that Settlement Interval only, the Scheduled Energy shall be deemed to be the SU Contract Capacity.

“Scheduling and Delivery Deviation Administrative Charge” or “SDD Administrative Charge” has the meaning set forth in Section 19.04.

“Scheduling and Delivery Deviation Charge” or “SDD Charge” has the meaning set forth in Section 19.04.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article Nineteen.

“SDD Admin Price” means any administrative charge applied by the CAISO due to “Uninstructed Imbalance Energy” or successor term as defined in the Tariff.

“SDD Price” means, for each Storage Unit, the applicable Resource-Specific Settlement Interval LMP, *provided*, in no case shall the SDD Price be less than zero (0).

“SEC” means the United States Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 13.04.

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

“Seller Initiated Test” has the meaning set forth in Section 7.03(c).

“Settlement Interval” has the meaning set forth in the Tariff.

“Shortfall Capacity” has the meaning set forth in Section 12.06.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Simple Interest” means the product of the following three factors: (a) dollar amount on which an interest payment is based; (b) Federal Funds Effective Rate; and (c) the number of days in the calculation period divided by 360.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(e) and Appendix 1.02. *[SCE Comment: may require additional description in addition to Appendix 1.02 (e.g., parcel map, legal description]*

“Site Certification” means the “California Energy Commission Power Facility and Site Certification” set forth in Section 5.01(b).

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project.

“SLIC” has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources.

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

“SP15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the Tariff.

“Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

“Start-Up” means the action of bringing a Storage Unit from shut down status to synchronization with the grid and the availability of unconditional release of such Storage Unit ready for ramping to the applicable dispatch instruction. During a Put Delivery Period, a Start-Up can only result from a Dispatch Notice and is complete once all of the conditions in the preceding sentence are met.

“State of Charge” or “SOC” means the amount of electric energy in a Storage Unit expressed as a percent of the “Stored Energy” amount as set forth in Appendix 1.01 (e.g., 80% State of Charge).

“Station Use” means the electrical load of the Project’s auxiliary equipment that are necessary for operation of the Storage Unit(s) as set forth in Section 1.02. The auxiliary equipment includes, but is not limited, to forced and induced draft fans, air conditioner systems, cooling towers, plant lighting, and control systems.

“Station Use Metering Equipment” means, for the Project, a CAISO-approved revenue quality meter or meters, CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy consumed by the Project for Station Use.

“Storage Capacity” means the maximum amount of energy that is capable of being stored in a storage device, and shall include, without limitation, any other products that may be developed or evolve from time to time during the Term that relate to the capability of a storage resource to store energy.

“Storage Unit” or “Storage Units” means the energy storage unit or units specified in Appendix 1.02.

“Storage Unit Removal Right” means, with respect to any Storage Unit that is subject to Section 8.02(d)(i) or 8.02(e)(i), SCE’s right to designate such affected Storage Unit(s) for removal from this Agreement. Upon Notice of such designation: (i) SCE shall have no obligation to compensate Seller for Product from such Storage Unit(s), (ii) Contract Capacity and Appendices 1.01, 1.02, 9.02, and any other information specific to such Storage Unit(s), shall automatically be amended to reflect the removal of such Storage Unit(s), (iii) Seller shall not be permitted to market, dispatch, store, provide, or convey Energy, Capacity, Ancillary Services, Ancillary Service Capacity and Resource Adequacy Benefits, or any other benefits associated therewith, associated with the Project under the terms of this Agreement from such Storage Unit(s) for SCE or any other third party, (iv) SCE shall calculate, and Seller shall be obligated to pay, a Termination Payment attributable to and associated with the Product from such Storage Unit(s) with SCE being considered the Non-Defaulting Party in all circumstances, and (v) notwithstanding clause (iv), this Agreement will otherwise remain in full force and effect.

“SU Contract Capacity” means the Contract Capacity of a single Storage Unit as set forth in Appendix 1.01.

“SU Flexible Capacity” means the Unit EFC of a single Storage Unit as set forth in Appendix 1.01.

“SU RA Contract Capacity” has the meaning set forth in PART III.E. of Appendix 7. *[SCE Note: add definition for a two hour product]*

“Substitution Costs” has the meaning set forth in Section 19.05(b).

“Substitution Rules” has the meaning set forth in Section 19.05(b).

“Successful Repair” means that, immediately upon completion of the repairs to or, if necessary, replacement of a Storage Unit, (a) with respect to any event described in Section 8.02(c)(i), Seller conducts an RA Capacity Qualification Test, at Seller’s expense, and obtains a Unit NQC for the applicable Storage Unit equal to or greater than ninety-eight percent (98%) of the *[SCE Note: for a two hour product “SU RA Contract Capacity”; for a four hour product “SU Contract Capacity”]* for such Storage Unit, and (b) with respect to any event described in Sections 8.02(c)(ii) or (iii), Seller demonstrates, at Seller’s expense, to SCE’s reasonable satisfaction, and as applicable, that such Storage Unit has and can:

* 1. with respect to repairs or a replacement associated with Discharging Capacity, (i) Start-Up and ramp up to and remain at full discharge for two (2) consecutive hours, and (ii) immediately thereafter remain available for dispatch under this Agreement by a quantity equal to or greater than ninety-five percent (95%) of SU Contract Capacity for seven (7) consecutive days.
	2. with respect to repairs or a replacement associated with Charging Capacity, (i) ramp up to and remain at full charge for two (2) consecutive hours, and (ii) immediately thereafter remain available for charging under this Agreement by a quantity equal to or greater than ninety-five percent (95%) of SU Contract Capacity for seven (7) consecutive days.
	3. with respect to repairs or a replacement associated with Storage Capacity, demonstrate that the Storage Capacity is equal to or greater than ninety-five percent (95%) of the Maximum Storage Level for seven (7) consecutive days.

Only upon the Successful Repair of a Storage Unit during any Put Delivery Period will SCE be responsible for Variable O&M Charges and Charging Energy Costs incurred by such Storage Unit to demonstrate a Successful Repair. Until such a Successful Repair is demonstrated, any test of the Storage Unit shall be deemed a Seller Initiated Test and the Storage Unit will be deemed unavailable.

“Successor” has the meaning set forth in Section 13.01.

“Supplemental Energy” is the Energy from the Project that have uncommitted capacity following finalization of the HASP awards and available to the CAISO during the Real Time Market.

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

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.01.

“Term Year” means a twelve (12) month period beginning on the Initial Delivery Date and each successive twelve (12) month period thereafter.

“Termination Payment” has the meaning set forth in Section 3.04.

“Test” has the meaning set forth in the first paragraph of Appendix 7.

“Test Plan” has the meaning set forth in Appendix 7, PART V.

“Test Records” has the meaning set forth in Appendix 7, PART II.E.

“Tie-Line” means the transmission or distribution line between the Energy Delivery Point and the Point of Interconnection as more fully described in Appendix 1.03(a).

“Trading Day” means the day in which Day Ahead trading occurs in accordance with the WECC Prescheduling Calendar.

“Trading Hour” has the meaning set forth in the Tariff.

“Transmission Emergency” means:

(a) An actual or imminent condition or situation which jeopardizes the integrity of PTO’s electric system or the integrity of any other systems to which the PTO’s electric system is connected, as determined by the PTO in its reasonable discretion, or any condition so defined and declared by the CAISO; or

(b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the PTO’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“UDP Implementation” means the date that UDP will be applied to each SC by the CAISO.

“Uninstructed Deviation Penalty” or “UDP” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy”, or any successor term, has the meaning set forth in the Tariff. To the extent this Tariff definition refers to or is applicable to a generation resource, such definition shall apply to the Storage Unit(s) as if the Storage Unit(s) are generation resources; *provided*, it shall only apply to the Storage Unit(s)’ ability to discharge energy and for instances where the Storage Unit(s) are discharging energy.

“United States Bankruptcy Code” means 11 U.S.C. §101 *et seq*., as amended, and any successor statute.

“Unit EFC” means the effective flexible capacity (in MWs) of the applicable Storage Unit pursuant to the counting conventions set forth in the Resource Adequacy Rulings and Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Storage Unit.

“Variable O&M Charge” means the applicable rate ($/MWh) for a Storage Unit as specified in Appendix 9.04.

“Variable O&M Payment” has the meaning set forth in Section 9.04.

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

“WECC Prescheduling Calendar” has the meaning used on the WECC website at <http://www.wecc.biz>.

“Western LA Basin High Voltage Substations” means the following substations located in the CAISO Control Area: Alamitos, Barre, Center, Chevmain, Del Amo, Eagle Rock, El Nido, El Segundo, Ellis, Goodrich, Gould, Hinson, Huntington Beach, Johanna, La Cienega, La Fresa, Laguna Bell, Lewis, Lighthipe, Long Beach, Mesa, Olinda, Redondo, Rio Hondo, Santiago, Viejo, Villa Park, and Walnut.

“Western LA Basin Project” means a storage facility that directly connects to a (i) Western LA Basin High Voltage Substation, or (ii) lower voltage substation that electrically connects to a Western LA Basin High Voltage Substation. *[SCE Note: if applicable]*

“Wholesale Distribution Access Tariff” or “WDAT” means the tariff through which open access transmission service and interconnection service are offered by SCE, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

**APPENDIX 1.01**

**CAPACITY AND ANCILLARY SERVICES OPERATING RESTRICTIONS**

Excel Appendices

**APPENDIX 1.02**

**STORAGE UNITS**

Excel Appendices

**PROJECT AND SITE DESCRIPTION**

1. Project Description.

*{SCE Comment: Seller must provide description of the Project equipment, systems, control systems and features, including a site plan drawing showing the general arrangement of the Project, and a single-line diagram(s) showing electrical arrangement of the equipment, inverters, unit/service transformers, interconnection transformer(s), metering, breakers, and disconnects (as applicable). To the extent applicable, Seller must include the designation system by which Seller identifies individual storage units.}*

2. Site Description.

*{SCE Comment: Seller must provide a legal description of the site, including a site map.}*

**APPENDIX 1.03(a)**

**ENERGY DELIVERY POINT**

Single-line diagram depicting grid interconnection

**APPENDIX 6.01(A)**

**MILESTONE SCHEDULE**

– Project Schedule –

Seller has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, financing, engineering, acceptance testing, Seller’s proposed Expected Initial Delivery Date, and proposed Delivery Period.

***[SCE Comment: This list is illustrative only. Seller to insert project specific list]***

| Line | Projected Completion Date | Milestone |
| --- | --- | --- |
| 1 |  | **Front End Engineering / Permits / Agreements** |
| 2 |  | Submit Applicable Participating Transmission Owner Interconnection Application |
| 3 |  | File a CEC Certification and Verification Application |
| 4 |  | Receive a Completed Interconnection System Impact Study (or equivalent) |
| 5 |  | Receive a Completed Interconnection Facilities Study (or equivalent)  |
| 6 |  | Finalize Labor Agreement Negotiations |
| 7 |  | Execute a Participating Transmission Owner Interconnection Agreement  |
| 8 |  | Receive FERC Acceptance of Interconnection Agreement and Transmission Agreement(s) |
| 9 |  | Receive CEC Certification and Verification or APCD permit if applicable |
| 10 |  | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site |
| 11 |  | Receive CEC Full Notice To Proceed |
| 12 |  | Receive All Other Required Permits |
| 13 |  | **Financing** |
| 14 |  | Verify That Seller’s Bank Has Received All Required Due Diligence Information |
| 15 |  | Complete Bank Financing  |
| 16 |  | **Engineering** |
| 17 |  | Execute EPC Contract |
| 18 |  | Begin Existing Site Re-Engineering |
| 19 |  | Begin New Storage Unit Engineering Design |
| 20 |  | Lump Sum Estimate Preparation |
| 21 |  | Complete Existing Site Re-Engineering |
| 22 |  | Complete New Storage Unit Engineering Design |
| 23 |  | **Construction – Initial Site Work** |
| 24 |  | Begin Civil Tasks - CTG’s |
| 25 |  | Begin Mechanical Tasks - U/G Piping |
| 26 |  | Begin Electrical Tasks - U/G Electrical |
| 27 |  | **Construction** |
| 28 |  | Begin Construction of the Project - Erect Equipment |
| 29 |  | Civil Tasks - Balance of Plant |
| 30 |  | Mechanical Tasks - A/G Piping |
| 31 |  | Electrical Tasks - A/G Electrical |
| 32 |  | Erect Storage Units |
| 33 |  | Commission Storage Units |
| 34 |  | Complete Construction of the Project |
| 35 |  | Commissioning |
| 36 |  | Begin Start-Up Activities - BOP Systems |
| 37 |  | Achieve Initial Operation |
| 38 |  | Demonstrate Contract Capacity |
| 39 |  | Expected Initial Delivery Date |

**APPENDIX 6.01(B)**

**CONSTRUCTION REPORT**

Monthly Project Progress Report

From the Effective Date and continuing until the Initial Delivery Date, Seller will provide a monthly Project Progress Report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:

Engineering;

Procurement;

Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project’s permitting schedule, over-all Project schedule, and ability of Project to meet Expected Initial Delivery Date);

Major construction activities in the prior month;

Testing;

Electrical interconnection status; and

Any other required interconnections.

1. Forecast activities for next month; and
2. Potential issues affecting the Project.

Seller must notify SCE’s contract manager for the Agreement in writing of its receipt of any additional documents, which fall into the categories, listed (in a – f) below, and make such documents available to SCE within two (2) Business Days of such receipt:

All material written commitments regarding construction work at the Project that could impact completion schedule or Initial Delivery Date;

Executed work orders for construction of the Project;

Construction agreements;

Letters of intent;

Precedent agreements; and

Engineering assessments of the Project or any Storage Unit.

**APPENDIX 7**

**TESTING PROTOCOLS**

**INITIAL COMMERCIAL OPERATION and**

**CONTRACT CAPACITY & ANCILLARY SERVICE TESTS**

*[SCE Note: Protocols may need to be adjusted based on storage process technology]*

*Storage Unit*

This Appendix 7 sets forth the protocols for (i) the Initial Commercial Operation Test that each Storage Unit must successfully complete in order to achieve Commercial Operation and which sets the level of SU Contract Capacity for such Storage Unit, and (ii) the Contract Capacity & Ancillary Services Test. The Initial Commercial Operation Test and the Contract Capacity & Ancillary Services Tests are sometimes referred to in this Appendix individually as a “Test” and jointly as the “Tests.”

PART I. GENERAL.

The Initial Commercial Operation Test and each Contract Capacity & Ancillary Service Test shall be conducted in accordance with Prudent Electrical Practices and the provisions of this Appendix 7.

PART II. REQUIREMENTS APPLICABLE TO ALL TESTS.

A. Test Elements. The Test shall include the following test elements (unless SCE otherwise agrees in writing in its sole discretion):

* Electrical output at PMAX and/or Maximum Discharge (kW)
* Electrical input at PMIN and/or Maximum Charge (kW)
	+ At 100% SOC, the amount of energy discharged at a rate of PMAX and/or Maximum Discharge
	+ At 0% SOC, the amount of energy charged at a rate of PMIN and/or Maximum Charge
	+ Regulation Ramp Rates
	+ Amount of time between being in the state of off-line to PMAX and/or Maximum Discharge
	+ Amount of time between being in the state of off-line to PMIN and/or Maximum Charge
	+ Amount of energy required to go from 0% SOC to 100% SOC charging at a rate equal to the Charging Capacity
	+ Energy loss over time

B. Parameters. During any Test, at a minimum, the following parameters shall be measured and recorded simultaneously for each Storage Unit at least every one (1) minute:

(1) Time;

(2) Net electrical energy output to the Energy Delivery Point (kWh);

(3) Net electrical energy input from the Energy Delivery Point (kWh);

(4) Reactive power (VARS);

(5) State of Charge (%);

(6) Emissions data required by air permit (if applicable); and

(7) *[SCE Note: Any other parameter specific to the storage process technology.]*

During any Test, at a minimum, the following parameters shall be measured and recorded simultaneously for each Storage Unit at least every thirty (30) minutes:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Unit; and

(3) Temperature (°F).

C. Test Showing. Seller must demonstrate to SCE’s reasonable satisfaction, that the Storage Unit:

(1) successfully started in *[SCE Note:TBD based on storage process technology and operating restrictions set forth in Appendix 1.01]*;

(2) operated for at least *[SCE Note:TBD based on storage process technology and operating restrictions set forth in Appendix 1.01]* at Maximum Discharge;

(3) operated for at least *[SCE Note:TBD based on storage process technology and operating restrictions set forth in Appendix 1.01]* at Maximum Charge;

(4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Storage Level; and

(5) Can deliver energy to the Point of Interconnection for four (4) consecutive hours at a rate equal to the *[SCE Note: for a two hour product “RA Contract Capacity”; for a four hour product “Contract Capacity”]* (as established under PART III.E. of this Appendix 7).

D. Test Conditions.

1. At all times during a Test, the Storage Unit(s), including all auxillary equipment, shall be operated in compliance with the Test Plan, Prudent Electrical Practices and all operating protocols recommended, required or established by the manufacturer for operation at PMAX and PMIN.
2. SCE in its sole descretion may elect to shorten the run periods or waive a particular portion of a Test at any time. Such election or waiver during one Test does not shorten any run period or waive any portion of any subsequent Test.
3. Abnormal Conditions. If abnormal operating conditions occur during a Test, SCE may postpone or reschedule all or part of such Test in its reasonable discretion in accordance with PART II.F. or PART II.G., below.
4. Applicable Laws and Permits. The Storage Unit(s) shall be operated in compliance with all Applicable Laws and permits, including those governing safety, noise, air and water emissions during any Test.
5. Instrumentation and Metering.Seller shall provide all instrumentation, metering and data collection equipment required to perform the Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the Test. All electrical metering for the Tests shall utilize the Storage Unit(s)’ CAISO metering equipment or other metering deemed acceptable by SCE in its sole discretion. These electrical meters shall be calibrated to CAISO standards. Copies of all calbration sheets shall be provided to SCE at least five (5) Business Days prior to the Test.

Permanently installed instruments shall include but not be limited to revenue metering devices located in the switchyard where the Project is located. Whenever possible, all data will be accessed through the Storage Unit’s DCS.

E.Test Records. Seller shall provide all records associated with PART II.A. through C. no later than four (4) Business Days following completion of a Test. The records shall include copies of the raw data taken during the Test. Collectively, the records and data provided under this section shall be “Test Records”.

F. Incomplete Test. If any Test is not completed in accordance herewith, SCE may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is an Initial Commerical Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Seller is unable to complete a Test due to a Seller’s Force Majeure or the actions or inactions of SCE or the CAISO, Seller shall be permitted to reconduct such Test as a Seller Initiated Test under Section 7.03(c) on dates and at times reasonably acceptable to SCE.

G. Retest. After the successful completion of a Test, Seller has the right, for any reason, to conduct a maximum of two (2) “Retests” at Seller’s sole expense including cost of charging the Storage Unit(s). For the avoidance of doubt, the limitation on retesting set forth in the preceding sentence does not apply to any testing of a Storage Unit other than an Initial Commercial Operation Test or Contract Capacity & Ancillary Services Test.

If the Test Records records provided by Seller to SCE in accordance with PART II.E. are not in accord with the records and notes of the SCE representative who attended such Test on SCE’s behalf, SCE may require the Test to be repeated or conducted by SCE or a testing firm of SCE’s choice and attended by Seller’s representatives at Seller’s expense.

The records from any Retest shall be used to determine Storage Unit performance as of the date of the original Test being repeated.

H. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a Retest), Seller shall prepare and submit to SCE a written report of the Test. At a minimum, the report shall include:

(1) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;

(2) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;

(3) the measured Test data for each aspect of the Test;

(4) the level of Contract Capacity, Charging Capacity, Discharging Capacity and Storage Capacity determined by the Test, including supporting calculations; and

(5) Seller’s statement of either Seller’s acceptance of the Test or Seller’s rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, SCE shall notify Seller in writing of either SCE’s acceptance of the Test results or SCE’s rejection of the Test and reason(s) therefore.

If SCE rejects the results of any Test or Retest, or Seller rejects the results of the first Initial Commercial Operation Test, such Test shall be repeated in accordance with PART II.G.

I.Operating Personnel.During any Test, the same operating personnel shall operate the Storage Unit(s) that Seller contemplates will operate the Storage Unit(s) during the Delivery Period.

J. SCE Representative. SCE shall be entitled to have at least two (2) representatives from SCE and one (1) independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART III. INITIAL COMMERCIAL OPERATION TEST.

1. Test Plan. The Test Plan is provided in PART V of this Appendix 7.

B. Test Duration. The Initial Commercial Operation Test shall take place on five (5) consecutive days unless SCE determines in its sole discretion that more or less time is needed.

C. Test Dates. Seller shall provide SCE with seven (7) Business Days’ Notice of Seller’s proposed dates for the Initial Commercial Operation Test. SCE shall confirm the dates in writing prior to the first date of the Test.

Seller may, but is not required to, schedule the Initial Commercial Operation Test to occur during any test performed by or for the EPC Contractor.

D. Costs. The Initial Commercial Operation Test is a Seller Initiated Test.

E. Determination of Contract Capacity. The net kW output at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the Test. The average of the sixteen average net kW values is the final SU Contract Capacity for each Storage Unit under Appendix 1.01. *[SCE Note: for a two hour product add the following: “For each Storage Unit, the “SU RA Contract Capacity” shall be fifty percent (50%) of the applicable SU Contract Capacity. The “RA Contract Capacity” shall be the aggregate of each SU RA Contract Capacity.”]*

PART IV. CONTRACT CAPACITY & ANCILLARY SERVICES TEST

A. Test Plan. The Test Plan from the Initial Commercial Operation Test shall be used for any Contract Capacity & Ancillary Services Test, unless the Parties agree otherwise in writing.

B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Initial Commercial Operation Test, unless the Parties otherwise agree in writing.

C. Test Duration. Each Contract Capacity & Ancillary Services Test shall take place on five (5) consecutive days unless SCE determines in its sole discretion that more or less time is needed.

D. Test Dates. Seller is responsible for scheduling each Contract Capacity & Ancillary Service Test on five (5) consecutive days (unless SCE determines in its sole discretion that more or less time is needed) that are acceptable to SCE and that fall between June 15 and September 30 of the Contract Year in which the Test is requested. The date of any such Test shall be confirmed in writing by SCE to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that SCE will or is likely to dispatch the Storage Unit.

E. Costs. Responsibility for costs and allocation of income for a Contract Capacity & Ancillary Service Test is as set forth in Section 7.03.

F. No Adjustment to Contract Capacity. Notwithstanding any other provision in the Agreement, Contract Capacity *[SCE Note: for a two hour product add “and RA Contract Capacity”]*shall not be adjusted to conform to the results of any Contract Capacity & Ancillary Service Test.

PART V. TEST PLAN.

Any Test shall be performed according to the provisions of this Appendix 7, and the Test Plan below.

STEP 1: Test begins when the Storage Unit has reached 100% State of Charge.

STEP 2: Increase power output to Maximum Discharge at maximum ramp rate

* Measure: time and power output (kW)
* Step 2 ends when Maximum Discharge is reached

STEP 3: Hold at highest power output, not exceeding Maximum Discharge, for as long as supported by the Storage Unit

* Measure: time and energy delivered to the Energy Delivery Point
* Step 3 ends when Storage Unit reaches 0% SOC

STEP 4: Immediately following the completion of Step 3, begin charging the Storage Unit at Maximum Charge rate

* Measure: time, charging energy and SOC
* Step 4 ends when Storage Unit reaches 100% SOC

STEP 5: Do not charge or discharge the Storage Unit for 24 hours

* Measure: time and SOC
* Step 5 ends after 24 hours

STEP 6: Increase power output to Maximum Discharge at maximum ramp rate

* Measure: time and power output
* Step 6 ends when Maximum Discharge is reached

STEP 7: Hold at highest power output, not exceeding Maximum Discharge, for as long as supported by the Storage Unit

* Measure: time and energy delivered to the Energy Delivery Point
* Step 7 ends when Storage Unit reaches 0% SOC

STEP 8: Begin charging the Storage Unit at Maximum Charge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 1” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, charging energy to the Energy Delivery Point and SOC
* Step 8 ends at the end of the ten (10) minute rest period

STEP 9: Begin charging the Storage Unit at Maximum Charge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 2” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, charging energy to the Energy Delivery Point and SOC
* Step 9 ends at the end of the ten (10) minute period

STEP 10: Begin charging the Storage Unit at Maximum Charge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 3” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, charging energy to the Energy Delivery Point and SOC
* Step 10 ends at the end of the ten (10) minute period

STEP 11: Begin charging the Storage Unit at Maximum Charge rate; once 100% SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, charging energy to the Energy Delivery Point and SOC
* Step 11 ends at the end of the ten (10) minute period

STEP 12: Begin discharging the Storage Unit at Maximum Discharge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 3” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, energy delivered to the Energy Delivery Point and SOC
* Step 12 ends at the end of the ten (10) minute period

STEP 13: Begin discharging the Storage Unit at Maximum Discharge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 2” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, energy delivered to the Energy Delivery Point and SOC
* Step 13 ends at the end of the ten (10) minute period

STEP 14: Begin discharging the Storage Unit at Maximum Discharge rate; once *[SCE Note: insert “Maximum SOC (%)” from “Configuration 1” of Section C of Appendix 1.01]* SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, energy delivered to the Energy Delivery Point and SOC
* Step 14 ends at the end of the ten (10) minute period

STEP 15: Begin discharging the Storage Unit at Maximum Discharge rate; once 0% SOC is reached, do not charge or discharge for ten (10) minutes

* Measure: time, energy delivered to the Energy Delivery Point and SOC
* Step 15 ends at the end of the ten (10) minute period

STEP 16: Begin charging the Storage Unit at Maximum Charge rate

* Measure: time, charging energy and SOC
* Step 16 ends when Storage Unit reaches 50% SOC

STEP 17: Ramp from Maximum Charge to Maximum Discharge at a ramp rate that is constant for ten (10) consecutive minutes, and hold at Maximum Discharge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 17 ends at end of the ten (10) minute hold period

STEP 18: Ramp from Maximum Discharge to Maximum Charge at a ramp rate that is constant for ten (10) consecutive minutes, and hold at Maximum Charge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 18 ends at end of the ten (10) minute hold period

STEP 19: Ramp from Maximum Charge to Maximum Discharge at a ramp rate that is constant for five (5) consecutive minutes, and hold at Maximum Discharge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 19 ends at end of the ten (10) minute hold period

STEP 20: Ramp from Maximum Discharge to Maximum Charge at a ramp rate that is constant for five (5) consecutive minutes, and hold at Maximum Charge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 20 ends at end of the ten (10) minute hold period

STEP 21: Ramp from Maximum Charge to Maximum Discharge at a ramp rate that is constant for one (1) minute, and hold at Maximum Discharge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 21 ends at end of the ten (10) minute hold period

STEP 22: Ramp from Maximum Discharge to Maximum Charge at a ramp rate that is constant for one (1) minute, and hold at Maximum Charge for ten (10) minutes

* + - Measure: time, SOC and power output
		- Step 22 ends at end of the ten (10) minute hold period

STEP 23: Ramp from Maximum Charge to Maximum Discharge at the maximum ramp rate, and hold at Maximum Discharge for ten (10) minutes

* + - Measure: time, SOC, and power output
		- Step 23 ends at end of the ten (10) minute hold period

STEP 24: Ramp to zero (0) power output at maximum rate

* + - Test ends once the Storage Units’s power output is zero (0)

**APPENDIX 9.02**

**MONTHLY CAPACITY PRICE AND MONTHLY CAPACITY PAYMENT**

Excel Appendices

**APPENDIX 9.04**

**VARIABLE O&M CHARGE**

Excel Appendices

**APPENDIX 13.03(b)**

**LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager Credit, Risk & Collateral Management

Ladies and Gentlemen:

 (the “Bank”) hereby establishes this Irrevocable Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of *[CONTRACT PARTY]*, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, (the “Applicant”), for the amount of XXX AND XX/100 Dollars ($ ) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”).

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date, of the following:

* + - 1. The original or a photocopy of this Letter of Credit and all amendments; and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided,* the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary’s drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

 AUTHORIZED SIGNATURE for Issuer

 By:

 Name:

 Title:

**ATTACHMENT A TO APPENDIX 13.03(b)**

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number.

(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

 Reference Number:

The undersigned , an authorized representative of Southern California Edison Company (the “Beneficiary”), hereby certifies to [Issuing Bank Name] (the “Bank”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. , dated , (the “Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to
$ , for the following reason(s) [check applicable provision]:

[ ]A. An Event of Default, as defined in the Resource Adequacy Purchase Agreement (Energy Storage Option) between Beneficiary and Applicant (the “Agreement”), with respect to the Applicant has occurred and is continuing. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]B. An Early Termination Date (as defined in the Agreement) has been set by the Beneficiary under the Agreement. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]C. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ]D. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.

[ ]F. Daily Delay Damages (as defined in the Agreement) are now due and payable under the Agreement.

[ ]G. The Beneficiary is entitled to retain the entire Delivery Date Security (as defined in the Agreement): (i) because the Initial Delivery Date (as defined in the Agreement) has not occurred on or before \_\_\_\_\_\_\_\_\_\_\_\_; or (ii) because the Agreement has been terminated due to an Event of Default by Applicant before the Initial Delivery Date.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of , \_\_\_\_\_.

Beneficiary: SOUTHERN CALIFORNIA EDISON

 COMPANY

 By:

 Name:

 Title:

**APPENDIX 20.01**

**AVAILABILITY NOTICE**

**Availability Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

Unit 100% Available No Restrictions:

State of Charge:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Available Capacity to Discharge | Available Capacity to Charge | Minimum Output | AGC Available | AGC Min Limit | AGC Max Limit | Storage Capacity Available to Charge | Storage Capacity Available to Discharge | Comments |
|  | (MW) | (MW) | (MW) (non AGC) | YES/NO | (MW) | (MW) | (MWh) | (MWh) |  |
| 1:00 |  |  |  |  |  |  |  |  |  |
| 2:00 |  |  |  |  |  |  |  |  |  |
| 3:00 |  |  |  |  |  |  |  |  |  |
| 4:00 |  |  |  |  |  |  |  |  |  |
| 5:00 |  |  |  |  |  |  |  |  |  |
| 6:00 |  |  |  |  |  |  |  |  |  |
| 7:00 |  |  |  |  |  |  |  |  |  |
| 8:00 |  |  |  |  |  |  |  |  |  |
| 9:00 |  |  |  |  |  |  |  |  |  |
| 10:00 |  |  |  |  |  |  |  |  |  |
| 11:00 |  |  |  |  |  |  |  |  |  |
| 12:00 |  |  |  |  |  |  |  |  |  |
| 13:00 |  |  |  |  |  |  |  |  |  |
| 14:00 |  |  |  |  |  |  |  |  |  |
| 15:00 |  |  |  |  |  |  |  |  |  |
| 16:00 |  |  |  |  |  |  |  |  |  |
| 17:00 |  |  |  |  |  |  |  |  |  |
| 18:00 |  |  |  |  |  |  |  |  |  |
| 19:00 |  |  |  |  |  |  |  |  |  |
| 20:00 |  |  |  |  |  |  |  |  |  |
| 21:00 |  |  |  |  |  |  |  |  |  |
| 22:00 |  |  |  |  |  |  |  |  |  |
| 23:00 |  |  |  |  |  |  |  |  |  |
| 0:00 |  |  |  |  |  |  |  |  |  |

Comments:

**APPENDIX 20.02**

**DISPATCH NOTICES**

**Dispatch Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Scheduled Energy | AGC Scheduled | Regulation Up | Regulation Down | Spinning Reserve | Non-Spinning Reserves | Comments |
|  | (MW) | YES/NO | (MW) | (MW) | (MW) | (MW) |  |
| 1:00 |  |  |  |  |  |  |  |
| 2:00 |  |  |  |  |  |  |  |
| 3:00 |  |  |  |  |  |  |  |
| 4:00 |  |  |  |  |  |  |  |
| 5:00 |  |  |  |  |  |  |  |
| 6:00 |  |  |  |  |  |  |  |
| 7:00 |  |  |  |  |  |  |  |
| 8:00 |  |  |  |  |  |  |  |
| 9:00 |  |  |  |  |  |  |  |
| 10:00 |  |  |  |  |  |  |  |
| 11:00 |  |  |  |  |  |  |  |
| 12:00 |  |  |  |  |  |  |  |
| 13:00 |  |  |  |  |  |  |  |
| 14:00 |  |  |  |  |  |  |  |
| 15:00 |  |  |  |  |  |  |  |
| 16:00 |  |  |  |  |  |  |  |
| 17:00 |  |  |  |  |  |  |  |
| 18:00 |  |  |  |  |  |  |  |
| 19:00 |  |  |  |  |  |  |  |
| 20:00 |  |  |  |  |  |  |  |
| 21:00 |  |  |  |  |  |  |  |
| 22:00 |  |  |  |  |  |  |  |
| 23:00 |  |  |  |  |  |  |  |
| 0:00 |  |  |  |  |  |  |  |

Comments:

###

**APPENDIX 20.03**

**START-UP NOTICE**

Date

Station Issued By:

Unit Issued At:

Date and Time Start-Up Initiated for

Applicable Storage Unit

Date and Time Applicable Generating
Unit Synchronized

Date and Time Applicable
Storage Unit Released for Dispatch

**APPENDIX 20.05**

**COMMUNICATIONS PROTOCOLS**

**Communication Protocols**

These Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require.

**1. Contacts and Authorized Representatives**

The “Contact Information” tables set forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

**2. Communication Protocols – General**

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day and intra-hour for the applicable Operating Day including those regarding emergencies Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charges, and **shall be provided electronically or telephonically as SCE directs** to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) \_\_\_\_\_\_\_\_\_\_\_, (2) \_\_\_\_\_\_\_\_\_\_\_, (3) \_\_\_\_\_\_\_\_\_\_\_. If to SCE, such notices and communications shall be provided to Real Time. **Each Party shall confirm all Intra-day Communication either electronically or via telephone as soon as practicable.**

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and SCE, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: SCE and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

2.4 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.5 Staffing: The Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

**Contact Information Table**

**Contacts and Authorized Representatives for SCE**

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by SCE with timely Notice to Seller.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contact** | **Primary Phone** | **Secondary Phone** | **Fax** | **Email** |
| Day-Ahead Trading | 626-307-4487 |  | 626-307-4430 | electrode@sce.com |
| Day-Ahead Scheduling | 626-307-4425 | 626-307-4420 | 626-307-4413 | presched@sce.com |
| Real Time | 626-307-4453 | 626-307-4423 | 626-307-4416 | realtime@sce.com |
| Settlements – Power | 626-302-3277 |  | 626-302-3276 | PPFDPowerSettle@sce.com |
| Contract Administration | 626-302-3126 |  | 626-302-8168 | Energycontracts@sce.com |
| Outage Scheduling | 626-302-3400 |  |  | genoutages@SCE.com |

**Contacts and Authorized Representatives for Seller**

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to SCE.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Desk:** | **Contact:** | **Direct Phone:** | **Secondary Phones:** | **Fax** | **Email:** |
| Dispatch Desk (Day-Ahead) |  |  |  |  |  |
| Dispatch Desk (Real Time) |  |  |  |  |  |
| Outage Desk |  |  |  |  |  |
| Plant Manager |  |  |  |  |  |
| Contract Administration |  |  |  |  |  |
| Settlements |  |  |  |  |  |
| Operations Manager |  |  |  |  |  |
| Operations Supervisor |  |  |  |  |  |

**APPENDIX 21.03**

**DELIVERY OF DATA**

The following is a list of generic data points to be electronically exchanged between Seller and SCE in real time. SCE may add items to or delete items form this list at its reasonable discretion prior to the Initial Delivery Date.

|  |  |
| --- | --- |
| **Data Point** | **Point description** |
| DNP - XXX UnitX Breaker | UNIT BREAKER |
| DNP - XXX UnitX AGC CTRL AVAILABILITY ON/OFF | UNIT AVAILABLE for AUTOMATED CONTROL |
| DNP - ISO RIG Lost Communication | RIG COMMUNICATION HEALTH |
| DNP - XXX UnitX High Operating Limit | UNIT HIGH OPERATING LIMIT |
| DNP - XXX UnitX Low Operating Limit | UNIT LOW OPERATING LIMIT |
| DNP - XXX UnitX ISO AGC set point | SET POINT FROM ISO WHEN ON REGULATION |
| DNP - XXX UnitX Net MW (POD) | POINT OF DELIVERY MW |
| DNP - XXX UnitX Max Sustained Ramp Rate | MAXIMUM SUSTAINED RAMP RATE |
| DNP - XXX UnitX AGC model - ISO AGC | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model - SFM | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model - MAN | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX AGC model - OFF | CONTROL MODE INSTRUCTION |
| DNP - XXX UnitX Dispatch Energy Schedule | DISPATCH ENERGY TARGET  |
| DNP - XXX UnitX Reg Up Awarded MW  | REGULATION UP AWARD MW |
| DNP - XXX UnitX RegDownp Awarded MW  | REGULATION DOWN AWARD MW |
| DNP - XXX UnitX Spin Awarded MW  | SPIN AWARD MW |
| DNP - XXX UnitX Non-Spin Awarded MW  | NON SPIN AWARD MW |
| DNP - XXX UnitX Set Point (MW) | SET POINT FROM SCE |
| DNP - XXX UnitX Ramp Rate (MW/M) | CALCULATED RAMP RATE FROM SCE |
| DNP – XXX UNITX Instantaneous Energy Storage Level | ENERGY STORAGE LEVEL |
| DNP – XXX UNITX Max Charge Energy | MAX CHARGE ENERGY |
| DNP – XXX UNITX Max Discharge Energy | MAX DISCHARGE ENERGY |
| DNP – XXX UnitX Energy Charge Ramp Rate MW/min | ENERGY CHARGE RAMP RATE MW/min |
| DNP – XXX UnitX Energy Discharge Ramp Rate MW/min | ENERGY DISCHARGE RAMP RATE MW/min |

**APPENDIX 22.01**

**PLANNED OUTAGE REPORT**

Actual Planned Outage Reports submitted under this Agreement should be provided in Excel.

|  |  |
| --- | --- |
| DATE OF UPDATE |  |
| **RESOURCE NAME** |  |
| Replicate for each Storage Unit |  |  |
|  |  |  |  |  |
| **Planned Outages** |  |  |  |  |
| **Start Date** | **HE** | **End Date** | **HE** | **MW Available** |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |
|   |   |   |   |   |