

AGENDA

ORANGE COUNTY POWER AUTHORITY SPECIAL MEETING OF THE BOARD OF DIRECTORS

Monday, October 27, 2025

4:30 p.m.

This meeting will proceed as an in-person meeting at **15310 Barranca Parkway, Suite 250, Irvine, CA 92618**. In addition, as a convenience to the public, the Orange County Power Authority is providing an option for members of the public to remotely view and participate in the meeting. Further details are below. Please note that, in the event of a technical issue causing a disruption in the remote participation option, the meeting may continue unless otherwise required by law.

Note: Any member of the public may provide comments to the Orange County Power Authority Board of Directors on any agenda items by requesting to speak during Item 4. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in the following manner:

To provide comments during the meeting, in-person attendees, please fill out the public speaker slip and provide it to the clerk at the beginning of the meeting. Before Item 4, the Chair or Clerk will ask members of the public to join the queue to provide public comment. The queue will remain open for a reasonable amount of time to allow members of the public sufficient time to request to speak and inform the Board of the number of speakers. After such time, the queue will be closed and the members of the public who have joined the queue to speak will be recognized at the appropriate time may speak. To join the queue on Zoom video conference by computer or mobile phone, use the “Raise Hand” feature. If joining the meeting using the Zoom dial-in number, you can raise your hand and join the queue by pressing *9. Members of the public will not be shown on video but will be able to speak when called upon.

Comments shall generally be limited to three minutes when speaking, provided that the Chair may equally reduce each speaker’s time to accommodate a large number of speakers or a large number of agenda items. If you have anything that you wish to be distributed to the Board, please provide it via comments@ocpower.org, who will distribute the information to the Members.

The public may participate using the following remote options:

ZOOM WEBINAR

Please click the link below to join the webinar:

[Launch Meeting - Zoom](#)

Dial-in: 1-669-900-6833

Webinar ID: 856 7491 0471

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **PUBLIC COMMENTS ON AGENDA ITEMS ONLY**

Opportunity for members of the public to address the Board on any item on the agenda only.

5. **REGULAR CALENDAR**

1. **APPROVE RESOURCE ADEQUACY AGREEMENT WITH ATHOS STORAGE, LLC**

Recommended Actions:

Authorize the CEO to execute a Resource Adequacy (RA) Agreement between OCPA and Athos Storage, LLC for a fifteen (15)-year term agreement to provide 52 megawatts (MWs) of nameplate capacity, equating to 38 MWs of Net Qualifying Capacity (NQC), which will satisfy a significant portion of OCPA's supplemental mid-term reliability procurement obligations based on the California Public Utilities Commission's (CPUC) applicable Decision.

6. **ADJOURNMENT**

Compliance with the Americans with Disabilities Act

Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact 949-263-2612. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at www.ocpower.org. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at clerk@ocpower.org or by mail to 15642 Sand Canyon Avenue, P.O. Box 54283, Irvine, CA 92619-4283. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at 15310 Barranca Parkway, Suite 250, Irvine, CA 92618. Please contact clerk@ocpower.org to arrange an appointment.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.1

To: Orange County Power Authority

From: Louis Ting, Director of Power Resources

Approved by: Joe Mosca, Chief Executive Officer

Subject: APPROVE RESOURCE ADEQUACY AGREEMENT WITH ATHOS
STORAGE, LLC

Date: October 27, 2025

STRATEGIC GOALS

- ☐ Enrich & Grow the OCPA Community: _____
- ☐ Prioritize Fiscal Sustainability & Affordability: _____
- ☐ Design & Deploy Community-Aligned Customer Programs: _____
- ☒ Energize Our Community with Renewable Energy: _____
- ☐ Raise Awareness of Community Energy & Advocate for Our Customers: _____
- ☐ Not Applicable: _____

RECOMMENDED ACTION(S)

Authorize the CEO to execute a Resource Adequacy (RA) Agreement between OCPA and Athos Storage, LLC for a fifteen (15)-year term agreement to provide 52 megawatts (MWs) of nameplate capacity, equating to 38 MWs of Net Qualifying Capacity (NQC), which will satisfy a significant portion of OCPA's supplemental mid-term reliability procurement obligations based on the California Public Utilities Commission's (CPUC) applicable Decision.

BACKGROUND

The CPUC issued the decision [D.23-02-040](#) (Decision) dated February 28, 2023, ordering load serving entities (LSE) to procure newly-built capacity resources to meet the supplemental Mid-Term Reliability (MTR) requirements. Specifically, for Orange County Power Authority (OCPA), an additional NQC of 76 MWs in aggregate based on CPUC's methodologies. This CPUC procurement order requires OCPA to procure NQC from new projects in the amount of 38 MW by June 1, 2026, and an additional 38 MW by June 1, 2027. The NQC from the new project(s) must be under long-term agreement(s) of at least 10 years in duration. This MTR requirement aims to incentivize the construction of new generating facilities in the State of California to maintain reliable electric service due to ongoing increases in electricity demand, as suggested by the California Energy Commission (CEC) through its load forecasting efforts. CPUC also points to the accelerating impacts of climate change, the likelihood of fossil-fueled generation resource

retirements, and the likelihood of delays beyond 2026 in procuring long lead-time resources required by CPUC.

Following the issuance of this CPUC Decision, OCPA issued two Request for Proposals (RFPs): one in March of 2024; and, more recently, one in February of 2025. In addition to meeting the CPUC MTR requirements, each of OCPA's RFPs solicited offers from renewable energy resources to support ongoing compliance with California's Renewables Portfolio Standard (RPS) procurement mandate as well as OCPA's internally adopted renewable energy procurement goals, which meaningfully exceed statewide mandates. For the 2024 RFP, with the evaluations and shortlisting of three new projects, and further negotiations with the proposers, the OCPA Board of Directors approved the Shell Energy North America (SENA) agreement on November 25, 2024. This fourteen (14) year agreement will provide significant quantities of bundled renewable energy to support OCPA's ongoing RPS needs. However, the agreement with SENA does not include the capacity attributes to meet the CPUC MTR requirements. As a result of the 2025 RFP, several developers reached out to OCPA and its advisors with potential MTR-qualified projects for consideration and evaluation. Unfortunately, due to uncertainties with Federal actions, including the tariff negotiations and the House of Representatives 1 (H.R.1) that was signed into law changing the terms of the investment tax credit, these projects have either become less attractive due to changes in commercial terms and conditions or were no longer feasible. Fortunately, through bilateral discussions with developers, OCPA has identified new projects with MTR potential. We believe these projects to be the least-cost and best-fit projects for OCPA. One of the projects is the Lock Energy Center with its standalone battery energy storage system (BESS) that the Board of Directors approved on August 25, 2025; and the second one is the Athos Storage project (Athos) with its RA product from the four-hour BESS in compliance with CPUC's Decision procurement order.

DISCUSSION/ANALYSIS

OCPA staff and its advisors evaluated and analyzed the Athos project amongst the other standalone BESS proposals with RA only products, and Athos presented higher values based on the quantitative and qualitative analysis. The developer of the Athos Storage, LLC is SB Energy Global, LLC (SBE) which will be the owner and the operator of the Athos projects. OCPA's share of the Athos project includes an RA capacity product that is expected to satisfy applicable elements of the Decision, providing 38 MWs of new-project capacity in time to meet the 2027 procurement mandate as well as ongoing compliance requirements associated with California's slice-of-day RA framework. Although the Athos project is an RA product that derives the capacity from the BESS that is under construction, the entire Athos project framework includes utility-scale solar coupled with BESS. With further discussions with the developer, SBE, there are potential future developments with additional solar plus BESS for OCPA's consideration.

The Athos project is located in Riverside County, California, west of the Desert Center Airport with direct access to the project site five miles north of Interstate 10. The standalone BESS is under construction with all permits received with little to no development risks. All of the project land is under lease agreement, and the sites are privately-owned former agricultural lands that had lower habitat values than surrounding lands that had not been previously disturbed. Site environmental surveys have been conducted for vegetation communities, Desert Tortoise, Mojave

Fringe-Toed Lizard, Couch's Spadefoot Toad, several avian species, special status plants, and jurisdictional waters. Due to potential impacts to desert tortoise and state jurisdictional waters, the Athos Solar Projects obtained an Incidental Take Permit and Lake and Streambed Alteration Agreement with the CA Department of Fish & Wildlife, and Athos Storage is utilizing these existing permits.

Fluence Energy, a Tier 1 supplier in the BESS industry, is providing the BESS for Athos with domestic battery cells manufactured in the state of Utah. Athos estimates 150 field construction and office jobs with many sourced from local signatories.

OCPA's share of the Athos project includes nameplate capacity totaling 52 MWs, or 38 MWs of NQC, based on technology adjustments applying to four-hour battery storage projects. A backstop provision is included in the agreement for any unforeseen circumstances for Athos to replace the capacity if necessary, and a liquidated damages provision is also included in the agreement to protect OCPA's interests, including compliance with CPUC RA requirements. Athos is also required to post performance security per the agreement in the form of cash collateral or a letter of credit.

FISCAL IMPACT

The competitive capacity pricing of the RA Agreement is confidential under the CPUC's rules regarding market sensitive information. The long-term purchase of capacity will provide OCPA with cost certainty over the term of this agreement and provide NQC to meet CPUC MTR requirements.

ATTACHMENT(S)

Attachment A – Resource Adequacy Agreement with Athos Storage, LLC. (REDACTED)

RESOURCE ADEQUACY AGREEMENT COVER SHEET

A. Parties

Seller: Athos Storage, LLC

Buyer: Orange County Power Authority, a California joint powers authority (“OCPA”)

B. Primary Unit Information

Unit Name:	Athos Power Plant
Location:	Riverside County, CA
CAISO Resource ID:	Not yet assigned; to be provided by Seller prior to start of Delivery Term
Unit SCID:	Not yet assigned; to be provided by Seller prior to start of Delivery Term
Buyer’s Share	50.83%
Unit NQC:	102.3 MW (expected)
Unit EFC:	204.6 MW (expected)
Resource Type:	Battery Energy Storage System – four (4) hours discharge duration
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	South
Local Capacity Area (if any, as of Effective Date):	Not Applicable
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	None (as of the Effective Date)
Run Hour Restrictions	None (as of the Effective Date)

C. RA Product and Attributes

Throughout the Delivery Term, Seller shall provide Buyer with the Designated RA Capacity having the following attributes:

☐ RAR Attributes

☒ RAR Attributes with FCR Attributes

☐ LAR Attributes

☐ LAR Attributes with FCR Attributes

☐ FCR Attributes

D. Delivery Term

The Delivery Term is fifteen (15) Contract Years.

E. Contract Quantities

Commencing with the earliest date practicable following the Commercial Operation Date but no later than the first Showing Month that commences at least forty-five days after the Commercial Operation Date, the Contract Quantities for each Showing Month of the Delivery Term shall be:

RAR Attributes: 52 MW NQC

LAR Attributes: Not Applicable

FCR Attributes: 104 MW EFC

F. Contract Price

The Contract Price shall be [REDACTED] per kW-month ("RA Price") for Product, as measured by RAR Attributes delivered by Seller.

G. Seller's Security Amounts

Performance Security: [REDACTED]/kW multiplied by the Contract Quantity of RAR Attributes.

H. Milestones

Milestone	Date for Completion
Evidence of Site Control	Complete
Interconnection Agreement Amendment executed	10/31/2025
Major equipment procured	Complete
Expected Construction Start Date	[REDACTED]
Interim Deliverability Status Obtained	11/30/2026

Milestone	Date for Completion
Full Capacity Deliverability Status obtained	████████
Expected Commercial Operation Date	████████
Guaranteed Commercial Operation Date	5/1/2027

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EXHIBIT A: FORM OF LETTER OF CREDIT

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

EXHIBIT D: DESCRIPTION OF PRIMARY UNIT

EXHIBIT E: [RESERVED]

EXHIBIT F: PROGRESS REPORTING FORM

EXHIBIT G: NOTICES

RESOURCE ADEQUACY AGREEMENT

This Resource Adequacy Agreement (“Agreement”) is entered into between **Athos Storage, LLC** (“Seller”) and **Orange County Power Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties,” as of _____ (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Primary Unit; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

- 1.1 “Accepted Compliance Costs” has the meaning set forth in Section 13.2(b).
- 1.2 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. 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.
- 1.3 “Agreement” has the meaning set forth in the Preamble.
- 1.4 “Alternate Capacity” means any Replacement Capacity having at least equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Product that would have been provided by the Primary Unit, including the same Slice-of-Day (as that term is defined in the Resource Adequacy Rulings) and related characteristics, and any successor criteria applicable to the Primary Unit; *provided*, if any portion of the Designated RA Capacity that Seller is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Seller may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product).
- 1.5 “Applicable Laws” means any law, rule, tariff, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time over one or both Parties or this Agreement, including without limitation, the Tariff.

- 1.6 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.7 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.8 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.
- 1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.10 “Buyer” has the meaning set forth in the Preamble.
- 1.11 “Buyer’s Share” has the meaning set forth in the Cover Sheet.
- 1.12 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.13 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.14 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.15 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.9 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. Buyer shall determine such market prices in a commercially reasonable manner.
- 1.16 “Change in RA Requirements” has the meaning set forth in Section 3.1(b)(iv).
- 1.17 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.18 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.19 “Commercial Operation” has the meaning set forth in Section 16.2(a).

- 1.20 “Commercial Operation Date” means the later of (a) January 1, 2027, and (b) the date on which Commercial Operation is achieved.
- 1.21 “Commercial Operation Delay Damages” means an amount equal to (a) the Performance Security amount required hereunder, divided by (b) [REDACTED].
- 1.22 “Compliance Actions” has the meaning set forth in Section 13.2.
- 1.23 “Compliance Adjusted Unit NQC” has the meaning set forth in Section 3.1(b)(iv).
- 1.24 “Compliance Adjustment Factor” means a ratio, (a) the numerator of which is the aggregate Unit NQC value of the Primary Unit as calculated under the CPUC and CAISO resource adequacy counting rules as of the Effective Date, and (b) the denominator of which is the Compliance Adjusted Unit NQC of the Primary Unit.
- 1.25 “Compliance Expenditure Cap” has the meaning set forth in Section 13.2.
- 1.26 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.
- 1.27 “Compliance Showings” means the applicable LSE’s compliance with the Resource Adequacy Requirements of the CPUC for an applicable Showing Month.
- 1.28 “Contingent Firm” means Seller shall provide Buyer with the Product from the Primary Unit in the amount of the Contract Quantity. If the Primary Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Primary Unit in accordance with Section 3.1(b) or due to Force Majeure, Seller shall have the option to notify Buyer that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 3.1(c). If Seller fails to provide Buyer with the Designated RA Capacity for a Showing Month, then Seller shall be liable for damages or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 3.9 for such Showing Month.
- 1.29 “Confidential Information” has the meaning set forth in Article 11.
- 1.30 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.31 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.32 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.33 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section E of the Cover Sheet, which Seller has agreed to provide to Buyer from the Shown Units for such Showing Month,

subject to the terms and conditions of this Agreement; provided, however, that the Contract Quantity is equal to zero (0) MW for any Showing Month prior to the first Showing Month that commences at least forty-five days after the Commercial Operation Date.

- 1.34 “Contract Year” means a period of twelve (12) consecutive months during the Delivery Term; the first Contract Year shall commence on the Commercial Operation Date; and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- 1.35 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.
- 1.36 “CPUC” means the California Public Utilities Commission or its successor.
- 1.37 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.38 “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 senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.39 “Damage Payment” means the dollar amount that equals the Performance Security.
- 1.40 “Day-Ahead Market” has the meaning set forth in the Tariff.
- 1.41 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.42 “Delivery Point” has the meaning set forth in Section 3.4.
- 1.43 “Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.44 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity in accordance with Section 3.1(c), less any excused reduction in the Contract Quantity of Product for such Showing Month as described in Section 3.1 or due to Force Majeure for which Seller has not elected to provide Alternate Capacity in accordance with Section 3.1(c). For avoidance of doubt, “Designated RA Capacity” shall include any and all Alternate Capacity which Seller elects to provide from one or more Replacement Units in accordance with Section 3.1(c).

- 1.45 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.46 “Dispute” has the meaning set forth in Section 17.10(a).
- 1.47 “Dispute Notice” has the meaning set forth in Section 17.10(a).
- 1.48 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.49 “Effective Date” is the date set forth in the Preamble.
- 1.50 “Effective Flexible Capacity” or “EFC” means the capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.51 “Emission Reduction Credits” 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.
- 1.52 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Primary Unit, and the Primary Unit’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 Primary Unit, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Primary Unit, and the 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.
- 1.53 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.54 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.55 “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.
- 1.56 “Event of Default” has the meaning set forth in Section 5.1.

- 1.57 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.58 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.59 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.60 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Rulings.
- 1.61 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements, exclusive of LAR and RAR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.62 “Flexible RA Product” means that the Product includes FCR Attributes, if applicable, as specified in Sections C and E of the Cover Sheet.
- 1.63 “Force Majeure” means an event or circumstance which delays or prevents a Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided despite the exercise of commercially reasonable efforts. A Force Majeure event may include, but is not limited to, an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic; landslide; mudslide; sabotage; terrorism; earthquake; other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure does not include (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply (except to the extent due to a Force Majeure); (iv) Seller’s ability to sell the Product at a price greater than the Contract Price or (v) events otherwise constituting Force Majeure that prevents Seller from achieving Commercial Operation of the Primary Unit, except to the extent expressly permitted as a Development Cure Period under this Agreement.
- 1.64 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.65 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

- 1.66 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Primary Unit.
- 1.67 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) any court or governmental tribunal; and (d) CAISO, but in all cases, excludes both Parties.
- 1.68 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.69 “Guaranteed Commercial Operation Date” is the date set forth in Section H of the Cover Sheet, subject to extension pursuant to Section 16.2(b), but as limited by Section 16.2(d).
- 1.70 “Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.
- 1.71 “Hold-Back Capacity” has the meaning set forth in Section 3.7(e).
- 1.72 “Interconnection Agreement” means the interconnection agreement entered into by Seller or its Affiliates pursuant to which the Primary Unit and its Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.73 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Primary Unit with the Transmission System in accordance with the Interconnection Agreement.
- 1.74 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- 1.75 “Interim Deliverability Status” has the meaning set forth in the Tariff.
- 1.76 “Interim Deliverability Status Percentage” means, for each Showing Month of the Delivery Term through the Showing Month in which the Full Capacity Deliverability Status Finding or Partial Capacity Deliverability Status Finding is obtained, Buyer’s Share of the capacity of the Primary Unit that has received Interim Deliverability Status for such Showing

Month, divided by the Contract Quantity of RAR Attributes for such Showing Month, expressed as a percentage.

- 1.77 “Investment Grade” means a Credit Rating of at least “BBB-” from S&P and/or “Baa3” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.78 “Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.79 “Joint Powers Agreement” means that certain Joint Powers Agreement dated October 30, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- 1.80 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff, exclusive of FCR and RAR. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.81 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any FCR Attributes or RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.
- 1.82 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.83 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having (a) a Credit Rating of at least “A-” with an outlook designation of “stable” from S&P or “A3” with an outlook designation of “stable” from Moody’s and (b) assets of at least ten billion US dollars (\$10,000,000,000), in a form as set forth in Exhibit A or as otherwise reasonably acceptable to Buyer.
- 1.84 “Locational Marginal Price” or “LMP” has the meaning set forth in the Tariff.

- 1.85 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.
- 1.86 “LRA” has the meaning set forth in the Tariff.
- 1.87 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.88 “Marketable Emission Trading Credits” means 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 (42 U.S.C. § 7651b (a) to (f)).
- 1.89 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.90 “Monthly Capacity Payment” has the meaning specified in Section 3.11 hereof.
- 1.91 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.92 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.93 “Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.
- 1.94 “Network Upgrades” has the meaning set forth in the Tariff.
- 1.95 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.96 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.97 “Notification Deadline” means, for a given Showing Month, ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings and FCR Showings, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.
- 1.98 “Notifying Party” has the meaning set forth in Section 17.10(a).
- 1.99 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.
- 1.100 “Partial Capacity Deliverability Status” has the meaning set forth in the Tariff.
- 1.101 “Partial Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Primary Unit is eligible for Partial Capacity Deliverability Status.

- 1.102** “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is Southern California Edison Company (“SCE”).
- 1.103** “Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:
- (a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and
 - (b) At least three (3) years of experience in the ownership and operations of facilities similar to the Primary Unit or has retained a third-party with such experience to operate the Primary Unit.
- 1.104** “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.105** “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.106** “Point of Interconnection” means the Primary Unit’s point of interconnection to the CAISO system, as further described in the Interconnection Agreement.
- 1.107** “Primary Unit” means the energy storage facility described in Section B of the Cover Sheet and Exhibit D hereof.
- 1.108** “Product” has the meaning set forth in Section 3.1.
- 1.109** “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(b).
- 1.110** “Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period with respect to grid-interconnected, utility-scale battery energy storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally

accepted in the electric power industry with respect to grid-interconnected, utility-scale battery energy storage facilities in the Western United States.

- 1.111 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.112 “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.113 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.114 “Recipient Party” has the meaning set forth in Section 17.10(a).
- 1.115 “Regulatory Event” has the meaning set forth in Section 17.7.
- 1.116 “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.117 “Replacement Capacity” has the meaning specified in Section 3.9(a) hereof.
- 1.118 “Replacement Unit” means a unit meeting the requirements specified in Section 3.1(c) hereof that is located within the CAISO Control Area and that is capable of providing Alternate Capacity, unless Buyer agrees to accept a Replacement Unit with different RAR Attributes and/or FCR Attributes. A Replacement Unit may not be a coal-fired or nuclear generating resource and may not be an unspecified import.
- 1.119 “Requested Confidential Information” has the meaning set forth in Section 11.2(c).
- 1.120 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.121 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.122 “Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements, exclusive of FCR and LAR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.
- 1.123 “Resource Adequacy Rulings” means any applicable CPUC ruling or decision related to resource adequacy, or any other resource adequacy Law, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions,

rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Term.

- 1.124 “Resold Product” has the meaning set forth in Article 12.
- 1.125 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.126 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.127 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.128 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.129 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.
- 1.130 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.131 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.132 “Seller” has the meaning set forth in the Preamble.
- 1.133 “Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other, expressed in U.S. Dollars, which such party incurs as a result of a Terminated Transaction pursuant to Section 5.2.
- 1.134 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.135 “Shown Unit” means a Unit, or any Replacement Unit and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Effective Date.
- 1.136 “Site” means the real property on which the Primary Unit is located as identified in Exhibit D.
- 1.137 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate):
(a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

- 1.138 “SP-15” means the Existing Zone Generation Trading Hub (as defined in the Tariff) for Existing Zone (as defined in the Tariff) region SP15.
- 1.139 “Substitute Capacity” means “RA Substitute Capacity” as defined in the Tariff.
- 1.140 “Substitution Rules” has the meaning specified in the Tariff.
- 1.141 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.142 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.143 “Term” has the meaning set forth in Section 2.1.
- 1.144 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.145 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.146 “Transmission Provider” means the CAISO.
- 1.147 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Point of Interconnection.
- 1.148 “Unit” shall mean the Primary Unit and any Replacement Units, from which Product is provided by Seller to Buyer.
- 1.149 “WECC” means the Western Electricity Coordinating Council.
- 1.150 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Security is released and/or returned (the “Term”). All provisions relating to

invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; (iii) all rights and obligations under Section 16.2(g) (Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Primary Unit after Early Termination Date), if applicable, survive early termination of this Agreement for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent.

Seller shall provide notice of the expected Commercial Operation Date for the Primary Unit to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Primary Unit and to enable Seller to deliver the Product to Buyer.

(b) Seller shall have executed an Interconnection Agreement, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer.

(c) Seller shall have secured Site Control.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Commercial Operation Date has occurred.

(e) As of the Commercial Operation Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(h) As of the Commercial Operation Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Commercial Operation Delay Damages.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product. During the Delivery Term, Seller shall provide Buyer with the Contract Quantity of (i) RAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Sections C and E of the Cover Sheet to this Agreement with respect to each Showing Month (the "Product") on a Contingent Firm basis.

(a) Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and,

except as set forth herein, Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity that is in excess of the Primary Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

(b) Reductions in Contract Quantity. Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option as follows:

(i) by the amount of any Planned Outages which exist with respect to any portion of the Primary Unit during the applicable Showing Month; provided, (A) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Primary Unit that Buyer may include in Buyer's Compliance Showings for each day of that month as a result of such Planned Outage, and (B) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff. In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of the Primary Unit, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such portion(s) of such Showing Month as Alternate Capacity pursuant to Section 3.1(c).

(ii) if the Primary Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline. Seller's potential reduction in the Contract Quantity of RAR Attributes for each remaining Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) the total amount (in MW) of reductions in Unit NQC since the Effective Date, divided by (C) Unit NQC as of the Effective Date. Seller's potential reduction in the Contract Quantity of FCR Attributes for each remaining Showing Month shall equal the product of (I) the applicable Showing Month Contract Quantity and (II) the total amount (in MW) Unit EFC was reduced since the Effective Date, divided by (III) Unit EFC as of the Effective Date. If the Primary Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable portion of the Contract Quantity for such Showing Month (x) from the Primary Unit, provided the Primary Unit has sufficient remaining and available Product, and/or (y) as Alternate Capacity pursuant to Section 3.1(c).

(iii) if the Primary Unit has obtained Interim Deliverability Status of less than the Contract Quantity, for each Showing Month from the Commercial Operation Date through the earlier of (x) [REDACTED], or (y) the Showing Month in which the Partial Capacity Deliverability Status Finding or Full Capacity Deliverability Status is obtained, Seller's obligation to deliver the applicable Contract Quantity for such Showing Month may also be reduced by Seller if Seller has provided notice of such reduction to Buyer by the Notification Deadline. Seller's potential reduction in the Contract Quantity of RAR Attributes and/or FCR Attributes for each Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) one (1) minus the Interim Deliverability Status Percentage for such Showing Month. For each Showing Month included in the Delivery Term prior to the Partial Capacity Deliverability Status Finding or Full Capacity Deliverability Status Finding for the Primary Unit, Seller has the option, but not the obligation, to provide all or a portion of the applicable shortfall in the Contract

Quantity for such Showing Month (I) from the Primary Unit, provided the Primary Unit has sufficient remaining and available Product, and/or (II) as Alternate Capacity pursuant to Section 3.1(c). For the avoidance of doubt, Seller may not reduce its obligation to deliver the Contract Quantity under this Section 3.1(b)(iii) based on the Interim Deliverability Status of the Primary Unit for any Showing Month after [REDACTED]

(iv) Change in RA Requirements. If, after the Effective Date, the CAISO or the CPUC (A) replaces NQC as the value utilized to measure the qualifying capacity of the Primary Unit that can be applied toward compliance with RAR, or (B) otherwise changes the methodology for calculating the Unit NQC or the applicable successor value such that the Unit NQC or applicable successor value of the Primary Unit would be reduced (each a “Change in RA Requirements”), then from and after each such Change in RA Requirements (I) Seller will provide notice to Buyer stating the equivalent amount of qualifying capacity of the Primary Unit that can be applied toward compliance with RAR following the Change in RA Requirements (the “Compliance Adjusted Unit NQC”), and (II) Seller will be excused from delivering the portion of the Contract Quantity equal to the difference between the Unit NQC as calculated under the CPUC and CAISO resource adequacy counting rules as of the Effective Date, minus the Compliance Adjusted Unit NQC applicable after the Change in RA Requirements.

(c) Alternate Capacity. If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 3.1(b), or Seller desires to provide some or all of the Contract Quantity for any day of a Showing Month from a Replacement Unit, then Seller may, at no additional cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Primary Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

(i) Seller shall notify Buyer in writing of its intent to provide Alternate Capacity and shall identify the Replacement Unit(s) from which such Alternate Capacity shall be provided no later than the Notification Deadline for such Showing Month;

(ii) The proposed Replacement Unit(s) must (1) be accepted by the CAISO, and (2) otherwise satisfy the requirements of this Agreement;

(iii) Seller shall, or shall cause the Replacement Unit’s SC to, submit a Supply Plan for each Showing Month no later than the Notification Deadline for such Showing Month; and

(iv) If Seller does not comply with the requirements of Section 3.1(c) for the applicable Showing Month, then any such Replacement Unit(s) shall not be deemed a Replacement Unit for purposes of this Agreement for that Showing Month and Seller shall not receive payment for Product provided by such unit for such Showing Month.

3.2 Seller’s and Buyer’s Obligations.

Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or

cause to be received, the Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the RA Price for the Designated RA Capacity. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3 Interconnection.

Seller shall take all commercially reasonable actions necessary to obtain Interim Deliverability Status, Partial Capacity Deliverability Status for no less than the Contract Quantity or Full Capacity Deliverability Status for the Primary Unit by the Guaranteed Commercial Operation Date or as soon as practicable thereafter if such status cannot be obtained by the Guaranteed Commercial Operation Date. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Primary Unit.

3.4 Delivery Point.

The “Delivery Point” for the Unit shall be the CAISO Control Area.

3.5 Planned Outages.

(a) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“**Outage Schedule**”) for the Primary Unit for the following twelve (12)-month period in a form reasonably agreed to by Buyer. As soon as commercially practical but no later than ten (10) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer’s comments.

(b) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 3.5(a); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Primary Unit as a Resource Adequacy Resource that is subject to the Availability Standards to qualify for an “Approved Maintenance Outage” under the Tariff. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Primary Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its reasonable discretion.

3.6 Reserved.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify the characteristics of the Shown Unit and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by Buyer.

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Term.

(c) Seller shall identify the Shown Unit(s) and Designated RA Capacity for a Showing Month by providing Buyer with the specific Shown Unit information in the format set forth in Section B of Cover Sheet no later than the Notification Deadline for such Showing Month.

(d) The Designated RA Capacity is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term as set forth in Section 3.7(e), has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Designated RA Capacity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month. Seller has failed to deliver Product if Seller fails to submit a Supply Plan for the volume of Designated RA Capacity for any Showing Month in such amount as instructed by Buyer (but not to exceed the Designated RA Capacity) for the applicable Showing Month. Seller shall not have failed to deliver the Designated RA Capacity if Buyer fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(e) No later than five (5) Business Days before the Notification Deadline for a Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's Scheduling Coordinator not to list, in the Shown Unit's Supply Plan a portion or all of the Designated RA Capacity for any portion of such Showing Month ("Hold-Back Capacity"). Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month. Such request shall be provided to Seller no later than five (5) Business Days prior to the first day for which Buyer seeks to use such Substitute Capacity. The portion of the Designated RA Capacity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 3.7(d) for purposes of calculating a Monthly Capacity Payment pursuant to Section 3.11. Seller shall, or shall cause the Unit's Scheduling Coordinator to, use commercially reasonable efforts to comply with Buyer's request under this Section 3.7(e) including taking all commercially reasonable actions to allow Buyer or a

subsequent purchaser under Article 12 to utilize the applicable portion of the Designated RA Capacity that Buyer timely requested be withheld from the Supply Plans during each Showing Month under the Substitution Rules, including, but not limited to, providing Buyer or subsequent purchaser under Article 12 with all information needed to utilize the Substitution Rules. Seller shall not be liable for any amounts under Section 3.9 or Section 3.10 resulting from Buyer's inability to use the Hold-Back Capacity as Substitute Capacity unless due to Seller's unexcused failure to make the Hold-Back Capacity available for use as Substitute Capacity.

3.8 CAISO Offer Requirements. To the extent required under the Tariff, Seller shall schedule or cause the Shown Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Shown Unit's portion of the Designated RA Capacity in compliance with the Tariff and perform all, or cause the Shown Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Product hereunder. Buyer is not liable for the failure of Seller or the failure of any Shown Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Shown Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

3.9 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller; *provided*, (i) capacity having equivalent RAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller is not available, then Buyer may replace such portion of the Designated RA Capacity with capacity having better RAR Attributes and/or FCR Attributes than the Designated RA Capacity not provided by Seller, and (ii) if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer, on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 3.9(a) for such Showing Month, plus (B) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 3.9(a) for such Showing Month, minus (ii) the product of the RA Price times the amount of the Designated RA Capacity not provided by

Seller for such Showing Month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

(c) Notwithstanding anything to the contrary herein, Seller's liability for unexcused failure to deliver the Product shall not exceed a monthly cap of (1) \$■/kW-mo. minus the RA Price for each kW of Designated RA Capacity not provided by Seller for such Showing Month for the Showing Months of June through October and (2) \$■/kW-mo. minus the RA Price for each kW of Designated RA Capacity not provided by Seller for such Showing Month for all other Showing Months.

3.10 Indemnities for Failure to Deliver Contract Quantity.

Seller shall be responsible for the cost of, and 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 Designated RA Capacity for the respective Showing Month for the Delivery Term; or

(b) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right, or a subsequent purchaser's right, to the Designated RA Capacity purchased hereunder.

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

3.11 Monthly Capacity Payment.

Buyer shall make a Monthly Capacity Payment to Seller, in arrears, after the applicable Showing Month. The "Monthly Capacity Payment" shall be equal to the product of (i) the applicable RA Price for such month, (ii) the Designated RA Capacity, as measured by RAR Attributes, actually delivered by Seller for such month in accordance with Section 3.7, (iii) following a Change in RA Requirements, the Compliance Adjustment Factor for such month, and (iv) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.12 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for any products other than the Designated RA Capacity, including for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party

the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.12(a) above).

(c) In accordance with Section 3.11 of this Agreement:

(i) all such Buyer revenues described in Section 3.12(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.12(a), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Designated RA Capacity in such centralized capacity market.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.13 Force Majeure.

(a) Except as provided in Section 16.2(c), neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Section 16.2(c), or (b) limit Buyer's right to declare an Event of Default pursuant to Section 5.1(d) after all applicable extensions of the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 5.2.

(b) Within five (5) Business Days of becoming aware of the commencement of a Force Majeure event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the initial notice of a Force Majeure event, the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure event as to all periods prior to the delivery of the notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure event.

(c) If a Force Majeure event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 4: RESERVED**ARTICLE 5: EVENTS OF DEFAULT; REMEDIES****5.1 Events of Default.**

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) 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 and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;
- (c) 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 Seller’s obligations to deliver the Product, the exclusive remedy for which is provided in Section 3.9 and Section 3.10) if such failure is not remedied within thirty (30) Business Days after written notice;
- (d) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages or a Development Cure Period;
- (e) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Alternate Capacity;
- (f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, from the Primary Unit for delivery during the Delivery Term to any party other than Buyer, a subsequent purchaser under Article 12, or CAISO, except as permitted under this Agreement or as otherwise required by Applicable Law;
- (g) such Party becomes Bankrupt;
- (h) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 17.3, if applicable;
- (i) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Damage Payment or a Termination Payment;
- (j) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation,

amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

(k) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(ii) the issuer of such Letter of Credit becomes Bankrupt;

(iii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(v) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(vi) such Letter of Credit fails or ceases to be in full force and effect at any time;
or

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

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

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 to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the Commercial Operation Date and Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer. If the Early Termination Date occurs before the Commercial Operation Date and Buyer is the Defaulting Party, then Seller shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated

and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable). If the Early Termination Date occurs after the Commercial Operation Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable). The Gains and Losses for a Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of the Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall net out (a) any Settlement Amount that is due to the Non-Defaulting Party, plus (b) any or all other amounts due to the Non-Defaulting Party under this Agreement against (c) all amounts due to the Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or from the Non-Defaulting Party as appropriate. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 5.3 is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 5.3 is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; *provided, however*, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to the extent this Agreement is not yet liquidated in accordance with Section 5.2, to withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for the Monthly Capacity Payment within ten (10) days after the end of the prior monthly delivery period. Each invoice shall include the amount of Product and Replacement RA delivered to Buyer (if any) and (ii) a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

All undisputed amounts shall be due and payable in accordance with each Party's invoice instructions by the thirtieth (30th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due,

with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.9, 3.10 or 16.2(b), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.9 or 3.10, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from the Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

6.7 Records.

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Applicable Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

ARTICLE 7: LIMITATIONS**7.1 No Consequential Damages.**

EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

7.2 Limitation of Remedies, Liability and Damages.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.9, 3.10, 5.2, 5.3, 16.2(b) AND 16.2(e), THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 Cooperation.

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

8.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 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 the law.

ARTICLE 9: RESERVED

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties

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

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct business in the state of California;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Primary Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
- (h) 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 Product.

10.2 Buyer and Seller Covenants.

(a) Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 12, and that Buyer may use the Contract Quantity for the purpose of meeting its Compliance Obligations. Such commercially reasonable actions shall include, without limitation:

- (i) Cooperating with and providing, and in the case of Seller causing the Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including, to the extent applicable, (1) to demonstrate that the Designated RA Capacity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy RAR pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction, and (2) provision of a Supply Plan to the CAISO by Seller or its Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Adequacy Plan by Buyer’s Scheduling Coordinator; and

(ii) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided, however*, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, Unit enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Additional Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) As of the Effective Date, the Primary Unit has received an allocation of 102.3 MW of TP Deliverability (as defined in the Tariff);

(b) Throughout the Delivery Term, the Unit qualifies as a Resource Adequacy Resource that is eligible to provide the Product pursuant to the Tariff and the Resource Adequacy Rulings;

(c) Throughout the Delivery Term, Seller owns or has the exclusive right to the RA Capacity sold under this Agreement;

(d) Throughout the Delivery Term, no portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in CAISO markets or non-CAISO markets;

(e) The aggregation of all amounts of Product that Seller has sold, assigned, or transferred for the Shown Unit for each Showing Month during the Delivery Term does not exceed such Shown Unit's Net Qualifying Capacity and, if applicable, the Shown Unit's Effective Flexible Capacity, for that Shown Unit for such Showing Month;

(f) Throughout the Delivery Term, with respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Compliance Obligations applicable to the Product;

(g) Seller has notified the Scheduling Coordinator of the Unit that, throughout the Delivery Term, Seller has transferred the Designated RA Capacity to Buyer, and that the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with this Agreement and the Tariff;

(h) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to Buyer, before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(i) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.12(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

10.4 Prevailing Wage. To the extent applicable to the Primary Unit, Seller shall ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Primary Unit are paid wages in accordance with the requirements of California Labor Code Section 1720.6 and Public Utilities Code Section 769.2. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any applicable labor Laws. Buyer agrees that Seller's obligations under this Section 10.4 will be satisfied upon the execution of a project labor agreement related to construction of the Primary Unit.

10.5 Additional Buyer Representations, Warranties, and Covenants. Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted under Applicable Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

ARTICLE 11: CONFIDENTIALITY

11.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is determined by Buyer to be subject to the California Public Records Act.

11.2 Duty to Maintain Confidentiality. Neither Party shall disclose Confidential Information to a third party (other than the Party's or its Affiliates' employees, actual or potential provider of debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Primary Unit, contractors, insurers, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; *provided, however,*

each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(a) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its Compliance Showings or other regulatory compliance filings and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; *provided*, each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction; *provided*, such other party agrees to keep such information confidential.

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920.000 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

(c) Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against Buyer for Buyer’s refusal to disclose any Requested Confidential Information.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

No later than fifteen (15) days prior to the Notification Deadline for any Showing Month of the Delivery Term, Buyer may provide written notice to Seller of Buyer’s intent to re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement in accordance with this Article 12 (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect

to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, 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 in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product directly due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.9 and 3.10.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting load serving entity SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

ARTICLE 13: CHANGE IN LAW

13.1 Change in Law. The Parties acknowledge that an essential purpose of this Agreement is to provide Product that complies with the Resource Adequacy Rulings. The Parties acknowledge that Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Law. Seller agrees, subject to the provisions of this Article 13 to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of the Product as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

13.2 Compliance Expenditure Cap. If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to obtain, maintain, convey or effectuate Buyer's use of any Product in accordance with this Agreement (any action required to be taken by Seller to comply with such change in Law, a "Compliance Action"), then the Parties agree that the maximum aggregate amount of in costs and expenses Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at twenty-five thousand dollars (\$25,000) per MW of Contract Quantity of RAR Attributes in aggregate (the "Compliance Expenditure Cap").

(a) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(b) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(c) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(d) Any change in the economic value of any Product provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer’s obligation to make payments required hereunder.

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 [Reserved]

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer within forty-five (45) days after the Effective Date. Seller shall maintain the Performance Security in full force and effect, and shall, within ten (10) Business Days after any draws made by Buyer in accordance with this Agreement, replenish the Performance Security, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Performance

Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 14.3):

- (i) Exercise any of its rights and remedies with respect to the Performance Security including any such rights and remedies under Applicable Law then in effect;
- (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and
- (iii) Liquidate the Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 15: INSURANCE

15.1 Insurance.

Prior to the start of construction of the Primary Unit and thereafter throughout the remainder of the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than one million dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than five million dollars (\$5,000,000), endorsed to provide contractual liability in said amount (subject to policy terms and conditions), specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement. Limits may be satisfied through a combination of primary and excess policies.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Primary Unit prior to the Commercial Operation Date, construction all-risk form property insurance covering the Primary Unit during such construction periods, and naming Seller (and/or Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, Seller shall maintain or require to be maintained, pollution liability coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained, and may be included as part of the time element pollution coverage under the above General Liability insurance.

(ii) The limit will be at least two million dollars (\$2,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

15.2 Evidence of Insurance.

Prior to the start of construction of the Primary Unit and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any cancellation or termination of coverage, except ten (10) days for nonpayment of premium. With the exception of Workers Compensation/Employers Liability, such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: PRIMARY UNIT CONSTRUCTION AND COMMERCIAL OPERATION

16.1 Construction of the Primary Unit.

(a) Construction Start. "Construction Start" will occur upon satisfaction of the following: Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to the Site and begin physical construction of the Primary Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the "Construction Start Date."

(b) Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller's possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Primary Unit. Subject to the provisions of Section 16.2, so long as Seller complies with its obligations under this Section 16.1(b), Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

16.2 Commercial Operation.

(a) Commercial Operation. "Commercial Operation" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of this Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall cause Commercial Operation for the Primary Unit to occur by the Guaranteed Commercial Operation Date, as such

date may be extended pursuant to Section 16.2(b) and Section 16.2(c), subject to the limitations in Section 16.2(d).

(b) Commercial Operation Delay Damages. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 16.2(b).

(c) Extension of Guaranteed Commercial Operation Date. The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth in Section 16.2(d), be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines: (a) a Force Majeure event occurs, or (b) the upgrades identified in the Interconnection Agreement for the Primary Unit (not including Network Upgrades required for the Primary Unit to obtain a Full Capacity Deliverability Status Finding that are not required for the Primary Unit to achieve the Commercial Operation Date) are not complete and ready for such Primary Unit to connect and sell Product by the date that is three (3) months prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed [REDACTED]. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

(d) Maximum Milestone Extensions. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed [REDACTED] including due to an event of Force Majeure, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) shall not exceed [REDACTED]. No extension shall be given if the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines (other than in the case of the extension set forth in Section 16.2(c)). Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s failure to take such commercially reasonable actions.

(e) Termination for Failure to Achieve Guaranteed Commercial Operation Date. If the Primary Unit has not achieved Commercial Operation on or before the Guaranteed Commercial

Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 16.2(b) and/or a Development Cure Period pursuant to Section 16.2(c), then Buyer may terminate this Agreement pursuant to Section 5.1(d). If Buyer terminates this Agreement under Section 5.1(d), Buyer has the right to collect as liquidated damages an amount equal to the full Performance Security that is required to be posted by Seller pursuant to this Agreement; *provided*, payment of such amount shall constitute liquidated damages and Buyer's sole and exclusive remedy for such termination. If the Facility still has not achieved Commercial Operation by the date that is [REDACTED] after the Guaranteed Commercial Operation Date (as may be extended hereunder) and Buyer has not already terminated this Agreement, Seller may elect to terminate this Agreement by providing Notice of termination to Buyer and, subject to Section 16.2(f), payment of liquidated damages in the amount of the Performance Security, which, at Seller's election, may either be paid directly to Buyer with the Notice of termination or drawn from the Performance Security. Subject to Section 16.2(f), Buyer shall retain all Commercial Operation Delay Damages previously paid by Seller. Buyer's receipt of the liquidated damages pursuant to the prior two (2) sentences and the right of first offer pursuant to Section 16.2(g) will be Buyer's sole and exclusive remedy in connection with Seller's termination of the Agreement pursuant to this Section 16.2(e).

(f) Limitation of Seller's Pre-Commercial Operation Date Liability. Notwithstanding anything in this Agreement to the contrary, prior to the Commercial Operation Date, Seller's aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Commercial Operation Delay Damages, the Damage Payment, and/or the Termination Payment, shall not exceed the amount of the Performance Security. An indemnity claim pursuant to Section 17.2(a) shall not be subject to the foregoing limitation and will be paid separately by Seller outside of the Performance Security. For avoidance of doubt, this Section 16.2(f) shall not be applicable once the Commercial Operation Date has occurred.

(g) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Primary Unit after Early Termination Date. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason other than a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Primary Unit to a party other than Buyer for a period of two (2) years following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price but adjusted to account for the incremental expected costs to complete development, financing, and construction and achieve Commercial Operation for the Primary Unit at such time relative to the expected costs as of the Effective Date) and otherwise substantially in the form of this Agreement, and (i) Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof or (ii) Buyer and Seller fail to execute a definitive agreement within one hundred twenty (120) days after Buyer's acceptance of such offer despite both Parties negotiating in good faith or due to either Party's failure to negotiate in good faith. Seller shall provide confirmation to Buyer of the nature and amount of the incremental expected costs to complete development, financing, and construction of the Primary Unit and achieve Commercial Operation by providing Buyer a certification of such amounts by an independent licensed professional engineer. Neither Seller nor Seller's Affiliates may sell or transfer the Primary Unit, or any part thereof, or land rights or interests in the Site

(including Seller's interest in the interconnection queue position of the Primary Unit) so long as the limitations contained in this Section 16.2(g) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(g) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(g).

ARTICLE 17: MISCELLANEOUS

17.1 Title and Risk of Loss.

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Designated RA Capacity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyer's respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits associated with third party claims, including costs and attorney's fees resulting from, or arising out of or in any way connected with Seller's construction, operation and/or maintenance of the Primary Unit, including without limitation any Environmental Costs and any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyer's and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Primary Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

(a) General Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, Seller may, without the consent of Buyer, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any Permitted Transferee ; *provided, however*, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Primary Unit, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

(b) Special Financing Arrangements. Buyer has informed Seller that it may negotiate a financing arrangement for its obligations under this Agreement pursuant to which Buyer would prepay its obligations for all or a portion of the term of this Agreement (the "Prepay Period") to a third party financial intermediary, which intermediary would then assume (i) the right to take delivery of Product during the Prepay Period; and (ii) the obligation to make payments to Seller during the Prepay Period. Actual scheduling and delivery of Product pursuant to this Agreement would remain unchanged and no additional risks or obligations will be placed on Seller. It is further understood that the creditworthiness of the third party financial intermediary (or its parent) will be the same or better than that of the Buyer's creditworthiness as of the Effective Date and that if the third party financial intermediary is a special purpose entity, the parent entity with the required creditworthiness will provide a guaranty of the payment obligations. Seller agrees to cooperate reasonably with Buyer in connection with the limited assignment of rights and obligations under the Agreement in connection with such financing arrangement, subject to (i) the creditworthiness of the third party financial intermediary and any parent guarantor and the other terms of the financing arrangement and limited assignment satisfying the requirements described in this Section 17.3(b); (ii) that the contractual documents related to the arrangement do not impose any substantial additional contractual risk on Seller; (iii) the limited assignment being expressly subject to Buyer's assignee's timely payment of amounts due under this Agreement (with Buyer remaining obligated to perform all of its obligations under this Agreement, including payment obligations, notwithstanding the limited assignment); (iv) reaching mutual agreement in good faith and without substantial delay on the form of any contractual documents related to the arrangement that Seller is requested to execute, and (v) Seller obtaining the consent of its financing parties in good faith and without substantial delay provided that the other requirements of this Section 17.3(b) have been satisfied. Any assignment by Buyer, its successors or assigns under this Section 17.3(b) shall be of no force and effect unless and until an assignment agreement has been fully executed by Seller, Buyer, and Buyer's assignee.

17.4 Governing Law and Venue.

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection

with this Agreement. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Central District of California or the Superior Court of California, City of Los Angeles, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Central District of California or the Superior Court of California, City of Los Angeles, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

17.5 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit G. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, overnight courier service or email. Notice by hand delivery and overnight courier shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by email shall be effective when actually confirmed by return email from the recipient (not an automated response). If email notice is not confirmed by the recipient on the same Business Day that the email is sent, then the Party providing notice may instead give notice by hand delivery or overnight courier with such notice deemed delivered on the same Business Day that the original email notice was sent, if sent during business hours on a Business Day, and otherwise shall be deemed delivered at the close of business on the next Business Day. A Party may change its addresses by providing notice of same in accordance herewith.

17.6 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); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this 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.

17.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; *provided, further*, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. 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. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

17.8 Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Designated RA Capacity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; *provided, however*, that no adjustment for any statement or payment will be made unless objection to the

accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

17.9 Forward Contract.

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

17.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.10) (a “Dispute”), any Party (the “Notifying Party”) may deliver to the other Parties (the “Recipient Party”) notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “Dispute Notice”). The Dispute Notice shall include a schedule of the availability of the Notifying Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party’s position on the Dispute and a parallel schedule of availability of the Recipient Party’s senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers’ schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer’s members in connection with this Agreement.

17.13 Dodd-Frank Act. The Parties intend this Agreement to be a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Responseto a Petition From Certain Independent System Operators and Regional Transmission*

Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission, 78 Fed. Reg. 19,880 (Apr. 2, 2013). Notwithstanding the prior sentence, if and to the extent that this Agreement and the performance of the Parties' obligations requires any reporting to the Commodity Futures Exchange Commission (together with any successor body, the "CFTC") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Seller shall be responsible for all such reporting (and Seller shall bear all costs and expenses associated therewith) and shall be the reporting counterparty for purposes of any applicable parts of the regulations of the CFTC promulgated under the Commodity Exchange Act. Buyer shall promptly provide information reasonably required by Seller for any such reporting and Seller shall be entitled to report and disclose information concerning all swaps transacted under this Agreement (including information regarding the economic terms and valuations of this Agreement) to any applicable Governmental Authority (or a third party swap data repository as required by a Governmental Authority), from time to time, to the extent required by any applicable laws, regulations, rules or orders of any Governmental Authority. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such applicable laws, regulations, rules or orders (including information concerning such other Party's organization, corporate status, status under the CFTC's regulations and/or unique entity identifier), such other Party shall promptly provide such additional information or details to the first Party upon request therefor. Buyer shall promptly reimburse Seller for any costs, fines or penalties Seller incurs as a result of Buyer's failure to comply with this Section 17.13. Seller shall promptly reimburse Buyer for any costs Buyer incurs as a result of Seller's failure to comply with this Section 17.13 and the Commodity Exchange Act, except to the extent such costs are a result of any action or omission of Buyer. Notwithstanding any provision of this Agreement to the contrary, no Event of Default, termination event, or other similar event shall be deemed to occur under this Agreement solely on the basis of a breach of any covenant or agreement in this Section 17.13 other than the obligation to make reimbursement payments.

17.14 Market-Based Rate Authority.

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

17.15 Physical Transactions. The Parties understand and agree that the transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy or capacity. Buyer is a California community choice aggregator engaged in the business of delivering electric energy and capacity to its retail load and routinely makes or takes delivery of electric energy and capacity in order to provide service to its retail electric customers.

17.16 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ATHOS STORAGE, LLC

**ORANGE COUNTY POWER
AUTHORITY, a California joint
powers authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Orange County Power Authority, a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Orange County Power Authority, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Resource Adequacy Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) by e-mail to [bank email address] . Email delivery is considered received upon return email from the Issuer. The drawing will be effective upon our receipt of the Drawing Certificate.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the

terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at *[insert bank address information]*, referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Orange County Power Authority, Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Orange County Power Authority, a California joint powers authority, [Buyer address], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Resource Adequacy Agreement dated as of _____, (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Orange County Power Authority

Name and Title of Authorized Representative

Date _____

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to Orange County Power Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (the “Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[Seller]

By: _____

Its: _____

Date: _____

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by [Seller] (“Seller”) to Orange County Power Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Primary Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Primary Unit, and Buyer’s Share of the nameplate capacity of such equipment is no less than [46 MW].
- c) Authorization to parallel the Primary Unit was obtained by the Participating Transmission Owner, SCE on _____[DATE]_____.

[SELLER]

Signature: _____

Name: _____

Title: _____

Date: _____

[ENGINEER]

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D: DESCRIPTION OF PRIMARY UNIT

The following describes the Primary Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: Athos Power Plant (Q1405)

Resource type: Battery Storage

Nameplate capacity: 102.3

Location: Desert Center (Riverside County), CA

Unit physical address: [REDACTED]

Unit elevation: 556 ft above mean sea level

Unit latitude: Latitude: [REDACTED] °

Unit longitude: Longitude: [REDACTED] °

Interconnection: SCE

CAISO transmission access charge area (e.g. SDG&E): SCE

Point of interconnection: SCE 230 kV Red Bluff

Point of interconnection address: Red Bluff Substation will be located adjacent to the south side of Interstate 10 (I-10), east of Aztec Road, and west of Corn Springs Road, in unincorporated Riverside County, California

Existing zone (e.g. SP-15): SP-15

PNode: Not yet assigned; to be provided by Seller prior to start of Delivery Term

CAISO Resource ID: Not yet assigned; to be provided by Seller prior to start of Delivery Term

Substation: SCE 230 kV Red Bluff

**EXHIBIT E:
[RESERVED]**

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Primary Unit description.
3. Site plan of the Primary Unit.
4. Description of any material planned changes to the Primary Unit or the Site.
5. Schedule showing progress on Primary Unit construction generally and achieving each of the Milestones and the Commercial Operation Date.
6. Summary of activities during the previous quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month, as applicable.
8. Written description about the progress relative to the Milestones and the Commercial Operation Date, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones and the Commercial Operation Date.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: NOTICES

ATHOS STORAGE, LLC ("Seller")	ORANGE COUNTY POWER AUTHORITY, a California joint powers authority ("Buyer")
All Notices: Street: 3 Lagoon Dr., Suite 280 City: Redwood City, CA 94065 Attn: SBE Legal, SBE Power Marketing Phone: 650-731-3262 Email: legalus@sbenenergy.com, powermarkets@sbenenergy.com	All Notices: Orange County Power Authority P. O. Box 54283 Irvine, CA 92619 Attn: Joseph M. Mosca Interim Chief Executive Officer Phone: (949) 767-8700 Email: jmosca@ocpower.org
Reference Numbers: [REDACTED] [REDACTED]	Reference Numbers: Duns: 117918392 Federal Tax ID Number: 86-1191848
Invoices: Attn: <u>SBE Asset Mgmt</u> Phone: [REDACTED] Email: amus@sbenenergy.com	Invoices: Attn: Tiffany Law Phone: (949) 767-8708 Email: tlaw@ocpower.org
Payments: Attn: <u>SBE Asset Mgmt</u> Phone: [REDACTED] Email: amus@sbenenergy.com	Payments: Attn: Tiffany Law Phone: (949) 767-8708 Email: tlaw@ocpower.org
Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD	Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD

ATHOS STORAGE, LLC ("Seller")	ORANGE COUNTY POWER AUTHORITY, a California joint powers authority ("Buyer")
With additional Notices of an Event of Default to: Attn: [REDACTED], VP General Counsel 3 Lagoon Dr., Suite 280 Redwood City, CA 94065 Phone: (650) 731-3262 Email: [REDACTED], legalus@sbenergy.com	With additional Notices of an Event of Default to: P. O. Box 54283 Irvine, CA 92619 Attn: Joseph Mosca, Chief Executive Officer Telephone: (949) 767-8700 Email: jmosca@ocpower.org Additional notices of an Event of Default to: Best Best & Krieger LLP Attn: Nicholas Norvell Address: 18101 Von Karman Ave., Suite 1000 Irvine CA 92612 Phone: (619) 525-1380 Email: Nicholas.Norvell@bbklaw.com

