

ENERGY STORAGE AGREEMENT

COVER SHEET

Seller: Desert Sands Energy Storage II, LLC, a Delaware limited liability company

Buyer: Desert Community Energy, a California joint powers authority

Description of Facility: A 25 MW / 200 MWh (at 8 hours of discharge) battery energy storage system, located in Riverside County, California

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Execute Interconnection Agreement	October 1, 2024
Expected Construction Start Date	October 1, 2026
Achieve Full Capacity Deliverability Status	Within sixty (60) days after the Commercial Operation Date, subject to <u>Section 2.7(a)</u> of this Agreement
Expected Commercial Operation Date	April 1, 2027

Delivery Term: Fifteen (15) Contract Years

Guaranteed Capacity: 25 MW

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[REDACTED]
2-15	[REDACTED]

Guaranteed Construction Start Date: October 1, 2026, as such date may be extended by:
 (a) Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B;
 and/or (b) a Development Cure Period or any delays due to a New BESS Trade Measure Event or an Import Restriction Action pursuant to Section 4 of Exhibit B.

Guaranteed Commercial Operation Date: April 1, 2027, as such date may be extended by:
(a) Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B;
and/or (b) a Development Cure Period or any delays due to a New BESS Trade Measure Event or
an Import Restriction Action pursuant to Section 4 of Exhibit B.

Contract Price: As set forth in the table below, subject to any increase that may be agreed to
pursuant to Section 2.6.

Contract Year	Contract Price
1 – 15	[REDACTED]

Product:

- Facility Energy
- Installed Capacity
- Ancillary Services
- Capacity Attributes

Scheduling Coordinator: Buyer

Security Amount:

Development Security: [REDACTED]

Performance Security: [REDACTED]

Seller's Guarantor: NextEra Energy Capital Holdings, Inc. (as of the Effective Date)

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ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (“**Agreement**”) is entered into as of September 27, 2023 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All initially capitalized terms used in this Agreement are used with the meanings ascribed to them in Section 1.1 of this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
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 **Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.6(c).

“**Additional Products**” has the meaning set forth in Section 3.7.

“**Adjusted Days of Liquidity on Hand**” has the meaning set forth in Section 8.9(c)(i).

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transfer” and “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such as a “yield co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP (“**NEP**”), NextEra Energy Operating Partners, LP (“**NEOP**”), and NextEra Energy Capital Holdings, Inc. (“**NEECH**”), and their respective direct or indirect subsidiaries.

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been

received, by any Person, the amount of such payment (the “**Base Payment**”), supplemented by a further payment (the “**Additional Payment**”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and all Exhibits and schedules hereto, and any written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.6(b).

“**Amendment Notice**” has the meaning set forth in Section 2.6(c).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary service, as each is defined in the CAISO Tariff, in each case that can be provided by the Facility based on the Operating Restrictions. For avoidance of doubt, the Ancillary Services do not include black start.

“**Automated Dispatches**” has the meaning set forth in Section 4.6(b).

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Adjustment**” has the meaning set forth in Exhibit O.

“**Availability Notice**” has the meaning set forth in Section 4.9(b).

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC and incorporated in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is expected to be mechanically available to charge and discharge Energy and provide Ancillary Services.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, that 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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of

creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

“Battery Charging Factor” means the percentage SOC of the Facility after the number of hours calculated by dividing eight (8) by the Guaranteed Efficiency Rate of the charging phase of the applicable Capacity Test, plus thirty (30) minutes.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Facility after the first eight (8) hours of the discharging phase of the applicable Capacity Test.

“BESS Equipment” means batteries, battery modules, onboard sensors, control components, inverters, transformers, or any of their components.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Credit Support” has the meaning set forth in Section 8.9(d).

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.4(c).

“Buyer Financial Covenants” has the meaning set forth in Section 8.9(b).

“Buyer Permitted Transferee” means a third-party that:

(a) assumes, as successor in interest to Buyer, all obligations of Buyer with respect to this Agreement and all obligations of Buyer to serve customers within Buyer’s service area through an agreement that merges the operations of Buyer into the operations of such third-party;

(b) is either (i) the City of Palm Springs or the City of Palm Desert, in each case that has established and is operating as an enterprise fund within its municipality a community choice aggregation program in accordance with California Public Utilities Code Section 366.2, or (ii) a joint powers authority duly established by eligible public agencies, which joint powers authority has established and is operating a community choice aggregation program in accordance with California Public Utilities Code Section 366.2;

(c) is able to make all of the Buyer representations and warranties set forth in Section 13.2; and

(d) if such third-party is a municipal corporation, additionally represents, warrants, and covenants in a written agreement with Seller that (i) such third-party has created and set aside a designated fund for its community choice aggregation program for payment of its obligations

under this Agreement (with citations to the ordinances establishing and requiring such designated fund), (ii) all monies derived from the operation of such community choice aggregation program, including revenues for sale of electricity, payment from other entities, and any financing proceeds associated with the community choice aggregation program's obligation, will be deposited in such designated fund, (iii) such third-party will establish customer rates and charges that are sufficient to maintain revenues in such designated fund necessary to pay its obligations under this Agreement and all of such third-party's payment obligations under its other contracts for the purchase of energy and related products for its community choice aggregation program, and (iv) such third party shall provide Seller with reasonable access to account balance information with respect to such designated fund during the Contract Term.

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2(d).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing requirements for Ancillary Services, PMAX, and PMIN that apply to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specific period of time or to a specified Stored Energy Level.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Capacity Test” or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Contract Capacity, initial Efficiency Rate or any other test conducted pursuant to Exhibit N.

“Change in Law” means the adoption, promulgation, taking effect of, implementation, or modification of the CAISO Tariff by the CAISO, or of any Law by a Governmental Authority, occurring or becoming effective after the Effective Date that relates to the registration, valuation, retirement, or transfer of the Product, or that affects the amount of Qualifying Capacity or Net Qualifying Capacity available from the Facility, or that otherwise relates to any performance obligations under the Agreement, and that has increased Seller’s costs above the costs that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under this Agreement or that reduces or impairs the amount of Product or Net Qualifying Capacity that can be provided by the Facility.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

“Charging Energy” means Energy delivered to the Facility (including pursuant to a Charging Notice) as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted consistent with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specific period of time or to a specified Stored Energy Level; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice.

“COD Certificate” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Capacity Test” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Section 2 of Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to [REDACTED].

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit P that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

“**Compliance Actions**” has the meaning set forth in Section 3.6(a).

“**Compliance Costs**” means costs required to be incurred by Seller as a result of a Change in Law (i) due to any required physical change to the Facility or its interconnection facilities or shared facilities, or any change in the method of operation of the Facility, in each case in light of counting conventions or other rulings or interpretations in effect following the Change in Law, or (ii) that result in a material increase in the costs that could have been reasonably expected by Seller as of the Effective Date in order to comply with Seller’s obligations under the Agreement with respect to the construction or operation of the Facility or its related interconnection facilities or shared facilities, and the delivery of the Product.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.6.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Consent to Collateral Assignment**” has the meaning set forth in Section 14.2.

“**Construction Delay Damages**” means an amount equal to [REDACTED].

“**Construction Start**” has the meaning set forth in Section 1 of Exhibit B.

“**Construction Start Date**” has the meaning set forth in Section 1 of Exhibit B.

“**Contract Capacity**” means the total capacity (in MW) of the Facility initially equal to the Guaranteed Capacity amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.4 and Exhibit N to reflect the results of the most recently performed Capacity Test, not to exceed the Guaranteed Capacity.

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

“**Contract Year**” means a period of twelve (12) consecutive months. 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.

“**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 Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable

attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

[REDACTED]

“CPUC” means the California Public Utilities Commission, or any successor government entity.

[REDACTED]

“Credit Notice” has the meaning set forth in Section 8.9(d).

“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 Fitch, S&P or Moody's. [REDACTED]

[REDACTED]

“Cure Plan” has the meaning set forth in Section 11.1(b)(ii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, to curtail deliveries of Facility Energy, including due to: (i) any System Emergency; (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected; or (iii) in response to an Energy oversupply or potential Energy oversupply;

(b) a curtailment ordered by the Transmission Provider including due to: (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party as a result of the termination of this Agreement, or by Seller to Buyer in the event of a termination by Seller for convenience under Section 2.7(b), occurring prior to the Commercial Operation Date, in the dollar amount set forth in Section 11.3(a).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Delay Damages" means Construction Delay Damages and Commercial Operation Delay Damages.

"Deliverability Deadline" has the meaning set forth in Section 2.7(a)(i).

"Delivery Point" has the meaning set forth in Exhibit A.

"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.

"Development Cure Period" has the meaning set forth in Section 4 of Exhibit B.

"Development Security" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"Discharging Energy" means Energy delivered from the Facility to the Delivery Point (including pursuant to a Discharging Notice) as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted consistent with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specific period of time or to a specified Stored Energy Level.

"Disclosing Party" has the meaning set forth in Section 18.2(a).

"Dispatch Notice" means any Charging Notice, Discharging Notice, and subsequent updates thereto, given by the CAISO, Buyer, or Buyer's SC to Seller directing the Facility to charge or discharge Facility Energy at a specific MW rate for a specific period of time or to a specified Stored Energy Level; *provided*, any such Charging Notice, Discharging Notice, and update shall be in accordance with the Operating Restrictions and the CAISO Tariff. Dispatch Notices may be communicated electronically through ADS, AGC, or e-mail, or telephonically, in accordance with the procedures set forth in Section 4.7. Telephonic or other verbal

communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Buyer and Seller upon request for settlement purposes. Any instruction to charge or discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice or Discharging Notice, as applicable.

“**DOC**” means the U.S. Department of Commerce.

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Date**” has the meaning set forth on the Preamble.

“**Efficiency Rate**” means the rate calculated by dividing Energy Out by Energy In (a) pursuant to Exhibit N for the initial Efficiency Rate, and (b) based on actual Facility operations for each calendar month thereafter.

“**Electrical Losses**” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

“**Energy**” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“**Energy In**” means the total Energy delivered to the Delivery Point pursuant to one or more Charging Notices during the relevant period as recorded by the CAISO.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Energy Out**” means the total Energy delivered to the Delivery Point pursuant to one or more Discharging Notices during the relevant period as recorded by the CAISO.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Excused Hour**” has the meaning set forth in Exhibit O.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Expected Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Extended Deliverability Deadline**” has the meaning set forth in Section 2.7(a)(ii).

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A located at the Site, including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such energy storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“**Facility Energy**” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by

the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and net of Station Use. All Facility Energy shall have originally been delivered to the Facility as Charging Energy.

“**Facility Meter**” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Facility Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“**Facility Metering Point**” means the location(s) of the Facility Meter shown in Exhibit Q.

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

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

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

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

“**Force Majeure Event**” has the meaning set forth in Section 10.1(a).

“**Full Capacity Deliverability Status**” or “**FCDS**” has the meaning set forth in the CAISO Tariff.

“**GAAP**” means Generally Accepted Accounting Principles as adopted from time to time by the Governmental Accounting Standards Board.

“**Gains**” means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Non-Defaulting Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (*e.g.*, SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes and Incentives.

“Governmental Authority” means any federal, state, provincial, local, or municipal government, any political subdivision thereof, or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

“Guaranteed Capacity” means the maximum dependable operating capability of the Facility to discharge Energy, as measured in MW AC at the Delivery Point (*i.e.*, measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) for eight (8) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed RA Amount” means, at any point in time on or after the RA Guarantee Date, the maximum Net Qualifying Capacity (in MWs) for which the Facility at the Delivery Point, having achieved Full Capacity Deliverability Status, and performing with operational characteristics equal to those required by the Seasonal Availability Guarantee, the Guaranteed Efficiency Rate, and the Operating Restrictions, may be counted in any given Showing Month pursuant to then-current provisions of Law and the CAISO Tariff, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources. Prior to the RA Guarantee Date, the Guaranteed RA Amount shall be zero.

“Guarantor” means, with respect to Seller, (a) NextEra Energy Capital Holdings, Inc., (b) an Affiliate of Seller [REDACTED], or (c) any Person reasonably acceptable to Buyer, that (i) has [REDACTED], (ii) [REDACTED], (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit R.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Facility Energy deviates from the amount of Scheduled Energy.

“Import Restriction Action” means (a) the Uyghur Forced Labor Prevention Act and/or the Hoshine Silicon Industry Withhold Release Order, and/or (b) a Governmental Authority implements any Law or policy, or a Governmental Authority including the United States Customs & Border Protection, utilizes CF28s, Withhold Release Orders, or takes other detention, seizure or enforcement actions that prevent or delay the delivery of major equipment, including BESS

Equipment procured by Seller, directly or indirectly, to be used in connection with the Facility.

“**Incentives**” means: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction or ownership of, investment in, or production or storage of electricity with respect to the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Capacity Attribute or Ancillary Service.

“**Indemnified Party**” has the meaning set forth in Section 16.1(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

“**Initial Synchronization**” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“**Installed Capacity**” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

“**Inter-SC Trade**” has the meaning set forth in the CAISO Tariff.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Interconnection Facilities that are used by the Facility and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Capacity Limit**” means the maximum instantaneous amount of Energy that is permitted to be delivered from the Facility to the Delivery Point under the Interconnection Agreement, in the amount of 25 MW.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

[REDACTED]

“**ITC**” means the investment tax credit established pursuant to Section 48, 48E or other applicable provisions of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Desert Community Energy Joint Powers Agreement effective as of 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.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage, mezzanine, or long-term debt, equity, or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including cash or tax equity), public debt, or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (d) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or in connection with the Facility.

“**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, [REDACTED] in a form substantially similar to the letter of credit set forth in (a) Exhibit K if issued on behalf of Seller for the benefit of Buyer, and (b) Exhibit U if issued on behalf of Buyer for the benefit of Seller, each as applicable.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

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

“**Losses**” means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes and Incentives.

“**Milestones**” means the milestones set forth on the Cover Sheet.

“**Minimum Rating**” has the meaning set forth in Section 8.9.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“**Monthly Forecast**” has the meaning set forth in Section 4.9(a).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**NEECH**” has the meaning set forth in the definition of Affiliate.

“**NEER**” means NextEra Energy Resources, LLC.

“**NEOP**” has the meaning set forth in the definition of Affiliate.

“**NEP**” has the meaning set forth in the definition of Affiliate.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

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

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**New BESS Trade Measure Event**” means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

(a) Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any antidumping and/or countervailing duty (“**AD/CVD**”) orders on BESS Equipment;

(b) Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment; or

(c) Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including AD/CVD or other trade measures on BESS Equipment.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (e-mail).

“**Off-Peak Hour**” means any hour that is not an On-Peak Hour.

“**On-Peak Hour**” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit P.

“**Outage Schedule**” has the meaning set forth in Section 4.10(a)(i).

“**Party**” has the meaning set forth in the Preamble.

“**Performance Guarantees**” has the meaning set forth in Section 4.3(d).

“**Performance Measurement Period**” means each two (2) consecutive Contract Year periods during the Delivery Term, calculated on a non-rolling basis such that no Contract Year is included in more than one Performance Measurement Period. For the avoidance of doubt, the first Performance Measurement Period shall be comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 3 and 4, the third Performance Measurement Period shall be comprised of Contract Years 5 and 6, and so on.

“**Performance Security**” means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“**Permitted Transfer**” means any of the following:

(a) Any transaction or combination of transactions between or among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or

transfer of assets or ownership interests involving Seller or its Affiliates; *provided* that (i) Ultimate Parent retains, directly or indirectly, ownership of fifty percent (50%) or more of the entity that is Seller after the transaction(s), or a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility after the transaction(s), and (ii) if such transactions transfer this Agreement to any entity other than the entity that is the Seller before such transactions, the transferee executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement;

(b) Any Change of Control of Ultimate Parent, NEER, NEP, NEOP, or NEECH, or any combination thereof;

(c) Any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) Any direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; or (iv) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an Affiliate of NEER continues to hold an economic interest in the Facility; provided, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator;

"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) Such entity or Person has a tangible net worth of [REDACTED]

[REDACTED] and

(b) Such entity or Person has at least two (2) years of experience in the ownership and operations of energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NEP, NEOP, and NEECH, and their respective direct and indirect subsidiaries.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.10(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

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

“**Portfolio**” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Financing**” means any tax equity or debt transactions entered into by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Posting Party**” has the meaning set forth in Section 8.10.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**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 industry during the relevant time period with respect to grid-interconnected, utility-scale 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 industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualified Operator” means Seller or an operator of energy storage facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery energy storage facilities having a nameplate capacity rating of ten (10) MW and/or two (20) MWh or more, for not less than two (2) years.

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

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.5(c).

“RA Guarantee Date” means the first day of the first calendar month that is at least two (2) months after the Commercial Operation Date. For illustrative purposes, if the Commercial Operation Date is June 30, the RA Guarantee Date shall be September 1.

“RA Shortfall” has the meaning set forth in Section 3.5(c)(i).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(c), any Showing Month, commencing with the Showing Month in which the RA Guarantee Date occurs, during which the Net Qualifying Capacity of the Facility plus any Replacement RA (if applicable) provided by Seller for such month, is less than the Guaranteed RA Amount

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

“Receiving Party” has the meaning set forth in Section 18.2(a).

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount otherwise would be owed to Buyer under this Agreement.

“Requested Confidential Information” has the meaning set forth in Section 18.2(d).

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings, including any Flexible Capacity, and any local, zonal or otherwise locational attributes, that are associated with and available from the Facility.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority having jurisdiction over Buyer or Seller.

“Resource Adequacy Resource” has the meaning set forth in the Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the Charging Energy or Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Seasonal Availability” has the meaning set forth in Exhibit O.

“Seasonal Availability Guarantee” has the meaning set forth in Section 4.3(a).

“Seasonal Period” means the Summer Season or the Winter Season.

“Secured Party” has the meaning set forth in Section 8.10.

“**Security Interest**” has the meaning set forth in Section 8.10.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Default**” means an Event of Default of Seller.

“**Seller Initiated Test**” has the meaning set forth in Section 4.4(c).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed the sum of its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, the Parties agree that the value of Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with Affiliates and/or third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

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

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“**Site Control**” means that, for the Contract Term, Seller or 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.

“**SOC**” or “**State of Charge**” means (a) the level of charge of the Facility relative to (b) the Contract Capacity multiplied by eight (8) hours, expressed as a percentage.

“**SQMD Plan**” has the meaning set forth in the CAISO Tariff.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Facility is charging or discharging pursuant to a Seller Initiated Test, a Buyer Dispatched Test, a Charging Notice, or a Discharging Notice.

“**Storage Capability**” means the capability of the Facility to charge and discharge Energy, expressed in whole MWhs, that is expected for each hour of the applicable period.

“**Stored Energy Level**” means, at a particular time, the amount of Energy in the Facility available to be discharged as Facility Energy, expressed in MWh.

“**Subject Entity**” has the meaning set forth in Section 2.7(c).

“**Summer Season**” means the months of May through October, inclusive.

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

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the ITC and any state, local and/or federal production tax credit, depreciation benefit, tax deduction investment tax credit and/or other tax benefits associated with the production of clean or renewable energy, investments in clean or renewable energy facilities or battery storage facilities, and/or the construction, operation or the ownership of, the Facility or any part thereof (including any cash payment or grant).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Transmission Plan Deliverability**” has the meaning set forth in Section 2.7(a)(i).

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain

transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means NextEra Energy, Inc., a Delaware corporation, NEER, NEP, NEOP, or NEECH, and any combination thereof.

“**Unplanned Outage**” means a period during which the Facility is unavailable to provide some or all of the Product due to the need to maintain or repair a component of the Facility, which period is not a Planned Outage.

“**Winter Season**” means the months of November through April, inclusive.

1.2 **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 in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice 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.

ARTICLE 2 TERM; CONDITIONS PRECEDENT; EARLY TERMINATION

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including any early termination under Section 2.7, Section 10.4, or Section 11.2, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and

all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall commence upon Seller's completion of all of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and shall be in full force and effect, and a copy of each shall have been delivered to Buyer;

(c) An Interconnection Agreement between Seller (or Seller's Affiliate) and the Transmission Provider shall have been executed and shall be in full force and effect and a copy of the Interconnection Agreement shall have been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required to commence operation of the Facility shall have been obtained and shall be in full force and effect;

(e) Seller shall have obtained CAISO Certification for the Facility, except for Ancillary Services which shall not be required as a condition for achieving the Commercial Operation Date or the start of the Delivery Term;

(f) Seller shall have delivered the Performance Security to Buyer in accordance with Section 8.8;

(g) Seller (with assistance from Buyer) shall have taken all actions and executed all documents and instruments required to be performed and/or signed by Seller to authorize Buyer (or its designated agent) to act as Scheduling Coordinator for the Facility; and

(h) Seller shall have paid Buyer for all amounts then owing under this Agreement, if any, including Delay Damages.

2.3 **Development; Construction; 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 reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller also shall provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions and Seller's right to redact portions that reveal confidential or commercially sensitive information) directly related to the achievement of Milestones within ten (10) Business Days after Seller's receipt of any such request from Buyer.

Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90)-day period following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones. Delivery of a Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones (when required under this **Section 2.4**), and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of **Exhibit B**, so long as Seller complies with its obligations under this **Section 2.4**, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including Seller’s delivery of an Availability Notice for the Commercial Operation Date, and Buyer’s delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

2.6 **New BESS Trade Measure Events/Import Restriction Action.**

(a) Notwithstanding anything to the contrary in this Agreement, the following shall apply in connection with any New BESS Trade Measure Event or Import Restriction Action. Within thirty (30) days after the occurrence or cessation, as applicable, of a New BESS Trade Measure Event or an Import Restriction Action that applies to any BESS Equipment, Seller shall give Notice to Buyer of such New BESS Trade Measure Event or Import Restriction Act, which Notice shall set forth Seller’s commercially reasonable opinion as of the date of such Notice regarding (i) the components of the Facility that are potentially impacted, (ii) whether there are commercially reasonably available alternatives to such components to mitigate the impact of the New BESS Trade Measure Event or Import Restriction Action, and (iii) any anticipated delay in the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and any other applicable Milestones. Within ten (10) Business Days after Buyer’s receipt of such Notice, Seller and Buyer shall meet and confer to discuss the opinions set forth in such Notice, and to the extent the costs and delays associated with anticipated impacts, alternatives, and delays identified in such Notice can be identified and mitigated with reasonable certainty, Seller and Buyer will commence negotiations of potential changes to this Agreement to keep the construction of the Facility on track including keeping Seller financially whole. If the impacts, alternatives, and delays are uncertain as of the date of such negotiations, or Seller and Buyer are not able to agree

on changes to this Agreement, then such meetings will continue on no less than a monthly basis until the earliest to occur of (A) Seller and Buyer agreeing to such changes in a signed amendment to this Agreement, (B) delivery of a Notice of termination of this Agreement pursuant to Section 2.6(d), and (C) cessation of the New BESS Trade Measure Event or Import Restriction Action. If neither Party has given Notice of termination pursuant to Section 2.6(d), then within sixty (60) days of the cessation of the New BESS Trade Measure Event or Import Restriction Action, Seller will give Notice to Buyer pursuant to Section 2.6(c).

(b) Subject to the terms of Section 2.6(d), while the New BESS Trade Measure Event or Import Restriction Action is ongoing and for a period of ninety (90) days following its cessation, Seller may suspend development and construction of the Facility, or any part thereof, and the Guaranteed Construction Start Date, Guaranteed Commercial Operation Date, and all applicable Milestones shall be extended automatically on a day-for-day basis for each day of such suspension.

(c) Seller shall, within sixty (60) days of the cessation of the New BESS Trade Measure Event or Import Restriction Action (or at such earlier date as Seller may, in its sole discretion, determine it has reasonable certainty of the impacts of the New BESS Trade Measure Event or Import Restriction Action, as applicable), provide Notice to Buyer of: (i) any increase in the cost of the Facility as a result of the New BESS Trade Measure Event or Import Restriction Action and any proposed increase in the Contract Price to compensate Seller for such cost; and (ii) an extension of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and all applicable Milestones to accommodate delays or cost increases that Seller reasonably expects to incur, including under any replacement arrangement, as a result of such New BESS Trade Measure Event or Import Restriction Action (an “**Amendment Notice**”). Within thirty (30) days of receipt of the Amendment Notice, Buyer will give Notice of its acceptance or rejection of such terms as set forth in the Amendment Notice. If Buyer accepts such terms, then Buyer and Seller will execute an appropriate amendment to this Agreement that incorporates the terms in the Amendment Notice. If the Buyer rejects such terms or does not timely provide any response to the Amendment Notice, then subject to the rights of the Parties under Section 2.6(d), Buyer and Seller will continue to negotiate the terms set forth in the Amendment Notice in good faith. If Seller has not provided an Amendment Notice or a termination notice pursuant to Section 2.6(d) within sixty (60) days following the cessation of the New BESS Trade Measure Event or Import Restriction Action, then the New BESS Trade Measure Event or Import Restriction Action will be deemed to have not resulted in any material impact on the obligations of the Parties under this Agreement, except for the extension set forth in Section 2.6(b).

(d) At any time following the occurrence of the New BESS Trade Measure Event or Import Restriction Action until the date that is sixty (60) days following the cessation of such New BESS Trade Measure Event or Import Restriction Action, as applicable, if Seller in its sole discretion determines that it does not make economic sense for Seller to proceed with this Agreement due to increased project costs and/or schedule delays, then Seller may terminate this Agreement (for the avoidance of doubt, this termination right applies regardless of any prior or pending Amendment Notices with respect to such New BESS Trade Measure Event or Import Restriction Action) upon at least thirty (30) days’ Notice to Buyer. Buyer will have the right to terminate this Agreement within thirty (30) days following either of the following: (i) Buyer’s receipt of an Amendment Notice if (A) the proposed increase in the Contract Price is greater than

[REDACTED], or (B) the extension of the Guaranteed Commercial Operation Date due to the New BESS Trade Measure Event or Import Restriction Action is greater than [REDACTED]; or (ii) [REDACTED]

[REDACTED] Any such Notice of termination must be provided not later than fifteen (15) days after the relevant triggering event in clause (i) or (ii) above, and any such termination shall be effective as of the date of such Notice. Any termination pursuant to this Section 2.6(d) will be governed by Section 2.7(d).

2.7 **Early Termination Events**. The following early termination rights shall apply in addition to the termination rights applicable under Section 10.4 and Section 11.2.

(a) **Early Termination for Lack of Deliverability**.

(i) One of the Milestones provides for the Facility to achieve Full Capacity Deliverability Status within sixty (60) days after the Commercial Operation Date. As of the Effective Date, the Facility does not have any deliverability under the CAISO's interconnection process but Seller will seek deliverability under the CAISO's process for obtaining transmission plan deliverability ("**Transmission Plan Deliverability**"). Accordingly, notwithstanding anything in this Agreement to the contrary: (A) Seller makes no representation or warranty that the Facility will obtain deliverability or Transmission Plan Deliverability allocation, or achieve Full Capacity Deliverability Status; and (B) if for any reason the Facility has not obtained Transmission Plan Deliverability allocation by the latest of (1) [REDACTED], (2) the date when Seller receives notification of the CAISO affidavit results from the first CAISO Transmission Plan Deliverability allocation cycle after the Effective Date, or (3) any later date agreed to by the Parties in writing, which under any circumstances shall not be later than [REDACTED] (the latest such date is the "**Deliverability Deadline**"), then, unless an extension is available and demanded in accordance with Section 2.7(a)(ii), in which case Section 2.7(a)(ii) shall apply: (x) Seller shall send a Notice to Buyer confirming that the Facility has not obtained Transmission Plan Deliverability allocation as of the Deliverability Deadline; (y) within five (5) Business Days after the date of Seller's Notice, Buyer shall return the Development Security to Seller, less any amounts previously drawn in accordance with this Agreement; and (z) this Agreement shall terminate automatically and neither Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

(ii) Notwithstanding the preceding paragraph, but without limiting the termination right applicable under the next succeeding paragraph, if the Facility did not obtain Transmission Plan Deliverability allocation by the Deliverability Deadline, and if the CAISO is conducting a Transmission Plan Deliverability allocation cycle in 2025, then either Party may demand that the other Party enter into an amendment to this Agreement that extends the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date, and all applicable Milestones by one (1) year and upon such demand the Parties shall execute such an amendment. If such amendment is executed, then Seller shall reapply for Transmission Plan Deliverability allocation in the 2025 Transmission Plan Deliverability allocation cycle (if there is such a cycle in 2025); provided, however, that (A) Seller makes no representation or warranty that

the Facility will obtain deliverability or Transmission Plan Deliverability allocation, or achieve Full Capacity Deliverability Status, and (B) if for any reason the Facility has not obtained Transmission Plan Deliverability allocation by the latest of (1) [REDACTED], (2) the date when Seller receives notification of the CAISO affidavit results, and (3) any later date agreed to by the Parties in writing, which under any circumstances shall not be later than [REDACTED] (the latest such date is the “**Extended Deliverability Deadline**”), then: (x) Seller shall send a Notice to Buyer confirming that the Facility has not obtained Transmission Plan Deliverability allocation as of the Extended Deliverability Deadline; (y) within five (5) Business Days after the date of Seller’s Notice, Buyer shall return the Development Security to Seller, less any amounts previously drawn in accordance with this Agreement; and (z) this Agreement shall terminate automatically and neither Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

(iii) Buyer also acknowledges that: (A) the Facility is part of a larger energy complex with 300 MW of battery storage capacity (referred to herein as the “Desert Sands Energy Complex”); (B) among the Shared Facilities used for the Desert Sands Energy Complex is the Interconnection Agreement; and (C) the off-takers from the Desert Sands Energy Complex, including Buyer, will be sharing in the deliverability capacity which is governed by the Interconnection Agreement. If the CAISO awards Transmission Plan Deliverability allocation with respect to the Interconnection Agreement, but in less than the full amount of the capacity of the Interconnection Agreement, the amount of Transmission Plan Deliverability allocation to which each off-taker from the Desert Sands Energy Complex will be entitled shall be determined based on the order in which each off-take agreement was signed. Provided that the Effective Date is not later than September 30, 2023, then as of the Effective Date Buyer will be second in priority for entitlement to a Transmission Plan Deliverability allocation (*i.e.*, Buyer will be junior in priority to one off-taker). If the amount of Transmission Plan Deliverability allocation awarded to the Facility after deductions for any senior off-takers would be less than the Guaranteed Capacity, then: (1) Seller shall send a Notice to Buyer confirming that the Facility has not obtained Transmission Plan Deliverability allocation as of the Deliverability Deadline for the Facility or the Extended Deliverability Deadline, if applicable; (2) within five (5) Business Days after the date of Seller’s Notice, Buyer shall return the Development Security to Seller, less any amounts previously drawn in accordance with this Agreement; and (3) this Agreement shall terminate automatically and neither Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

(b) Early Termination for Convenience. Seller shall have the right, in its sole discretion, to terminate this Agreement for convenience by providing Notice of termination to Buyer not later than the Guaranteed Construction Start Date. If Seller exercises such termination right, then Seller shall pay the Damage Payment (which shall be the amount calculated under Section 11.3(a)(i) that would apply to a Seller Default occurring before the Commercial Operation Date) to Buyer not later than five (5) Business Days after the date of Seller’s Notice of termination. If Seller does not pay the Damage Payment when due, then Buyer may draw on the Development Security in the amount of the Damage Payment. Upon Seller’s payment of the Damage Payment (or Buyer’s collection of the Damage Payment through a draw on the Development Security), Buyer shall return any undrawn portion of the Development Security to Seller, less any amounts previously drawn in accordance with this Agreement, this Agreement shall terminate, and neither

Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

(c) Early Termination for Buyer Transfers. The following early termination right shall apply without limiting Seller's rights to declare a Buyer Default under Section 11.1(c), and collect a Termination Payment under Section 11.2, and Seller may elect, in its sole discretion, to exercise its rights under Section 11.1(c) and Section 11.2, or to exercise its termination right under this Section 2.7(c), under the circumstances specified therein and herein. If at any time during the Contract Term: (i) more than [REDACTED] is voluntarily or involuntarily transferred or assigned to a third-party unless permitted pursuant to Section 14.6; (ii) this Agreement or any of Buyer's rights or obligations hereunder is voluntarily or involuntarily assigned, transferred, or conveyed, in whole or in part, or any attempt is made to assign, transfer, or convey this Agreement or any of Buyer's rights or obligations hereunder, to a "provider of last resort" (as such term is defined in California Public Utilities Code Section 387 or any successor provision), or to any other entity (each, a "Subject Entity") for reasons similar to those that permit an involuntary assignment, transfer, or conveyance of an agreement to a provider of last resort under the foregoing statutory provisions; or (iii) Buyer, a provider of last resort, a Subject Entity, or a Governmental Authority takes action (which action is legally binding on the entity taking such action) that approves the occurrence of the events or circumstances specified in subsection (i) or (ii) above, which may be evidenced by the official minutes or proceedings of such entity including a Governmental Authority taking such action, or by any public statement or press release confirming such action has been taken, or Buyer provides Seller with a Notice thereof, then Seller shall have the right, in its sole discretion, to elect to terminate this Agreement by providing Notice to Buyer. If Seller exercises its termination right under this Section 2.7(c), then: (A) Buyer shall return all Development Security and Performance Security (as may be then posted) to Seller, less any amounts previously drawn in accordance with this Agreement; (B) this Agreement shall terminate as of the date specified in Seller's Notice of termination; and (C) thereafter neither Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

(d) Early Termination for New BESS Trade Measure Event or Import Restriction Action. If this Agreement is terminated pursuant to Section 2.6(d), then: (i) Buyer shall return all Development Security and Performance Security (as may be then posted) to Seller, less any amounts previously drawn in accordance with this Agreement; (ii) this Agreement shall terminate as of the date specified in Seller's Notice of termination; and (iii) thereafter neither Party shall have any further liability or obligation under this Agreement, except under the provisions of this Agreement that survive termination as specified in Section 2.1(b).

ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its

sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Facility Energy and Ancillary Services.** Except for Facility Energy resulting from a Seller Initiated Test, Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments related to such Imbalance Energy shall be made by Buyer and shall be for Buyer's account. Buyer shall have the exclusive rights to all Ancillary Services and Energy associated with Ancillary Services, with characteristics and quantities determined in accordance with the CAISO Tariff. Notwithstanding the foregoing, prior to the Commercial Operation Date, Seller has the right to sell all capacity, Facility Energy, and Ancillary Services from the Facility into the CAISO's markets and to retain all resulting revenues for Seller's own account.

3.3 **Ownership of Incentives.** Seller shall have all right, title and interest in and to all Incentives. Buyer acknowledges that any Incentives belong to Seller. If any Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Incentives.

3.4 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.6, Seller grants, pledges, assigns, and otherwise commits to Buyer all the Capacity Attributes from the Facility associated with the Installed Capacity.

(b) Throughout the Delivery Term and subject to Section 3.6, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.6, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits available from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.6, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA as the sole remedy for (i) any RA Shortfall, and (ii) any failure by Seller to deliver Capacity Attributes and the Guaranteed RA Amount hereunder.

(b) **Replacement RA.** Seller may, as an alternative to paying any RA Deficiency Amount, provide Replacement RA to Buyer in amounts up to the amount of RA Shortfall that otherwise would be calculated under Section 3.5(c)(i) absent any Replacement RA; *provided*, that Seller shall provide a Notice to Buyer identifying any Replacement RA and specifying the applicable resource information at least ten (10) Business Days before the deadline (as established by the CAISO or CPUC) for Buyer's submission of its Resource Adequacy Plan for the applicable Showing Month for the purpose of monthly RAR reporting; *provided, further*, that Replacement RA provided by Seller hereunder shall comply with the requirements of CPUC Decision 21-06-035 and meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC's Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties.

(c) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of:

(i) the positive difference, if any, expressed in kW, of (A) the Guaranteed RA Amount, minus (B) the lowest amount of Net Qualifying Capacity for the Facility that is eligible to be included on a Supply Plan as a Resource Adequacy Resource under the Resource Adequacy Rulings and the CAISO Tariff for the RA Shortfall Month, minus (C) any Replacement RA supplied by Seller for the Showing Month, minus (D) any Net Qualifying Capacity of the Facility that was not eligible to be shown on a Supply Plan for the Showing Month due to Planned Outage or a Force Majeure affecting the Facility (the result is the "**RA Shortfall**"); multiplied by

(ii) the lower of (A) [REDACTED], or (B) [REDACTED].

3.6 **Compliance Expenditure Cap.** If a Change in Law occurs after the Effective Date with respect to obtaining, maintaining, conveying, or effectuating Buyer's use of any Product, including any such Change in Law that impacts the Facility's or the Product's eligibility to qualify for or maintain Resource Adequacy Benefits, then Seller shall use commercially reasonable efforts to comply with such Change in Law as necessary to maintain such eligibility described above, subject to the following sentence. Notwithstanding anything to the contrary in this Agreement, the Parties agree that the maximum aggregate amount of Compliance Costs that Seller shall be required to incur during the Contract Term to comply with any such Change in Law shall be capped at [REDACTED] with respect to any

Change in Law that impacts the Facility's or the Product's eligibility to qualify for or maintain Resource Adequacy Benefits, each to the extent as applicable ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

(c) 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 (i) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.6(c) within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay the applicable Compliance Costs.

(d) 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.

(e) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a Change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law, and (iii) the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the Change in Law.

3.7 **Additional Products**. If after the Effective Date, new or incremental opportunities arise for the sale or transfer of additional products from the Facility that are not known to or contemplated by the Parties as of the Effective Date, including potentially the sale of reactive power or ancillary services (collectively, "**Additional Products**"), then either Party may provide Notice to the other Party regarding the availability of any such Additional Product from the Facility. Buyer may request, in a written Notice to Seller, that Seller use commercially reasonable efforts, at Buyer's cost, to propose modifications to this Agreement that would allow Seller to assist Buyer in monetizing any such Additional Products on behalf of Buyer. Notwithstanding the foregoing, Seller shall not be required to accommodate such requests by Buyer if: (i) the creation, registration, sale, or transfer of such Additional Products would require Seller to (A) make material

modifications to the Facility (or the design thereof) or material upgrades or other material modifications to any interconnection or transmission facilities (other than those for which Buyer has agreed to fund or reimburse to Seller), (B) reduce the Available Capacity, Contract Capacity, or other Product available from the Facility or delivery thereof to the Interconnection Point, or (C) reduce or restrict the Facility's flexibility in a manner that would restrict flexibility in offering, bidding, planning, and scheduling any part of the Product; or (ii) the sale or transfer of such Additional Products is not permitted by (and capable of being implemented pursuant to) Law and the CAISO Tariff.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties (except as otherwise set forth in this Agreement), if any, imposed in connection with: (a) the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself); and (b) the acceptance and transmission of Facility Energy at and from the Delivery Point, including without limitation, transmission costs and transmission line losses and imbalance charges. Charging Energy and Facility Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as provided in clause (iii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.3 **Performance Guarantees.**

(a) During the Delivery Term, the Facility shall maintain a Seasonal Availability (calculated in accordance with Exhibit O) of no less than the applicable “**Seasonal Availability Guarantee**” which is the value set forth in the table below for the applicable Contract Year and Seasonal Period.

	Seasonal Availability Guarantee for the Summer Season (May-October)	Seasonal Availability Guarantee for the Winter Season (November-April)
Contract Year 1	■	■
Contract Year 2	■	■
Contract Year 3-15	■	■

(b) If the Seasonal Availability during any Seasonal Period is less than the applicable Seasonal Availability Guarantee, then Buyer’s payment for the Product shall be calculated by reference to the applicable Availability Adjustment as set forth in Exhibit C.

(c) During the Delivery Term, if the Facility does not maintain an Efficiency Rate at least equal to the applicable Guaranteed Efficiency Rate, then Seller shall owe Buyer a liquidated damages payment calculated in accordance with Exhibit C that shall be applied to the monthly payment due from Buyer as set forth in Exhibit C.

(d) The Seasonal Availability Guarantee and the Guaranteed Efficiency Rate collectively are the “**Performance Guarantees**”. Notwithstanding anything to the contrary herein, (i) the sole and exclusive remedy for Seller’s failure to meet the applicable Seasonal Availability Guarantee shall be the calculation and application of an Availability Adjustment as set forth in Exhibit O and Exhibit C, and (ii) the sole and exclusive remedy for Seller’s failure to meet the applicable Guaranteed Efficiency Rate shall be the payment of liquidated damages as specified in Exhibit C.

4.4 **Facility Testing.**

(a) Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit N. Thereafter, Seller shall have the right to run additional Capacity Tests in accordance with Exhibit N.

(i) Buyer shall have the right, at its expense, to send one or more representatives to witness all Capacity Tests.

(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity determined pursuant to a Capacity Test varies

from the then-current Contract Capacity, as applicable, then the actual capacity determined pursuant to such Capacity Test shall become the new Contract Capacity, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices.

(c) Buyer or Seller Initiated Tests. The Commercial Operation Capacity Test and all required annual tests pursuant to Section B of Exhibit N shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Facility that is not a Buyer Dispatched Test (including any test requested by Seller to discharge any energy stranded behind any inverters, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test other than a Capacity Test required by Exhibit N for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); provided, however, when these requests occur during Off-Peak Hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer’s cooperation for Seller to perform such tests shall not be unreasonably withheld.).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Seasonal Availability. The Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Facility during such Seller Initiated Test.

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for all Charging Energy and other costs, and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. For all Seller Initiated Tests, (i) Seller shall reimburse Buyer the amount of Buyer’s payment of the Charging Energy for such Seller Initiated Test, and (ii) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices. Seller shall develop written operating procedures for the Facility before the start of the Delivery Term that set forth the protocol under which the Parties shall perform their respective obligations under this Agreement.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain accurate records with respect to all Capacity Tests.

(d) Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer will have the right to dispatch the Facility seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If an electronic submittal is not possible for reasons beyond Buyer’s control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines specified in the CAISO Tariff.

4.8 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) Charging Notices. Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, *provided*, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.8(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and other benefits (including Product) associated with such discharge.

(d) Discharging Notices. Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, *provided*, that Buyer's right to issue Discharging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.

(f) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.8 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(g) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Facility (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing, and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing shall be for Seller's account.

Commencing on the Commercial Operation Date, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer's account.

(h) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.8 or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the operational procedures.

4.9 Capacity Availability Notice.

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity, and a non-binding forecast of the hourly expected available Storage Capability, for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable ("Monthly Forecast").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) (the "Availability Notice"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) changes or is expected to change by one (1) MW or more after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.10 Outages.

(a) Planned Outages.

(i) At least sixty (60) days prior to the Guaranteed Commercial Operation Date and each subsequent Contract Year, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within fifteen (15) days after its receipt of an Outage

Schedule, Buyer shall give Notice to Seller of any reasonable requests 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 may propose changes to any Planned Outage included in an Outage Schedule by providing Notice to Buyer at least fifteen (15) days prior to such Planned Outage. Within three (3) days after receipt of such Notice, Buyer may propose alternate dates for the rescheduled Planned Outage and Seller shall use commercially reasonable efforts to accommodate such requests to the extent consistent with Prudent Operating Practices. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO. Seller shall communicate to Buyer all changes to a Planned Outage and estimated time of return of the Facility as soon as practicable after the condition causing the change becomes known to Seller.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.10(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.10(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.10(a)(ii), during the Summer Season of each Contract Year, Seller shall not schedule any non-emergency outage or maintenance that reduces the Available Capacity of the Facility by more than [REDACTED], unless (i) such outage or maintenance is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such outage or maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the Summer Season of each Contract Year, (iii) such outage or maintenance occurs in connection with any Force Majeure Event, (iv) such outage or maintenance is required by Law or by the CAISO Tariff or the tariffs of the Transmission Provider, or (v) the Parties agree to such outage or maintenance in writing.

(c) **Notice of Unplanned Outages.** Seller shall notify Buyer by telephoning or emailing Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof. Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage.

(d) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(e) **Force Majeure Event.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event prevents Seller from delivering any such Product.

(f) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(d) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with the CAISO Tariff or any applicable Laws.

ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility.**

(a) Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product, and shall comply with applicable Law and Prudent Operating Practices relating to the operation and maintenance of the Facility. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit M Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements, including through shared ownership of, or possessing contractual right from, an Affiliate that is the interconnection customer under the Interconnection Agreement or the owner of any Shared Facilities and Interconnection Facilities; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID (as defined in the CAISO Tariff), and (iv) provide that in the event of any discretionary allocation of curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter(s) will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller's sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit Q, as may be revised to be

consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the fifteenth (15th) day of each month for the previous calendar month. Each invoice shall: (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy and Facility Energy, in each case as read by the Facility Meter, Energy In, Energy Out, and the amount of Replacement RA delivered to Buyer (if any), and (ii) data showing 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. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product and all other amounts due hereunder by wire transfer or ACH payment to the bank account

provided on each monthly invoice. Buyer shall pay all undisputed amounts set forth in each invoice within thirty (30) days after the invoice date. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), [REDACTED] (the “**Interest Rate**”), provided, however, that in no event shall the Interest Rate imposed on either Party exceed the maximum legal rate of interest payable by Buyer under California law. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and 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 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).

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to the next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due absent the inaccuracy; provided, however, that for purposes of this Section 8.4 only, interest shall not be owed for more than a maximum period of six (6) months prior to the date the adjustment is invoiced, regardless of the period of the applicable payment adjustment.

8.5 **Billing Disputes.** 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. The foregoing period will be extended in the event of any adjustment to an invoice as a result of billing errors or corrections due to actions of the CAISO pursuant to Section 8.4. If 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 made when due. 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 original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments that bear interest in line with Section 8.2 and in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. 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 unless otherwise specified in this section.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, C and O, 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.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect, subject to the terms of this Section 8.7. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. Subject to this Section 8.7 and the other terms of this Agreement governing Seller's Development Security requirements, Seller may change the type and/or issuer (as applicable) of the Development Security from time to time and at any time. For avoidance of doubt, Seller shall have no replenishment obligation with respect to the Development Security including following any draw by Buyer.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Performance Security may be provided in the form of cash, Letter of Credit, or a Guaranty substantially in the form set forth in Exhibit R. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, any Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting); *provided, however*, that in no event shall Seller have any obligation to replenish the Performance Security to the extent that the total aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds two (2) times the amount of the original Performance Security specified on the Cover Sheet. Following the occurrence of both of the events in

subsections (a) and (b) above, Buyer shall promptly return to Seller the unused portion of the Performance Security. Subject to this Section 8.8 and the other terms of this Agreement governing Seller's Performance Security requirements, Seller may change the type and/or issuer (as applicable) of the Performance Security from time to time and at any time.

8.9 **Buyer's Performance Assurance and Credit Support.**

(a) Throughout the Contract Term, unless available on Buyer's internet site at <https://desertcommunityenergy.org/about/key-documents/>, Buyer shall provide to Seller unaudited quarterly financial statements of Buyer within sixty (60) days of the end of each calendar quarter, and audited annual financial statements of Buyer within one hundred fifty (150) days after the end of each fiscal year of Buyer. Buyer's financial statements shall have been prepared in accordance with GAAP.

(b) Buyer agrees to meet the following financial covenants during the Contract Term (collectively, "**Buyer Financial Covenants**"):

(i) For the fiscal year of Buyer ending June 30, 2023, Buyer shall demonstrate to Seller that Buyer has not less than [REDACTED] of Adjusted Days of Liquidity on Hand, and an Equity to Assets Ratio of not less than [REDACTED]; and

(ii) For the fiscal year of Buyer ending June 30, 2024 (including for avoidance of doubt each calendar quarter within such fiscal year), Buyer shall demonstrate to Seller that Buyer has not less than [REDACTED] of Adjusted Days of Liquidity on Hand, and an Equity to Assets Ratio of not less than [REDACTED]; and

(iii) For each fiscal year (including for avoidance of doubt each calendar quarter within each such fiscal year) thereafter, Buyer shall demonstrate to Seller that Buyer has not less than [REDACTED] of Adjusted Days of Liquidity on Hand, and an Equity to Assets Ratio of not less than [REDACTED].

(c) Buyer Financial Covenants will be calculated as follows:

(i) Buyer's "**Adjusted Days of Liquidity on Hand**" shall be calculated as follows:

$$\frac{((\text{available unrestricted cash and investments}) + (\text{committed unused bank line})) * 365 \text{ days}}{\text{annual operating expenses}}$$

(ii) Buyer's "**Equity to Assets Ratio**" shall be calculated as follows:

$$\frac{\text{Total Net Position (Equity)}}{\text{Total Assets}}$$

(d) Throughout the Contract Term, subject to Section 8.9(c)(i), beginning with Buyer audited financial statements for the fiscal year ending June 30, 2023, no later than one hundred fifty (150) days after the end of each fiscal year of Buyer and within sixty (60) days of each calendar quarter within each such fiscal year (other than the quarter ending June 30), Buyer

shall determine and provide to Seller a Notice in the form attached hereto as Exhibit T (“**Credit Notice**”) certifying (A) Buyer’s determination of Buyer’s Adjusted Days of Liquidity on Hand and Equity to Assets Ratio as of the end of the prior fiscal year of Buyer or end of the most recent calendar quarter, as applicable, which shall be determined based on Buyer’s most recent quarterly financials for the quarters ending March 31, September 30 and December 31 or audited fiscal year end financials for the quarter ending June 30, as applicable, (B) the applicable financial statements have been prepared in accordance with GAAP and are true and correct to Buyer’s knowledge, and (C) whether Buyer is in compliance with the Buyer Financial Covenants. For avoidance of doubt, (i) for the purpose of calculating the Adjusted Days of Liquidity on Hand, annual operating expenses are for the twelve (12) months ended on such most recent quarterly or annual, as applicable, financial statement end date, and (ii) the Equity to Assets Ratio shall be calculated as of the most recent financial statement end date. To the extent not available as set forth in Section 8.9(a), Buyer shall include with the Credit Notice a true and correct copy of the applicable annual audited or quarterly unaudited financial statements, used in determining the Adjusted Day of Liquidity on Hand and the Equity to Assets Ratio. If Buyer does not timely provide a Credit Notice and thereafter fails to provide the Credit Notice within five (5) Business Days of a request for the Credit Notice from Seller, or fails at any time to meet any Buyer Financial Covenant in whole or in part, including if based on any Credit Notice or on Seller’s review of the audited or unaudited financial statements, then Buyer shall provide credit support to Seller in the form of cash or a Letter of Credit in the amount of [REDACTED] (“**Buyer Credit Support**”). Buyer shall deliver the required Buyer Credit Support to Seller within ten (10) Business Days after the date that the applicable Credit Notice is due, or within ten (10) Business Days after Seller’s request for Buyer Credit Support based on Seller’s review of Buyer’s audited or unaudited financial statements. Buyer shall maintain the Buyer Credit Support in full force and effect, and Buyer shall within five (5) Business Days after any draw thereon replenish the Buyer Credit Support in the event Seller collects or draws down any portion of the Buyer Credit Support for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement, including compensation for penalties, any Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting); *provided, however*, that if after posting the Buyer Credit Support, Buyer demonstrates compliance with all Buyer Financial Covenants, then Buyer shall no longer be required to post the Buyer Credit Support and Seller shall return the Buyer Credit Support to Buyer less any amounts drawn by Seller in accordance with this Agreement. Return of any Buyer Credit Support shall not prejudice or diminish Seller’s rights or Buyer’s obligations with respect to any subsequent failure by Buyer to demonstrate compliance with the Buyer Financial Covenants, which subsequent failure shall trigger the requirement for Buyer to repost the Buyer Credit Support in accordance with the terms of this Section 8.9(d). Following the occurrence of both of the events in subsections (a) and (b) above, Seller shall promptly return to Buyer the unused portion of any Buyer Credit Support then held by Seller. Subject to this Section 8.9 and the other terms of this Agreement governing the Buyer Credit Support requirements, Buyer may change the type and/or issuer (as applicable) of the Buyer Credit Support from time to time and at any time.

(e) The Buyer Financial Covenants and Buyer’s obligation to deliver Buyer Credit Support to Seller (i) shall not apply during any period in which Buyer maintains an Investment Grade Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s

(the “**Minimum Rating**”), and (ii) shall apply during all periods when Buyer has not yet obtained, or no longer maintains, the Minimum Rating. If Buyer obtains the Minimum Rating, then Seller shall return any posted Buyer Credit Support to Buyer within fifteen (15) days following Notice thereof from Buyer. If Buyer subsequently loses or otherwise fails to maintain the Minimum Rating, then Buyer’s obligation to meet the Buyer Financial Covenants shall apply, and if Buyer does not then meet any Buyer Financial Covenant, then Buyer shall post the Buyer Credit Support within fifteen (15) days following loss of the Minimum Rating.

(f) Buyer agrees to establish rates and charges to its customers that are sufficient to provide revenues necessary, taking into account available reserves, to enable Buyer to pay its obligations under this Agreement and all of Buyer’s payment obligations under its other contracts for the purchase of energy, capacity, resource adequacy capacity, storage services, environmental attributes, and related products.

8.10 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, each Party (the “**Posting Party**”) hereby grants to the other Party (the “**Secured Party**”) a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, Buyer Credit Support, or any other cash collateral and cash equivalent collateral posted by the Posting Party pursuant to Sections 8.7, 8.8, and/or 8.9, as applicable, 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 the Secured Party, and the Posting Party agrees to take all action as the Secured Party reasonably requires in order to perfect the Secured Party’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. Upon or any time after the occurrence of an Event of Default caused by the Posting Party, an Early Termination Date resulting from an Event of Default caused by the Posting Party, or an occasion provided for in this Agreement where the Secured Party is authorized to retain all or a portion of the Development Security, Performance Security, or Buyer Credit Support, as applicable, the Secured Party may do any one or more of the following (in each case subject to the final sentence of this Section 8.10):

(a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, and Buyer Credit Support, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by the Secured Party as Development Security, Performance Security, or Buyer Credit Support; and

(c) Liquidate all Development Security, Performance Security, or Buyer Credit Support (as applicable) then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Posting Party, including any equity or right of purchase or redemption by the Posting Party.

The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Posting Party’s obligations under this Agreement; *provided*, that

the Posting Party shall remain liable for any amounts owing to the Secured Party after such application, except to the extent limited in this Agreement, subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit M or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by a regularly scheduled next Business Day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (b) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms (including for avoidance of doubt, hail); explosion; fire; volcanic eruption; flood; epidemic, pandemic (including COVID-19) or plague; or any directive from a Governmental Authority including any temporary restraint or restriction that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement; landslide; mudslide; sabotage or vandalism; terrorism; earthquake; other cataclysmic events; an act of public enemy;

war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below; or a failure of the Facility's final step-up transformer so long as it is maintained by Seller in accordance with Prudent Operating Practice.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy components of the Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event or if such equipment failure relates to the failure of the Facility's final step-up transformer; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Party 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 a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event 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 Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after the date the claiming Party became aware of the Force Majeure Event, must (a) give the other Party Notice describing the particulars of the occurrence in reasonable detail, (b) provide information reasonably sufficient to establish that the occurrence constitutes a Force Majeure Event as defined in this Agreement, and (c) provide Notice to the other Party of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B), plus the total extensions obtained through the payment of Commercial Operation Delay Damages, equal or exceed (i)

or (ii)

and Seller has demonstrated to Buyer's reasonable satisfaction that Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would be eligible for a Development Cure Period but for the limitations in Exhibit B, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller.

(b) 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 in any material respect, 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 at least thirty (30) days' prior Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; provided, that if the applicable Force Majeure event is cured within the applicable 30-day notice period, the applicable termination right shall expire at the time of such cure. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to either Party (the "**Defaulting Party**"), the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) 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 cause such representation or warranty to be true and correct within thirty (30) days after

Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if such Party is unable to cause such representation or warranty to be true and correct within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except to the extent an exclusive remedy for such performance failure is set forth herein, including (A) any failure of Seller to provide the Guaranteed RA Amount or Capacity Attributes, or any RA Shortfall, the exclusive remedy for which is set forth in Section 3.5, (B) any failure of Seller in connection with unauthorized charging or discharging, the exclusive remedies for which are set forth in Section 4.8(c), or (C) any failure of Seller related to any Performance Guarantee that does not trigger the provisions of Section 11.1(b)(ii), the exclusive remedies for which are set forth in Exhibit C and Exhibit O), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if such Party is unable to remedy such failure within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14;

(vi) 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;

(vii) failure by such Party to satisfy the collateral requirements pursuant to Section 8.7, Section 8.8, or Section 8.9 within five (5) Business Days after Notice from the other Party, including the failure to replenish the Performance Security amount or the Buyer Credit Support in accordance with this Agreement in the event such other Party draws against it for any reason other than to satisfy a Termination Payment;

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [REDACTED];

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

- (C) 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;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) 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;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) such Party 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, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) Seller's failure to achieve Construction Start on or before [REDACTED] after the Guaranteed Construction Start Date, or subject to Section 10.4(a) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date;

(ii) the simple average Seasonal Availability during any Performance Measurement Period is less than [REDACTED], and Seller fails to (A) deliver to Buyer within sixty (60) days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is consistent with Prudent Operating Practices and the condition is capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days, unless such plan or report shows the cure requires replacement of at least fifty percent (50%) of the Facility's battery capacity, or at least fifty percent (50%) of the Facility's inverter capacity or sub-inverter capacity, or replacement of the Facility's generator step-up transformer, in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a "**Cure Plan**"), and (B) complete such Cure Plan in all material respects as set forth therein, including within the applicable time frame set forth therein;

(iii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either cash or a replacement Letter of Credit from an 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:

- (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
- (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
- (C) the Guarantor becomes Bankrupt;
- (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
- (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

(c) with respect to Buyer as the Defaulting Party, the occurrence of an event specified in Section 2.7(c)(i), 2.7(c)(ii) or 2.7(c)(iii).

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (**“Non-Defaulting Party”**) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (**“Early Termination Date”**) that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment in the case of an Early Termination Date that occurs before the Commercial Operation Date (subject to the limitation in Section 11.8), or (ii) the Termination Payment in the case of an Early Termination Date occurring on or after the Commercial Operation Date, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement pending declaration of an Early Termination Date;

(d) to suspend performance pending declaration of an Early Termination Date;

and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any termination of this Agreement and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be due and shall be calculated in accordance with this Section 11.3(a).

(i) Subject to the limitation in Section 11.8, if Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall equal [REDACTED]

[REDACTED]. If Seller has not paid the Damage Payment, then Buyer may liquidate the Development Security as payment thereof. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by a Seller Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be calculated in the same manner as a Termination Payment pursuant to Section 11.3(b). There will be no amount owed to Buyer.

(b) **Termination Payment On or After the Commercial Operation Date**. The payment owed by the Defaulting Party to the Non-Defaulting Party if an Early Termination Date has been declared on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of the Settlement Amount plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, information vendors, and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages. 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 termination of the Agreement due to an Event of Default by the Defaulting Party would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with the termination of this Agreement due to an Event of Default by the Defaulting Party 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 to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

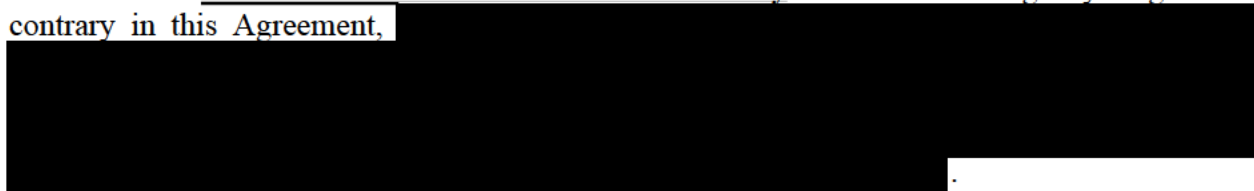
11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.8 **Limitation on Seller's Pre-COD Liability.** Notwithstanding anything to the contrary in this Agreement,



ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) A LIQUIDATED DAMAGES CALCULATION PERFORMED IN ACCORDANCE WITH THIS AGREEMENT, OR (D) A CLAIM RESULTING FROM A PARTY'S FRAUD, 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, OR IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages.

(a) 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 THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES PURSUANT TO SECTION 12.1, 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.

(b) 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.

(c) 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) SHALL BE DEEMED TO BE DIRECT DAMAGES.

(d) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 2.6, 3.5, 4.3, 11.2, 11.3, AND 11.8, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT O, 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.

(e) 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 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation, and is or will be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller, or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is or will be located in the State of California.

(f) Seller reasonably believes that, despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer's only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing, and in good standing under the laws of the State of California and the rules, regulations and orders of the CPUC, and is qualified to conduct business in each jurisdiction of the members of the Joint Powers Agreement. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer, or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) 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, (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.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed (provided, however, that it shall not be unreasonable for Seller to withhold, condition, or delay any attempted assignment in connection with the circumstances set forth in Section 2.7(c), and this Section 14.1 shall not limit or affect Seller's rights and remedies with respect to any attempted assignment in connection with the circumstances in Section 2.7(c), including Seller's right to declare a Buyer Event of Default under Section 11.1(c)). A Change of Control is deemed an assignment for purposes of this Agreement. Any assignment, including any Change of Control, made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement, or a consent reasonably requested by a Lender or financing party in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement (each, a "**Consent to Collateral Assignment**"). Such Consent to Collateral Assignment shall be substantially the form attached as Exhibit S, subject to modifications reasonably requested by Seller or its Lenders or financing parties to reflect the applicable financing structure and documentation.

14.3 **Other Assignments and Permitted Transfers.** In addition to assignments addressed in Section 14.2, Seller may, without the prior written consent of Buyer:

(a) engage in and consummate any transaction that results in a Permitted Transfer; or

(b) transfer or assign this Agreement or undergo a Change of Control in which the assignee or the entity that is the Seller following such Change of Control is a Permitted Transferee.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Accommodation of Lenders.** Buyer will, as soon as reasonably practicable after request, cooperate reasonably with Seller and any Lender or tax equity investor of Seller or a parent of Seller involving the Facility or this Agreement to provide such consents to assignments, estoppels, certifications, representations, information or other documents as may be reasonably requested by Seller or such Lender or tax equity investor in connection with any financing or assignment involving the Facility or this Agreement, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent(s) are collaterally assigned in lieu of an assignment of this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including reasonable attorneys' fees.

14.6 **Assignment by Buyer to a Buyer Permitted Transferee.** Buyer may assign its rights and obligations under this Agreement to a Buyer Permitted Transferee, other than an assignment that qualifies under Sections 2.7(c)(ii) or (iii), subject to the following conditions which must be satisfied prior to any transfer of Buyer's rights under this Agreement: (i) the Buyer Permitted Transferee shall have assumed all obligations of Buyer under to this Agreement and made the Buyer representations and warranties set forth in Section 13.2, and, if applicable, the additional representations in clause (d) of the definition of Buyer Permitted Transferee, in each case in a written agreement provided to Seller; (ii) the Buyer Permitted Transferee shall have posted any Buyer Credit Support that is required pursuant to Section 8.9; (iii) the Buyer Permitted Transferee must have rate-setting authority; and (iv) the creditworthiness of the Buyer Permitted Transferee must be acceptable to Seller, to be determined in Seller's reasonable discretion, and the identity of the Buyer Permitted Transferee must not otherwise be adverse to Seller (e.g., the Buyer Permitted Transferee cannot present credit concentration concerns). Any other assignee of Buyer under this Agreement will be subject to the prior written consent of Seller in accordance with Section 14.1.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** 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.

15.2 **Judicial Reference.** Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **Dispute Resolution.** In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (each a “**Dispute**”), either Party may deliver to the other Party notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a “**Dispute Notice**”). The senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the thirty (30) day period following receipt of the Dispute Notice in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved by the expiration of the thirty (30) day period, then a Party may pursue any legal remedy available to it in accordance with this Agreement.

15.4 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.5 **Venue.** In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in California sitting in the City and County of Los Angeles, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

**ARTICLE 16
INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and such other Party’s Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for (i) personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party or its Affiliates, directors, officers, employees, or agents, or (ii) third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance, or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve either Party of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, then the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED] per occurrence and in aggregate. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. 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.

(e) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED] (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 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; and (iv) information that the recipient

independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidential Information.**

(a) The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, investors, prospective lenders and investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, 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 applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure.

(b) 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.

(c) 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 (Government Code Section 6250 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.

(d) 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, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in

addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy storage-related product seller and energy storage-related product purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except pursuant to the terms of any Buyer Credit Support provided by or on behalf of Buyer, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another

provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

DESERT SANDS ENERGY STORAGE II,
LLC, a Delaware limited liability company

DESERT COMMUNITY ENERGY, a
California joint powers authority

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Desert Sands (for clarification, the Facility will comprise only a portion of the entire Desert Sands Energy Complex).

Site may include all or some of the following APNs: Seller to provide at least sixty (60) days prior to the Guaranteed Construction Start Date.

City: Within or nearby Palm Springs city limits

County: Riverside, California

Zip Code: 92258

Latitude and Longitude:

Facility Description: Lithium Ion Battery Storage Facility

Delivery Point: [REDACTED]

Facility Meter: See Exhibit Q

Facility Metering Points: See Exhibit Q

P-node: To be established prior to the Commercial Operation Date. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Southern California Edison

Interconnection Point: [REDACTED]

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- (a) “**Construction Start**” will occur when Seller has (i) acquired all applicable regulatory authorizations, approvals, and permits necessary to start construction activities at the Site, and (ii) executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin construction. The date of Construction Start will be evidenced by Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date.**” Subject to the other terms of this Agreement, Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- (b) Seller may extend the Guaranteed Construction Start Date (in addition to any extensions pursuant to a Development Cure Period) by paying Construction Delay Damages to Buyer for each day of extension of the Guaranteed Construction Start Date, [REDACTED] by such payment of Construction Delay Damages. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action), then Buyer shall refund to Seller all Construction Delay Damages paid by Seller and not previously refunded by Buyer. If Seller achieves Commercial Operation after the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action), but in fewer days than the number of days by which Seller missed the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Construction Delay Damages, but as may be extended pursuant to any Development Cure Period), then Buyer shall refund to Seller an amount equal to [REDACTED] of the Construction Delay Damages for the difference between (i) the number of days by which Seller missed the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Construction Delay Damages, but as may be extended pursuant to any Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action), minus (ii) the number of days by which Seller missed the Guaranteed Commercial Operation Date (not including any

extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but as may be extended pursuant to any Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action). For illustrative purposes only, if Seller misses the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller's payment of Construction Delay Damages, but as may be extended pursuant to any Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action) by ten (10) days, but only misses the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but accounting for any extensions to such date pursuant to any Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action) by four (4) days, then Buyer shall refund to Seller an amount equal to [REDACTED] of six (6) days' worth of Construction Delay Damages.

2. **Commercial Operation of the Facility.** "**Commercial Operation**" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**"). The date when Commercial Operation occurs as set forth in the COD Certificate is the "**Commercial Operation Date**."

(a) Subject to the other terms of this Agreement, Seller shall cause Commercial Operation to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) In addition to any extensions pursuant to any Development Cure Period, New BESS Trade Measures Event, and/or Import Restriction Action, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day of extension of the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extension by such payment of Commercial Operation Delay Damages. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Section 11.1(b)(i) and 11.2 (subject, however, to Buyer's and/or Seller's ability to terminate this Agreement in accordance with the provisions of Section 10.4(a)).

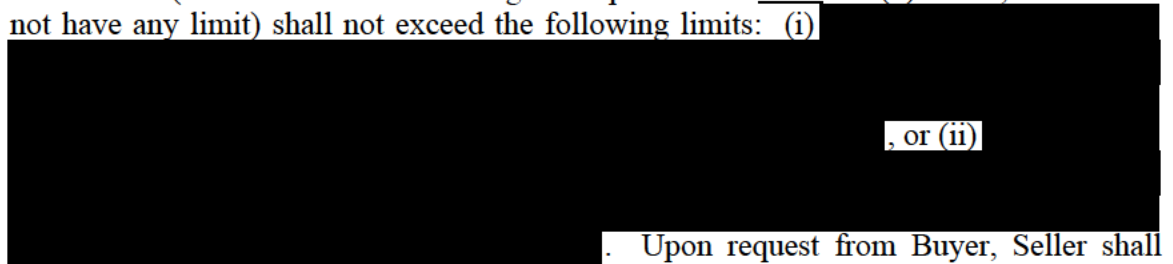
4. **Extension of the Guaranteed Dates.**

The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date each shall be extended automatically 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 the applicable requirements and deadlines; *provided*, that day-for-day delays caused by more than one of the following circumstances occurring at the same time shall apply concurrently:

- (a) a delay in the issuance of any permit or approval required to achieve the Construction Start;
- (b) a delay caused by one or more Force Majeure Events;
- (c) a delay in the completion of construction of any Interconnection Facilities or Network Upgrades required for the Facility to interconnect with the transmission system, charge and discharge Energy, and deliver Capacity Attributes to Buyer; or
- (d) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Seller shall submit a Notice of a Development Cure Period delay to Buyer and Seller shall be entitled to submit subsequent Notices, and to revise or supplement any previously submitted Notice to, among other things, reflect additional days of Development Cure Period which occur after the submission of any such Notice. Notwithstanding anything in this Agreement to the contrary, but subject to Seller’s early termination rights in Section 2.7(d) and Section 10.4, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to Section 4(d) above, which shall not have any limit) shall not exceed the following limits: (i)



. 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 actions or failure to take commercially reasonable actions. Extensions due to any Development Cure Period shall apply to the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date simultaneously.

In addition to the above Development Cure Period, Seller shall be entitled an extension of the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date due to a delay caused by an Import Restriction Action or a New BESS Trade Measure Event, subject to each of Seller and Buyer’s right to terminate the Agreement in accordance with Section 2.6(d). Extensions due to any Import Restriction Action or New BESS Trade Measure Event shall apply to the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date simultaneously.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Seller’s payment of Capacity Damages under this Section 5 shall be Buyer’s sole and exclusive remedy for Seller’s failure to install the Guaranteed Capacity after the Commercial Operation Date.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Construction Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof, subject to the limitation in Section 11.8.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Monthly Capacity Payment. For each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a “Monthly Capacity Payment” equal to the product of (i) the Contract Price (in dollars per kW-month), *multiplied by* (ii) one thousand (1,000), *multiplied by* (iii) the Contract Capacity (in MW). If the Contract Capacity is adjusted pursuant to a Capacity Test on any day other than the first day of a calendar month, the Monthly Capacity Payment shall be calculated separately for each portion of the month in which the different Contract Capacity is applicable.

(b) Seasonal Availability Adjustment. If the Seasonal Availability for any Seasonal Period during the Delivery Term is less than the applicable Seasonal Availability Guarantee, then in the second monthly invoice provided to Buyer after the end of such Seasonal Period, Seller shall include a credit on such invoice equal to the product of (i) the sum of the aggregate Monthly Capacity Payments paid by Buyer for such Seasonal Period, *multiplied by* (ii) one hundred percent (100%) minus the Availability Adjustment or AA applicable to such Seasonal Period as calculated in accordance with Exhibit O. For the avoidance of doubt, if the applicable Availability Adjustment or AA for such Seasonal Period is 100%, then no credit or payment shall be owed by Seller for such Seasonal Period.

(c) Liquidated Damages for Failure to Achieve the Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the applicable Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, *by* (iii) [REDACTED]

[REDACTED] Any such amounts shall be credited by Seller against amounts owed by Buyer in the applicable monthly invoice.

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Charging Energy, Facility Energy, and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement, the Operating Restrictions, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO costs and penalties resulting from any failure by Seller to comply with applicable provisions of the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). If requested by Seller, Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to submit replacement Resource Adequacy Capacity (as defined in the CAISO Tariff) or make Resource Adequacy Capacity substitutions with respect to outages at the Facility as permitted by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff)

are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to require Buyer to pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. If requested by Seller, Buyer (as the Facility's SC) shall dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling

Coordinator) related to Seller's compliance with NERC reliability standards. Buyer (as Scheduling Coordinator) shall be responsible for Buyer's compliance with NERC reliability standards related to Scheduling Coordinators.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including material permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[MW Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

FORM OF MONTHLY EXPECTED STORAGE CAPABILITY REPORT

[Stored Energy Capability, MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Storage Capability	Comments
	(MW)			(MWh)	
1:00					
2:00					
3:00					
4:00					
5:00					
6:00					
7:00					
8:00					
9:00					
10:00					
11:00					
12:00					
13:00					
14:00					
15:00					
16:00					
17:00					
18:00					
19:00					
20:00					
21:00					
22:00					
23:00					
0:00					

Comments: _____

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“**Agreement**”) by and between Desert Sands Energy Storage II, LLC, a Delaware limited liability company (“**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]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with an Installed Capacity of no less than _____ of the Guaranteed Capacity.

3. The Facility’s Installed Capacity is no less than _____ of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.

6. The CAISO has provided notification supporting Commercial Operation (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF CAPACITY TEST CERTIFICATE

This certification ("**Certification**") of Capacity Test results is delivered by [licensed professional engineer] ("**Engineer**") to Desert Community Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Agreement dated _____ ("**Agreement**") by and between Desert Sands Energy Storage II, LLC 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.

I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an installed capacity of ___ MW AC to the Delivery Point at eight (8) hours of continuous discharge, and (ii) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit N of the Agreement.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Desert Sands Energy Storage II, LLC, a Delaware limited liability company (“**Seller**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of 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.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

Desert Sands Energy Storage II, LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT
(issued on behalf of Seller for the benefit of Buyer)

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

Desert Community Energy,
a California joint powers authority

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Desert Community Energy, a California joint powers authority (“Beneficiary”), [address to be added], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile

transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the 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; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. 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.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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. [XXXXXXXX]. 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: Desert Community Energy, a California joint powers authority. 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 officer of [], [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 Energy Storage Agreement dated as of _____, 20__ (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) 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 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 [] 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 [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Desert Sands Energy Storage II, LLC, a Delaware limited liability company (“**Seller**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

Desert Sands Energy Storage II, LLC

By: _____

Its: _____

Date: _____

EXHIBIT M

NOTICES

SELLER	BUYER
<p>All Notices:</p> <p>Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management</p> <p>Phone: (561) 691-2816 Facsimile: Email: dl-bmo-west-caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com</p>	<p>All Notices:</p> <p>Street: 74-199 El Paseo, Suite 100 City: Palm Desert, CA 92260 Attn: Tom Kirk, Executive Director Attn: David Freedman, Program Manager Phone: (760) 346-1127 E-mail: tkirk@cvag.org E-mail: dfreedman@cvag.org</p> <p>With a copy to: Street: 405 114th Ave SE #100 City: Bellevue, WA 98004 Attn: TEA CAISO Desk Phone: 425-460-1118 Facsimile: 425-372-0201 Email: Group-Corp-TradingCaiso@teainc.org</p> <p>With additional Notices of an Event of Default to:</p> <p>Attn: Ryan M.F Baron, Best & Krieger LLP Phone: 949-263-6568 Email: ryan.baron@bbkllaw.com</p>
<p>Reference Numbers:</p> <p>Duns: Federal Tax ID Number:</p>	<p>Reference Numbers:</p> <p>Duns: 081015464 Federal Tax ID Number: 82-3785770</p>
<p>Invoices:</p> <p>Attn: Business Management, Aileen Yeung Phone: (561) 691-2816 Facsimile: E-mail: dl-bmo-west-caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com</p>	<p>Invoices:</p> <p>Attn: Janice Reitman, Accounting Manager Phone: (760) 346-1127 E-mail: jreitman@cvag.org</p>
<p>Scheduling: [TBD]</p> <p>Attn: Phone: Facsimile: Email:</p>	<p>Scheduling:</p> <p>Attn: TEA CAISO Desk Phone: (425) 460-1118 Email: Group-Corp-TradingCaiso@teainc.org</p>


SELLER	BUYER
Confirmations: [TBD] Attn: Phone: Facsimile: Email:	Confirmations: Attn: Phone: Email:
Payments: Attn: Business Management, Aileen Yeung Phone: (561) 691-2816 Facsimile: E-mail: dl-bmo-west-caiso@nexteraenergy.com, aileen.yeung@nexteraenergy.com	Payments: Attn: Janice Reitman, Accounting Manager Phone: (760) 346-1127 E-mail: jreitman@cvag.org
Wire Transfer: BNK: [TBD] ABA: [TBD] ACCT:[TBD]	Wire Transfer: 

EXHIBIT N

CAPACITY TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit N and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Contract Capacity has varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Contract Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Contract Capacity (up to, but not in excess of, the Installed Capacity) determined pursuant to such Capacity Test shall become the new Contract Capacity at the beginning of the day following the completion of such Capacity Test.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit N. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit N as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.
- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data

with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Seller's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit N, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Contract Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit N.
 - (1) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least [REDACTED], continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches [REDACTED] %.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time;
 - (2) The amount of Facility Energy delivered to the Facility Meter (kWh) (i.e., to each measurement device making up the Facility Meter);
 - (3) Net electrical energy input from the Facility Meter (kWh) (i.e., from each measurement device making up the Facility Meter);
 - (4) Stored Energy Level (MWh).
- C. Intentionally Omitted.

D. Test Showing. Each CT shall record and report the following datapoints:

- (1) That the CT successfully started;
- (2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
- (3) The maximum sustained charging level to attain ■■■■ SOC pursuant to A(2) above;
- (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
- (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC;
- (7) Amount of Facility Energy and Energy Out to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Contract Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a

CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. [Intentionally Omitted]

I. Adjustment to Contract Capacity. The Contract Capacity shall be updated in accordance with Part III Test Results below as of the date of the test in Part III is completed:

PART III. CAPACITY TEST PROTOCOL.

A. **Contract Capacity and Initial Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level, and continue charging until the Facility has reached 100% SOC.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) time elapsed equals eight (8) hours divided by the Guaranteed Efficiency Rate, plus thirty (30) minutes of continuous

charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

- (5) Record and store the AC Energy In.
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, (b) the Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Contract Capacity.
- (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
- (10) Record and store the Facility Energy (in MWh) as measured at the Facility Meter, if applicable.
- (11) Record and store the Energy Out from the commencement of discharging pursuant to Part III.A.5 until the Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

- (1) The resulting Contract Capacity determination is the sum of the total Facility Energy at the Facility Meter (as reported under Section III.A.8) divided by eight (8) hours.
- (2) The resulting initial Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A.11 above) divided by the total amount of Energy In (as reported under Section III.A.5 above), and expressed as a percentage, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated following the first month of operations.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 25 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Facility's full charging level within 25 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of -Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.

- (2) Command the Facility to follow 12.5 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 12.5 MVAR for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.

System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT O

SEASONAL AVAILABILITY CALCULATION

Seasonal Availability

Following the end of each Seasonal Period during the Delivery Term, Seller will calculate the “Seasonal Availability” for such Seasonal Period using the formula set forth below:

$$\text{Seasonal Availability (\%)} = \frac{[\text{SPDHRS}_s - \text{UNAVAILHRS}_s]}{[\text{SPDHRS}_s]}$$

Where:

s = relevant Seasonal Period “s” in which Seasonal Availability is calculated;

SPDHRS_s is the total number of On-Peak Hours for the Seasonal Period;

UNAVAILHRS_s is the total number of On-Peak Hours, or partial On-Peak Hour, in the Seasonal Period during which the Facility was unavailable to charge and discharge Energy and to provide Ancillary Services (provided that notwithstanding anything to the contrary set forth above in this Exhibit O or elsewhere in this Agreement, to the extent the Facility is unable to provide Ancillary Services for any reason not excused under this Agreement during any Settlement Interval or Settlement Period that is not otherwise deemed excused, but the Facility is available to charge and discharge Energy between the Facility and the Delivery Point, then such impact on UNAVAILHRS_s shall be reduced by [REDACTED]) for any reason other than the occurrence of any of the following (any hour when any one or more of the following occurs is an “Excused Hour”): Force Majeure Event, Curtailment Order, Buyer Default, Capacity Test, System Emergency, Transmission System Outage, Planned Outage up to [REDACTED], or unavailability due to compliance with any Operating Restriction. For the avoidance of doubt, hours and partial hours of unavailability that are Excused Hours will not be included in UNAVAILHRS_s for any Seasonal Period. Any event that results in unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour for this calculation. Additionally, if during any hour the Facility is available, but for less than the full amount of the then applicable Contract Capacity, the UNAVAILHRS_s for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

- A. If the Seasonal Availability is greater than or equal to the applicable Seasonal Availability Guarantee, then:

$$AA = \text{One hundred percent (100\%)}$$

- B. If the Seasonal Availability is less than the applicable Seasonal Availability Guarantee, but greater than or equal to [REDACTED], then:

$$AA = \text{One hundred percent (100\%)} - \frac{[REDACTED]}{[REDACTED]}$$

- C. If the Seasonal Availability is less than [REDACTED] but greater than or equal to [REDACTED] then:

$$AA = \text{One hundred percent (100\%)} - \frac{[REDACTED]}{[REDACTED]}$$

- D. If the Seasonal Availability is less than [REDACTED] then:

$$AA = \text{zero (0)}$$

EXHIBIT P

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit P, (iii) will include protocols and parameters for Seller’s operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and Communications Protocols.

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium Ion Batteries	
Storage Unit Name:	[Desert Sands Energy Storage]	
A. Contract Capacity		
Guaranteed Capacity (MW):	25	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	220	
Maximum Storage Level (MWh):	200	
Minimum Storage Level (MWh):	0	
Stored energy capability (MWh):	200	
Maximum Discharge (MW):	25	
Maximum Charge (MW):	25	
Guaranteed Efficiency Rate:	As set forth on the Cover Sheet	
Maximum energy throughput (Discharged MWh/year):	73,000 (365 cycles)	
Maximum annual average State of Charge (SOC)	■	
C. Charge and Discharge Rates		
Mode	Maximum (MW)	Ramp Rate (MW/s) Description
Energy (Charge)	25	1 MW/s
Energy (Discharge)	25	1 MW/s
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	
Black start is included:	No	

EXHIBIT Q
METERING DIAGRAM

To be updated by Seller prior to Commercial Operation Date

EXHIBIT R

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“**Guarantor**”), and Desert Community Energy, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and Desert Sands Energy Storage II, LLC, a Delaware limited liability company (“**Seller**”), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “**ESA**”) dated as of [____], 2023.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESA, as required by Section 8.8 of the ESA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the ESA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

Agreement

1. **Guaranty.** For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following

its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the ESA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the ESA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the ESA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

- 4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
 - (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the ESA;
 - (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
 - (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- 5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor's parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.
- 7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified

below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:

If delivered to Guarantor, to it at
Attn:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the ESA is assigned in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY

(WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS,
INC.

By: _____

Printed Name: _____

Title: _____

BUYER:

[]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT S

FORM OF CONSENT AND AGREEMENT ([NAME OF CONTRACTING PARTY]) ([NAME OF ASSIGNED AGREEMENT])

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [_____] (the "Contracting Party"), [_____] a [_____] (the "Project Owner"), and [_____] as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. The Project Owner owns, operates and maintains [_____] (the "Project").

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Assigned Agreement").

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [_____] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [_____] (as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [_____] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a “Termination Event”) that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [, except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, the Collateral Agent shall have the right, but not the obligation, following an “event of default” or “default” (or any other similar event however defined) by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned Agreement (other than pursuant to Section ___ of the Assigned Agreement) or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur (other than a termination pursuant to Section ___ of the Assigned Agreement), and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of 30 days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a “Non-monetary Event”) the Collateral Agent shall have such longer period as is required to cure such Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event; provided, however, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

4. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Project Owner, at the Collateral Agent’s request, the Contracting Party will enter into a new agreement with the Collateral Agent or the Collateral Agent’s designee for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE COLLATERAL AGENT’S DESIGNEE WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.

5. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of remedies following a default under the Financing Documents, the Collateral Agent may (but shall not be obligated to) assume, or cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume, all of the interests, rights and obligations of the Project Owner thereafter arising under the Assigned Agreement. If the interest of the Project Owner in the Assigned Agreement shall be assumed, sold or transferred as provided above, the assuming party shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, and the Contracting Party shall continue to perform its obligations under the Assigned

Agreement in favor of the assuming party as if such party had thereafter been named as the “Customer” under the Assigned Agreement; provided that if the Collateral Agent or its designee (or any entity acting on behalf of the Collateral Agent, the Collateral Agent’s designee or any of the other Secured Parties) assumes the Assigned Agreement as provided above, it shall not be personally liable for the performance of the obligations thereunder except to the extent of all of its right, title and interest in and to the Project. NOTWITHSTANDING THE FOREGOING, THE COLLATERAL AGENT OR THE DESIGNEE, PURCHASER OR ASSIGNEE OF COLLATERAL AGENT WILL EITHER BE A QUALIFIED OPERATOR OR CONTRACT WITH A QUALIFIED OPERATOR FOR THE OPERATION OF THE FACILITY.

6. Payments. The Contracting Party shall make all payments due to the Project Owner under the Assigned Agreement directly into the account specified on Schedule II hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Project Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party’s corresponding payment obligation under the Assigned Agreement.

7. No Amendments. The Contracting Party acknowledges that the Financing Documents restrict the right of the Project Owner to amend or modify the Assigned Agreement, or to waive or provide consents with respect to certain provisions of the Assigned Agreement, unless certain conditions specified in the Financing Documents are met. The Contracting Party shall not, without the prior written consent of the Collateral Agent, amend or modify the Assigned Agreement, or accept any waiver or consent with respect to certain provisions of the Assigned Agreement, unless the Contracting Party has received from the Project Owner a copy of a certificate delivered by the Project Owner to the Collateral Agent to the effect that such amendment, modification, waiver or consent has been made in accordance with the terms and conditions of the Financing Documents, which may in certain circumstances require the prior written consent of the Collateral Agent thereto.

8. Additional Provisions. [To be specified if necessary to clarify the Assigned Agreement.]

9. Notices. Notice to any party hereto shall be in writing and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [_____]
[_____]
Attn: [_____]

Telephone No.: []

Facsimile No.: []

The Project Owner:

The Contracting Party:

10. Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of the successors and assigns of the Contracting Party, and shall inure to the benefit of the Collateral Agent, the other Secured Parties, the Project Owner and their respective successors, transferees and assigns.

11. Counterparts. This Consent may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Governing Law. This Consent shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws thereunder (other than Section 5-1401 of the New York General Obligations Law).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

By: _____
Name:
Title:

[_____] as Collateral Agent

By: _____
Name:
Title:

Acknowledged and Agreed:

[_____]

By: _____
Name:
Title:

Assigned Agreement

Payment Instructions
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement
(Section 2(c))]

EXHIBIT T

FORM OF CREDIT NOTICE

This Credit Notice is given by Desert Community Energy (“**Buyer**”) pursuant to Section 8.9(d) of that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “**ESA**”) dated as of [____], 2023. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

I hereby certify, as of the date set forth in the signature block below, with respect to Buyer’s [most recent quarterly financial statements dated [Date] for the calendar quarter ended [Date]] / [most recent audited financial statements dated [Date] for the Fiscal Year ended [identify fiscal year], and the related notes to the financial statements] (the “**Buyer Subject Financial Statements**”) as follows:

1. I am the duly appointed and acting [signatory’s title] of Buyer, and I am authorized to provide this Credit Notice on behalf of Buyer.
2. A true and correct copy of the Buyer Subject Financial Statements is attached to this Credit Notice.
3. The Buyer Subject Financial Statements have been prepared in accordance with GAAP and are true and correct to Buyer’s knowledge.
4. Based on the Buyer Subject Financial Statements, Buyer’s Adjusted Days of Liquidity on Hand is ___ days.
5. Based on the Buyer Subject Financial Statements, Buyer’s Equity to Assets Ratio is ___ %.
6. For the purpose of calculating Adjusted Days of Liquidity on Hand, annual operating expenses are for the 12 months ended as of the end date of the Buyer Subject Financial Statements.
7. For the purpose of calculating the Equity to Assets Ratio, the Equity to Assets Ratio shall be calculated as of the end date of the Buyer Subject Financial Statements.
8. Based on the Buyer Subject Financial Statements, Buyer [is] [is not] in compliance with the Buyer Financial Covenants.

Desert Community Energy

By: _____
Name:
Title:
Date

EXHIBIT U

FORM OF LETTER OF CREDIT
(issued on behalf of Buyer for the benefit of Seller)

DATE OF ISSUANCE:

[Date of issuance]

Desert Sands Energy Storage II, LLC (“**Beneficiary**”)
700 Universe Blvd.
Juno Beach, FL 33408
Attention: Business Management

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “**you**”) this Irrevocable Standby Letter of Credit No. _____ (the “**Letter of Credit**”) for the account of [[_____] on behalf of] Desert Community Energy, located at 74-199 El Paseo, Suite 100, Palm Desert, CA 92260 (“**Applicant**”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain Renewable Power Purchase Agreement dated as of [_____], as amended from time to time (the “**Agreement**”).

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “**Stated Amount**”).

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “**Draw Certificate**”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, *Attention:* _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). If presentation is made by facsimile transmission, you must contact us at [**insert phone number**] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such

address by 12:00 noon, [_____] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_____] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

Sincerely,

[ISSUING BANK]

By: _____
Title: _____
Address:

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$ _____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) Beneficiary and Desert Community Energy (“**Applicant**”) are parties to that certain Renewable Power Purchase Agreement dated as of [_____], as amended from time to time (the “**Agreement**”).
- (3) Beneficiary is making a drawing under this Letter of Credit because a Buyer Event of Default (as such term is defined in the Agreement) has occurred.

Or

Beneficiary is making a drawing under this Letter of Credit because 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 instrument within thirty (30) days prior to such expiration date.

- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____
Title: _____
Date: _____

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

Desert Sands Energy Storage II, LLC

By: _____

Title: _____

Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.

Date:

PAY TO: Desert Sands Energy Storage II, LLC

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.
_____.

Desert Sands Energy Storage II, LLC

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of Desert Community Energy (“**Applicant**”), under the that certain Energy Storage Agreement dated as of [_____], as amended from time to time (the “**Agreement**”) have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

Desert Sands Energy Storage II, LLC

By: _____

Title: _____

Date: _____