ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION ("DENTON") PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXECUTION BY THE CITY MANAGER OF THE POWER PURCHASE AGREEMENT ("PPA") BETWEEN DENTON AND TIDWELL PRAIRIE IIA, LLC ("TIDWELL PRAIRIE"); AUTHORIZING THE ACCEPTANCE AND APPROVAL BY THE CITY MANAGER OF THE LETTER OF CREDIT OR OTHER CREDIT SUPPORT ISSUED ON BEHALF OF TIDWELL PRAIRIE FURTHER SECURING THE OBLIGATIONS OF TIDWELL PRAIRIE TO DENTON FOR THE BENEFIT OF DENTON; APPROVING THE EXECUTION OF SUCH OTHER AND FURTHER RELATED DOCUMENTS DEEMED NECESSARY TO EFFECTUATE THE TRANSACTIONS ALLOWED UNDER THIS AGREEMENT BY THE CITY MANAGER, WHICH ARE INCIDENT TO OR RELATED TO THE PPA; FINDING THAT THE PURCHASE OF CAPACITY AND ENERGY MADE BY DENTON UNDER THE TERMS OF THE PPA ARE IN THE PUBLIC WELFARE; AUTHORIZING THE EXPENDITURE OF FUNDS; DETERMINING THAT SPECIFIC INFORMATION CONTAINED IN DOCUMENTS INVOLVED IN THIS TRANSACTION PERTAIN TO A "COMPETITIVE ELECTRIC MATTER" AS SET FORTH UNDER THE PROVISIONS OF §551.086 AND §552.133 OF THE TEXAS GOVERNMENT CODE, AS AMENDED; ALLOWING THE PUBLIC TO INSPECT AND REPRODUCE THE PPA AS REDACTED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Denton is a home-rule city and a Texas municipal corporation governed by the constitution and laws of the State of Texas ("State"); and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due notice of the public meeting was provided as required by law, the PPA between Denton and Tidwell Prairie (hereafter the "Transaction") was submitted for final consideration of the Denton Public Utilities Board on September 29, 2025; a majority of the Public Utilities Board ("PUB"), a "Public Power Utility Governing Body" as defined by State law, convened in open and closed meetings as permitted by law, and discussed, considered, and deliberated the Transaction; and

WHEREAS, in accordance with the provisions of §551.086 of the Texas Government Code, after due public notice being given, the City Council of Denton (the "City Council"), a "Public Power Utility Governing Body" as defined by State law, convened in open and closed meeting as permitted by law, and discussed, considered, and deliberated the Transaction, the subject of this ordinance, in closed and open meeting of the City Council on September 30, 2025, after receiving a legal opinion of counsel that the Transaction is a proper item for consideration in its open and closed meeting, which item involves competitive electric matters, including business and commercial information, which if disclosed, would give advantage to its competitors or prospective competitor; and

WHEREAS, the City Council has further determined and finds that several of those documents to be entered into by and between Denton and Tidwell Prairie namely the PPA, and all other documents which are related thereto as from time to time may be executed by Denton and/or

Tidwell Prairie, in connection therewith; should be excepted from public disclosure, as permitted by the provisions of §552.133 of the Texas Government Code, as documents that are reasonably related to a competitive electric matter, the disclosure of which documents would provide an advantage to the competitors or prospective competitors of Denton Municipal Electric ("DME"); and

WHEREAS, the City Council has further determined that it is in the public interest that it should exercise its right under Texas Government Code to lawfully safeguard and keep certain of these documents in the preceding paragraph sealed, as they are competitive documents which contain competitive electric and financial information; and

WHEREAS, the City Council finds that there is no divestiture, sale or other disposition of the property of any utility of Denton, and therefore that no public election is required pursuant to the Charter of Denton; and

WHEREAS, the City Council finds that said Transaction involves DME purchasing from Tidwell Prairie, replacement power and energy requirements for a contractual term of ten years from the Project's Commercial Operation Date, as provided in the said PPA; and that such Transaction involves Denton's acquisition of dispatchable energy from Tidwell Prairie, and

WHEREAS, the City Council finds and concludes that a diversified portfolio is prudent considering the ever-changing present circumstances; and that Denton, through its electric utility, DME provides 100% renewable energy to meet the demands of the customers of DME; and

WHEREAS, the City Council finds that the Transaction provided by this ordinance, will not impair the ability of Denton to comply with the provision of any of its utility revenue bonds, as amended, which ae issued and outstanding; and

WHEREAS, Denton desires to enter into such other arrangements in support of the PPA with Tidwell Prairie, which are incident and related to the said PPA, and to take such additional actions as the City Manager or their designee, shall determine to be necessary and advisable to consummate and effectuate the matters set forth herein; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City's governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS

SECTION 1. The recitations contained in the above preamble are incorporate herewith and are considered to be a part of this ordinance.

SECTION 2. The City Council, hereby approves and authorizes the City Manager and City Secretary, to execute and attest respectively, the PPA, by and between Denton and Tidwell Prairie, under the terms and condition set forth in the PPA, attendant with all Exhibits attached thereto, and made part hereof, with such ancillary instruments, changes and additions which are in substantial compliance with said PPA as the City Manager, or their designee may approve, and to consummate the execution and delivery thereof on behalf of Denton by or at the direction of the City Manager, or their designee.

SECTION 3. The City Council, as further security for Tidwell Prairie's performance of this Transaction, hereby approves and authorizes the City Manager and the City Secretary, and their respective designees, to approve and accept the irrevocable non-transferable standby Letter(s) of Credit furnished to Denton by Tidwell Prairie, in accordance with the PPA, said Letter(s) being drawn upon a commercial bank within the United States, on behalf of Denton, as additional credit protection, under the terms and conditions being contained in substantially the form as set forth in said agreements, with such amendments, changes and additions as the City Manager, or their designee may approve, and approval and acceptance thereof on behalf of Denton by or at the direction of the City Manager, or their designee, shall constitute such approval.

SECTION 4. The City Council, hereby approves and authorizes the City Manager and City Secretary, and their respective designees, to execute and attest respectively, all other documents which are incident and related to the PPA referenced herein, and to take such additional actions as the City Manager, or their designee, shall determine to be necessary and advisable to effectuate the matters set forth above.

SECTION 5. The City Council, the Mayor, the City Manager, the City Attorney, or their designees, and each of them individually hereby is, authorized and empowered to perform all such acts and obligations as required with respect to the PPA described herein.

SECTION 6. The Mayor, the City Manager, the City Attorney or their designees, and each of them individually hereby is, authorized, empowered and directed to negotiate, deliver and perform all such acts and things and to sign all such document, certificates, contract, assignments, licenses, leases, agreements, directions, instruments and statements, each together with such amendment, changes and addition thereto as Mayor, the City Manager, the City Attorney or their respective designees shall determine to be necessary or advisable to effectuate the matters set forth herein, any such determination to be conclusively evidenced by the taking or causing to be taken of such action or the execution and delivery of any such document, certificate, agreement, license, lease, direction, instrument or statement by the Mayor, the City Manager, the City Attorney or their designee.

SECTION 7. All prior action taken by the Mayor, the City Manager, the City Attorney, or their designees in furtherance of the foregoing matters are hereby ratified, confirmed, approved and authorized in all respects as of the dates and times such actions were taken.

SECTION 8. Immediately following the execution and deliver of the documents described as the PPA and all Guaranties and Letter(s) of Credit which are incident to such PPA, as provide in this ordinance, the City Secretary is hereby directed to seal and maintain said documents in their custody and control, as documents excepted from public disclosure under the provision of §552.133 of the Texas Government Code (the "Public Power Exception"); unless otherwise lawfully ordered to disclose such documents.

SECTION 9. This ordinance shall be open for public inspection. However, all Exhibits and Attachments which are appended to this ordinance, including without limitation, the Power Purchase Agreement, and all Guaranties and Letter(s) of Credit incident to such PPA, shall not be produced for public inspection, but shall be sealed, as provided for in Section 8 above.

SECTION 10. The expenditure of funds as provided for in this ordinance is hereby authorized.

SECTION 11. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	**Nay**	**Abstain**	**Absent**
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

_____
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Redacted Version

Energy Storage Tolling Agreement

between

Tidwell Prairie IIA LLC as Seller

and

City of Denton, Texas

as Purchaser

dated as of

[____], 2025

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ENERGY STORAGE TOLLING AGREEMENT

This Energy Storage Tolling Agreement (including all Exhibits attached hereto, this "Agreement") is entered into on [____], 2025 (the "Effective Date") by and between **Tidwell Prairie IIA LLC**, a Delaware limited liability company ("Seller"), and **City of Denton, Texas** ("Purchaser"), a municipal corporation formed under the laws of the State of Texas which owns and operates a municipal utility known as "Denton Municipal Electric" (Purchaser and Seller each being sometimes referred to in this Agreement as a "Party" or, collectively, as the "Parties").

WHEREAS, Seller desires to develop, design, construct, own and operate the Facility (as defined below) at the Site (as defined below);

WHEREAS, Seller desires to sell and provide to Purchaser, and Purchaser desires to purchase and receive, the Energy Storage Services (as defined below) under the terms and conditions set forth in this Agreement;

WHEREAS, Seller desires to have Purchaser undertake the obligations more fully set out in this Agreement; and

WHEREAS, Seller and Purchaser have agreed to enter into this Agreement for the foregoing purposes.

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

ARTICLE 1
KEY TRANSACTION TERMS

1. Monthly Capacity Payment	[redacted]
2. Delivery Term	The period beginning on (i) the Commercial Operation Date, if such date is the first day of a Month or (ii) the first day of the Month immediately following the Month in which the Commercial Operation Date occurs, if the Commercial Operation Date does not occur on the first day of a Month (the "Start Date"), and ending on the [redacted] anniversary of the Commercial Operation Date.
3. Expected Commercial Operation Date	[redacted]
4. Guaranteed Commercial Operation Date	[redacted]

5. Outside Commercial Operation Date	[redacted]
6. Daily Delay Damages Rate	[redacted]
7. Expected Power Capacity	[redacted]
8. Guaranteed Power Capacity	[redacted]
9. Expected Energy Capacity	[redacted]
10. Guaranteed Energy Capacity	Period (Commercial Operation Years following Commercial Operation Date) | Guaranteed Energy Capacity [redacted]
11. Seller Security Amount	[redacted].
12. Purchaser Security Amount	[redacted]; *provided* that Purchaser shall have no obligation to post Performance Security unless there is a Purchaser Downgrade, as set forth pursuant to Section 10.2.1.
13. Compliance Cost Cap	[redacted]
[redacted]	[redacted]

[redacted]	[redacted]
16. Guaranteed Availability Percentage	[redacted]
17. Guaranteed Availability Evaluation Period	During each Commercial Operation Year during the Delivery Term, each of the following: [redacted] [redacted]
18. Guaranteed Availability Percentage LDs	If during any Guaranteed Availability Evaluation Period the Actual Availability is less than the Guaranteed Availability Percentage, Guaranteed Availability Percentage LDs will be calculated and payable by Seller to Purchaser as follows: The "Guaranteed Availability Percentage LDs" in respect of each Guaranteed Availability Evaluation Period means an amount equal to the product of: [redacted]

19. Guaranteed Roundtrip Efficiency	The Guaranteed Roundtrip Efficiency set forth below, [redacted] | Period (Commercial Operation Years) | Total Throughput Limitation | Guaranteed Roundtrip Efficiency at POI AC | | [redacted] | [redacted] | [redacted] |
20. Guaranteed Roundtrip Efficiency LDs	Liquidated damages for failure to meet the Guaranteed Roundtrip Efficiency shall be calculated for each Day that the Measured RTE is less than the Guaranteed Roundtrip Efficiency (until cured). [redacted] [redacted] [redacted] [redacted]

21. Annual Maintenance Cap	[redacted] per Commercial Operation Year during the Delivery Term, [redacted].

ARTICLE 2
RULES OF CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

2.1 Rules of Construction. Capitalized terms in this Agreement, including as defined in this Article 2, shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of construction shall apply:

2.1.1 References to "Articles," "Sections," or "Exhibits" shall be to articles, sections, or exhibits of this Agreement.

2.1.2 The Exhibits attached hereto are incorporated into this Agreement by reference thereto and are intended to be a part of this Agreement; *provided* that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall control, save and to the extent this Agreement makes specific reference to a calculation or other defined term set out in any such Exhibit, in which case the terms of the Exhibit shall control.

2.1.3 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this Agreement or any part hereof.

2.1.4 Unless and except as expressly provided otherwise in this Agreement, where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

2.1.5 Use of the words "include" or "including" or similar words shall be interpreted as "include without limitation," "including, but not limited to," or "including, without limitation."

2.1.6 Use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

2.1.7 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, save and except to the extent any such text in bold and italics is required to be set out in such manner under any Applicable Laws.

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

2.1.9 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.

2.1.10 A reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of such document, agreement, or this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement.

2.1.11 A reference to a Person includes that Person's successors and permitted assigns.

2.1.12 A reference to "days" or "calendar days" shall mean "calendar days," save to the extent otherwise defined herein.

2.1.13 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.

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

2.1.15 Words, phrases or expressions not otherwise defined herein that (a) have a generally accepted meaning in Good Utility Practices shall have such meaning in this Agreement or (b) do not have well known and generally accepted meaning in Good Utility Practices but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings.

2.2 Definitions. Unless defined elsewhere herein, capitalized terms used in this Agreement will have the following scope and meaning:

"AAA" has the meaning set forth in Section 12.3.1.

"AC" means alternating current.

"Accepted Compliance Action Costs" has the meaning set forth in Section 8.8.1(b).

"Actual Availability" has the meaning set forth in Exhibit C.

"Actual Energy Capacity" means the rated amount of Energy (expressed in MWh) that the Facility can store, determined in accordance with Exhibit B, as the same may be adjusted from time to time pursuant to Exhibit B.

"Actual Power Capacity" means the total capacity (in MW) of the Facility determined in accordance with Exhibit B, as the same may be adjusted from time to time pursuant to Exhibit B.

[redacted]

[redacted]

"Affected Party" has the meaning set forth in Section 14.1.

[redacted]

"Agreement" has the meaning set forth in the preamble.

"Ancillary Service Product" means any and all services, to the extent commonly sold or saleable (or used or usable) in the electric power generation or transmission industry and capable of being provided at the Point of Delivery by the Facility that are (i) existing and recognized by ERCOT in the ERCOT Protocols as ancillary services as of the Effective Date and which the Facility is qualified to provide and (ii) subject to Section 8.7 recognized and implemented by ERCOT under the ERCOT Protocols at any time during the Term.

[redacted]

"Applicable Law(s)" means all applicable laws, statutes, treaties, codes, ordinances, rules, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments or modifications to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment, or otherwise) have the force of law.

"Aux Power" means the power used to operate the auxiliary equipment and facilities which are part of the Facility and required for the Facility's charging, storage, discharging and climate control functions, as measured at the Aux Power Meter.

"Aux Power Meter" means the applicable meter assigned by Seller to measure Aux Power Requirements, as shown in Exhibit K.

"Aux Power Requirements" means the power requirements to operate the auxiliary equipment and facilities which are part of the Facility and required for the Facility's charging, storage, discharging and climate control functions, as measured at the Aux Power Meter.

"Availability Deficiency" has the meaning set forth in Article 1.

"Back-Up Metering" means redundant Electric Metering Devices installed by Seller pursuant to Section 6.2.2.

"Bankrupt" means, with respect to any Person, such Person (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Applicable Law; (ii) has any such petition, action or proceeding filed or commenced against it and such petition, action or proceeding is not stayed or dismissed within [redacted] Days after filing; (iii) makes an assignment or any general arrangement for the benefit of its creditors; (iv) otherwise becomes bankrupt or insolvent; (v) 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 (vi) is otherwise generally unable to pay its debts as they fall due.

[redacted]

"Billing Period" shall mean each Month during the Term, as may be adjusted in accordance with the terms of this Agreement.

"Business Day" means every Day other than a Saturday, Sunday or any other Day on which banks in the State of Texas are permitted or required to remain closed.

"Capacity Attributes" means any current or future defined characteristic of the Facility, intended to value any aspect of the capacity of the Facility to charge and discharge Energy that may be recognized by ERCOT or PUCT as of the Effective Date and at any time during the Term within the Operating Limitations.

"Change in Law" means the occurrence, on or after the Effective Date, of any of the following: (a) the adoption or taking effect of any Applicable Laws; (b) any change in or with respect to any Applicable Laws or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; [redacted]

"Change of Control" means with respect to any Party, the occurrence of any event or series of events by which such Party is not Controlled by such Party's Ultimate Parent or by a Permitted Owner; *provided* that no event or series of events in connection with Seller's financing (including tax equity financing) with respect to the development, construction, operation, or ownership of the Facility shall constitute a Change of Control with respect to Seller.

"Charging Energy" means Energy delivered to the Point of Delivery for the purpose of charging the Facility. Charging Energy never includes Energy associated with the Aux Power Requirements.

"Charging Notice" means an operating instruction, and any subsequent updates, given by Purchaser, the Designated QSE, ERCOT, or the Interconnection Provider to Seller, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level; *provided that* any operating instruction shall be in accordance with ERCOT requirements, the Operating Procedures and the Operating Limitations. Charging Notices may be communicated electronically via telemetry or by other commercially reasonable means mutually agreed between the Parties. For the avoidance of doubt, any Purchaser request to initiate a Storage Test shall not be considered a Charging Notice.

"Close of the Business Day" means 5:00 PM central prevailing time on a Business Day.

"COD Delay Damages" has the meaning set forth in Section 5.2.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commercial Operation Date" or "COD" means the date designated by Seller as the "Commercial Operation Date" in the Commercial Operation Notice following the date the Conditions have been met, which date shall not be earlier than the date Seller has delivered such notice and later than [redacted] following the date Seller has delivered such notice.

"Commercial Operation Notice" has the meaning set forth in Section 5.6.

"Commercial Operation Year" means each twelve (12) consecutive Month period commencing on the Start Date and each anniversary thereof.

"Compliance Action" has the meaning set forth in Section 8.8.1.

"Compliance Action Cost Notice" has the meaning set forth in Section 8.8.1(b).

"Compliance Cost Cap" has the meaning set forth in Article 1.

"Conditions" has the meaning set forth in Section 5.6.

"Confidential Information" has the meaning set forth in Section 19.17.4.

"Control" or "Controlled" means (including, with correlative meanings, the terms "Controlling", "Controlled by" and "under common Control with"), as applied to any Person, the ownership, directly or indirectly, individually or in the aggregate, of more than fifty percent (50%) of the economic and voting equity interests of that Person or the power, directly or indirectly, to direct or cause the direction of the management and policies of that Person.

"Costs" with respect to the non-defaulting Party, [redacted]

"Credit Rating" means, with respect to any Person, the rating then assigned to such Person's senior, unsecured long-term debt obligations (not supported by third party credit enhancements), or if such Person does not have a rating for its senior, unsecured long-term debt, then the rating assigned to such Person as an issuer rating, by S&P, Moody's, Fitch or any other rating agency mutually agreed to by the Parties.

[redacted].

"Curtailment" means any instruction or action to limit charging or discharging of Energy or provision of Ancillary Service Products or other form of curtailment, in each case, with respect to or impacting the Facility, from Purchaser, the Designated QSE, ERCOT, the Interconnection Provider or any Governmental Authority.

"Daily Delay Damages Rate" has the meaning set forth in Article 1.

"Day" or "day" means each consecutive twenty-four (24) hour period beginning at 12:00 midnight (CPT) and ending at 11:59 pm (CPT).

"Delivery Term" has the meaning set forth in Article 1.

"Designated QSE" has the meaning set forth in Section 8.3.1.

"Discharging Energy" means the Energy discharged by the Facility to the Point of Delivery.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Purchaser, the Designated QSE, ERCOT or the Interconnection Provider to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level; *provided that* any operating instruction shall be in accordance with ERCOT requirements, the Operating Procedures and Operating Limitations. Discharging Notices may be communicated electronically via telemetry or by other commercially reasonable means mutually agreed between the Parties.

"Disclosing Party" means the Party disclosing Confidential Information to the other Party.

"Dispute" has the meaning set forth in Section 12.1.

"EA Increased Costs" has the meaning set forth in Section 8.10.

"Early Termination Date" has the meaning set forth in Section 11.5.1.

"Effective Date" has the meaning set forth in the preamble.

"Electric Metering Device(s)" means metering equipment, and data processing equipment installed by the Interconnection Provider, or Seller if applicable, at or as part of the Facility and used to measure, record, or transmit data relating to (i) the amount of Charging Energy received by the Facility (as measured by the Point of Delivery Meter); (ii) the amount of Discharging Energy discharged by the Facility (as measured by the Point of Delivery Meter); and (iii) the amount of Energy delivered to Purchaser at the Point of Delivery (as measured by the Point of Delivery

Meter). Electric Metering Devices include the metering current transformers and the metering voltage transformers.

[redacted]

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh.

"Energy Storage Services" means, collectively or individually, the acceptance of Charging Energy at the Facility from the Point of Delivery, the storing of Charging Energy (net of losses) in the Facility, the delivery of Discharging Energy from the Facility to the Point of Delivery, and the provision of applicable Ancillary Service Products, all in accordance with Charging Notices and Discharging Notices issued under the terms of this Agreement.

"Environmental Attributes" means any and all claims, credits, benefits, emissions reductions, offsets and allowances, however named, associated with the discharge of Energy by the Facility and its displacement of Energy generated from fossil fuels or resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or otherwise arising as a result of the discharge of Energy from the Facility, regardless of whether or not (i) such environmental attributes have been verified or certified, (ii) such environmental attributes are creditable under any applicable legislative, regulatory or other industry recognized program or scheme, or (iii) such environmental attributes are recognized as of the Effective Date or at any time during the Term, together with the rights to report ownership of such attributes to any agency, authority or any other Person. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; (b) all emissions reduction credits; and (c) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by any Applicable Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (d) the reporting rights to these avoided emissions. Environmental Attributes do not include any federal, state and local tax credits, grants, reductions, or allowances, any other tax or financial incentives, or any other monetary incentives, and any such tax credits, grants, reductions, allowances, or other tax or financial incentives with respect to the Facility or this Agreement are the property of and allocated to Seller (or Seller's transferee or designee).

"EPS Meter(s)" has the meaning set out in the ERCOT Protocols.

"ERCOT" means the Electric Reliability Council of Texas, Inc., or its successor in function.

"ERCOT Delay" means any delay in the achievement of the Commercial Operation Date attributable to the time ERCOT takes to approve requests and submissions by the Seller in connection with testing and commissioning of the Facility; [redacted]

"ERCOT Nodal Protocols" shall mean the ERCOT Nodal Protocols as adopted by the PUCT on April 5, 2006 in Docket No. 31540 and any subsequent revisions to such protocols adopted in accordance with the protocols change process defined therein, including any attachments or exhibits referenced in that document, as amended from time to time, that contain the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT relative to its implementation of the nodal market design.

"ERCOT Operational Approval" has the meaning set forth in Section 5.6.3.

"ERCOT Protocols" means the documents as published by ERCOT and as amended from time to time, including any attachments or exhibits referenced in each such document, that contain the scheduling, operating, planning, reliability, and settlement (including customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT and as approved by ERCOT, including, during such times as they are in full force and effect, the ERCOT Nodal Protocols.

"ERCOT System" has the meaning set out in the ERCOT Protocols.

"Event of Default" means a Seller Event of Default or Purchaser Event of Default, as applicable.

[redacted]

"Expected Commercial Operation Date" has the meaning set forth in Article 1.

"Expected Energy Capacity" has the meaning set forth in Article 1.

[redacted]

[redacted]

"Facility" means Seller's battery energy storage facility, as identified and described in Article 4 and Exhibit A located at the Site, and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms and conditions of this Agreement. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery and the location of the important ancillary facilities and Interconnection Facilities, is included in Exhibit A.

[redacted]

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, partnership and limited liability company agreements, equity capital contribution agreements and other documents relating to the development, bridge, construction, back leverage, tax equity financing or permanent debt financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller or any Affiliate of Seller subject to any required approvals, whether in this Agreement, or otherwise, in connection with development, construction, ownership, leasing, operation or maintenance of the Facility or a portfolio of projects in which the Facility is a part.

"Financing Party" means (i) any and all lenders providing senior or subordinated construction, interim or long-term debt or other financing or refinancing to Seller or its Affiliate, (ii) any and all tax credit purchasers of, or equity investors in, Seller or its Affiliate providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution to Seller or its Affiliate in cash or in kind), or (iii) any Person providing credit support to or on behalf of Seller or its Affiliate, in each case in connection with the Facility or a portfolio of projects of which the Facility is a part and, in each case, any trustee or agent acting on behalf of any such Financing Party.

"Fines" has the meaning set out in Section 17.2.

"Fitch" means Fitch Ratings or its successor.

"Force Majeure Event" has the meaning set forth in Section 14.1.

"Forced Outage" means [redacted].

"Future Products" means, as of any applicable date in the Delivery Term, any future Products for which the Facility is not or was not qualified to provide as of or preceding such date.

"Gains" means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs) for the remaining Term resulting from the termination of this Agreement, determined in a commercially reasonable manner, which economic benefit (if any) will be deemed to be the gain (if any) to such non-defaulting Party represented by the difference between the present value of the payments or deliveries required to be made or Products and services to be provided during the remainder of the Term of this Agreement and the present value of the payments that would be required to be made or Products and services to be provided or under a transaction(s) replacing this Agreement for the remainder of the Term of this Agreement; provided, however, the non-defaulting Party shall not be required to enter into any one or more of such transactions replacing this Agreement for purposes of the calculation contemplated herein.

"General Terms and Conditions" means those General Terms and Conditions of Purchaser attached hereto as Exhibit L and incorporated herein for all purposes.

"Good Utility Practice(s)" means any of the practices, methods and acts engaged in or approved by a significant portion of the utility-scale battery energy storage industry, or 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. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be practices, methods, or acts generally accepted in the region in which the Facility is located.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, quasi-governmental entity, commission, board, bureau, agency, tribunal, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question, the Facility or a Party, which shall include ERCOT, PUCT and the Interconnection Provider, but, for the avoidance of doubt, shall not include either of the Parties.

"Guaranteed Availability Evaluation Off Peak Period" has the meaning set forth in Article 1.

"Guaranteed Availability Evaluation Peak Period" has the meaning set forth in Article 1.

"Guaranteed Availability Evaluation Period" means, as appliable, either the Guaranteed Availability Evaluation Off Peak Period or the Guaranteed Availability Evaluation Peak Period.

"Guaranteed Availability Percentage" has the meaning set forth in Article 1.

"Guaranteed Availability Percentage LDs" has the meaning set forth in Article 1.

"Guaranteed Commercial Operation Date" has the meaning set forth in Article 1.

"Guaranteed Energy Capacity" has the meaning set forth in Article 1.

"Guaranteed Power Capacity" has the meaning set forth in Article 1.

"Guaranteed Roundtrip Efficiency" has the meaning set forth in Article 1.

"Guaranteed Roundtrip Efficiency LDs" has the meaning set forth in Article 1.

"Guarantor" means, as applicable to the Party providing Performance Security in the form of a Guaranty, a Person with an Investment Grade Credit Rating who has issued a Guaranty for such Party to the other Party.

"Guaranty" means a guaranty issued by a Guarantor guaranteeing the obligations of the Party on whose behalf such guaranty is provided that is substantially similar to the form of the guaranty attached hereto as Exhibit I, or other form reasonably acceptable to the Party receiving Performance Security.

[redacted]

[redacted]

"Inaccuracy Adjustment" has the meaning set forth in Section 6.3.1.

"Inaccuracy Period" has the meaning set forth in Section 6.3.1.

[redacted]

[redacted]

[redacted]

"Interconnection Agreement" means [redacted]

"Interconnection Facilities" has the same meaning as that same term is defined in the Interconnection Agreement.

"Interconnection Provider" means [redacted], or its successor in function.

"Interest Rate" means a rate equal to the lesser of (a) one percent (1%) over the prime rate as published in *The Wall Street Journal* on the first Day of July of the preceding fiscal year that does not fall on a Saturday or Sunday and (b) the highest rate allowable by Applicable Law, as it changes from time to time.

"Investment Grade Credit Rating" means [redacted]

"kW" means kilowatt.

"kWh" means kilowatt hour.

"Letter of Credit" shall mean an irrevocable, standby letter of credit in a form substantially similar to the form of Exhibit H issued by a Qualified Issuer, or other form reasonably acceptable to the Qualified Issuer and the Party receiving such letter of credit as Performance Security.

"LMP " has the meaning given such term in the ERCOT Protocols.

"Losses" means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), for the remaining Term resulting from termination of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) will be deemed to be the loss (if any) to such non-defaulting Party represented by the difference between the present value of the payments required to be made or Products and services to be provided during the reminder of the Term of this Agreement and the present value of the payments or deliveries required to be made or Products and services to be provided under a transaction(s) replacing this Agreement for the remainder of the Term of this Agreement; provided, however, the non-defaulting Party shall not be required to enter into any one or more of such transactions replacing this Agreement for purposes of the calculation contemplated herein.

"Measured RTE" has the meaning set forth in Article 1.

"Minimal Outage" has the meaning set forth in Exhibit C.

"Month" means a calendar month.

"Monthly Capacity Payment" has the meaning set forth in Article 1.

"Moody's" means Moody's Investors Service, Inc., or its successor.

"MPT Failure" means a failure of all or part of the Facility's generator main power transformer(s) that results in Seller being unable to receive or deliver Energy; provided, however, that [redacted]

"MW" means megawatt or one thousand kW.

"MWh" means megawatt hours.

"NERC" means the North American Electric Reliability Council or any successor organization.

"Network Operations Model" has the meaning given such term in the ERCOT Protocols.

"Non-Affected Party" has the meaning set forth in Section 14.3.

"Operating Limitations" means those limitations, protocols and procedures set forth in Exhibit G.

"Operating Procedures" means those procedures developed pursuant to Section 13.2.

"Operational" has the meaning set forth in Exhibit C.

"Outside Commercial Operation Date" has the meaning set forth in Article 1.

"Party" or "Parties" has the meaning set forth in the preamble.

"Performance Security" means (a) with respect to Seller, Seller Security, and (b) with respect to Purchaser, Purchaser Security.

"Planned Maintenance Schedule" has the meaning set forth in Section 13.4.

"Period Multiplier" has the meaning set forth in Article 1.

"Permitted Owner" means, [redacted]

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, joint venture, other business organization, trust, union, association or Governmental Authority.

"Point of Delivery" means (i) with respect to Energy, the point on the ERCOT System at which Charging Energy is delivered to the Facility and Discharging Energy is delivered by Seller to the ERCOT System, as measured in kWh by the Point of Delivery Meter as set forth on Exhibit A, and (ii) with respect to any Products other than Charging Energy and Discharging Energy, the point at or method by which such Product is delivered to Purchaser.

"Point of Delivery Meter" means the Electric Metering Device owned, operated, and maintained by ERCOT that measures (i) Charging Energy delivered at the Point of Delivery pursuant to a Charging Notice, and (ii) Discharging Energy delivered to the ERCOT System at the Point of Delivery pursuant to a Discharging Notice, which Point of Delivery Meter is also the EPS Meter.

"Products" means any Energy, Ancillary Service Products, Capacity Attributes, and Environmental Attributes provided to Purchaser as part of the Energy Storage Services.

"Prohibited Instruction" has the meaning set forth in Section 8.9.1.

"Public Information Act" has the meaning set forth in Section 19.17.2.

"PUCT" means the Public Utility Commission of Texas or its successor in function.

"Purchaser" has the meaning set forth in the preamble.

"Purchaser Downgrade" has the meaning set forth in Section 10.2.1.

"Purchaser Event of Default" has the meaning set forth in Section 11.3.

"Purchaser Security" has the meaning set forth in Section 10.2.1.

"Purchaser Security Amount" has the meaning set forth in Article 1.

"Purchaser Security Proceeds" has the meaning set forth in Section 10.2.2.

[redacted]

[redacted]

"Qualified Scheduling Entity" or "QSE" has the meaning given to 'Qualified Scheduling Entity' in the ERCOT Protocols.

[redacted]

"Receiving Party" means the Party receiving Confidential Information from the other Party.

[redacted]

"Representatives" has the meaning set forth in Section 19.17.2.

"Roundtrip Efficiency" or "RTE" has the meaning set forth in Exhibit B.

"Rules" has the meaning set forth in Section 12.3.1.

"S&P" means S&P Global Ratings, a division of S&P Global Inc., or its successor.

"Scheduled Maintenance Outage" has the meaning set forth in Section 13.4.

"Seller" has the meaning set forth in the preamble.

"Seller Event of Default" has the meaning set forth in Section 11.1.

"Seller Security" has the meaning set forth in Section 10.1.1.

"Seller Security Amount" has the meaning set forth in Article 1.

"Seller Security Proceeds" has the meaning set forth in Section 10.1.2.

"Serial Defect" means [redacted].

"Settlement Amount" means, with respect to the non-defaulting Party, Losses plus Costs less any Gains, which such Party incurs as a result of an early termination of this Agreement in accordance with Section 11.5.2.

"Settlement Interval" has the meaning ascribed to such term in the ERCOT Protocols.

"Site" means real estate on which the Facility is located. The Site is more specifically described in Exhibit A.

"Start Date" has the meaning set out in Article 1.

"State of Charge" or "SOC" means the amount of Discharging Energy stored the Facility expressed as a percent of the maximum amount of Discharging Energy the Facility is capable of storing (e.g., 80% SOC).

"Storage Test" has the meaning set forth in Exhibit B.

"Stored Energy" means energy stored in the Facility.

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

[redacted]

"Successor QSE" has the meaning set forth in Section 8.3.6.

[redacted]

[redacted]

[redacted]

"Term" has the meaning set forth in Article 3.

"Termination Payment" has the meaning set forth in Section 11.5.2.

"Termination Payment Notice" has the meaning set forth in Section 11.5.2.

"Testing Report" has the meaning set forth in Section 5.5.3.

[redacted]

"Throughput" has the meaning set forth in Article 1.

"TRE" means Texas Reliability Entity, Inc., or its successor in function.

"Treasury Regulations" means regulations of the United States Department of the Treasury.

[redacted]

"Unpaid Amount" has the meaning set forth in Section 11.5.2.

ARTICLE 3
TERM

This Agreement shall be in full force and effect from the Effective Date and shall remain in effect until the last Day of the Delivery Term, subject to any early termination or extension provisions set forth herein ("Term").

ARTICLE 4
FACILITY DESCRIPTION

4.1 Facility Description. Seller shall design, engineer, construct, own, operate, and maintain the Facility, which shall be located on the Site. Exhibit A provides a detailed description of the Facility, including identification of the major equipment and components that comprise the Facility, it being understood that Seller may at its sole discretion at any time modify, supplement, improve, augment, repair and replace any portion of the Facility in accordance with Good Utility Practices and consistent with the provisions of Section 13.4.

4.2 Substituted Facility.

4.2.1 [redacted]

[redacted]

4.2.4 [redacted]

ARTICLE 5
PRE-COMMERCIAL OPERATION AND COMMERCIAL OPERATION

5.1 Monitoring and Inspection. Persons visiting the Site and the Facility on behalf and with the authorization of Purchaser shall be required to [redacted] prior to any such visits, and shall comply with Seller's safety and health rules and requirements for the Facility and the Site as in effect and established by Seller from time to time and made known to Purchaser (including Seller's requirements that any visitor be accompanied by a representative of Seller), and shall not interfere with Seller's construction or operation of the Facility.

5.2 Delay Damages; COD Delay Damages. In the event that Seller fails to satisfy the Conditions to the Commercial Operation Date by the Guaranteed Commercial Operation Date, Seller shall pay Purchaser, as liquidated damages on account of such delay an amount equal to the Daily Delay Damages Rate for each Day of delay in achieving the Guaranteed Commercial Operation Date (the "COD Delay Damages"). Each Party agrees and acknowledges that (a) the damages that Purchaser would incur due to Seller's delay in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty and (b) the COD Delay Damages are a reasonable forecast of just compensation for such delay and are the sole and exclusive remedy for a delay in failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

5.3 Extension of the Guaranteed Commercial Operation Date and Outside Commercial Operation Date. The Commercial Operation Date, Guaranteed Commercial Operation Date, and Outside Commercial Operation Date (in each case, other than as set forth below) shall automatically be extended on a day-for-day basis for the duration of a delay due to or arising out of [redacted]

[redacted]

5.4 Progress Reports. [redacted]

5.5 Storage Tests.

5.5.1 Prior to the Commercial Operation Date, Seller shall schedule and complete one or more Storage Tests in accordance with Exhibit B. [redacted]

5.5.2 [redacted]

5.5.3 Following each Storage Test, Seller shall submit a testing report to Purchaser in accordance with the provisions of Exhibit B (each, a "Testing Report").

5.6 Conditions to Commercial Operation. Seller shall notify Purchaser within [redacted] following the date when the Facility has achieved all of the conditions set forth in this Section 5.6 (the "Conditions") by delivering to Purchaser a notice attaching a certificate signed by an officer of Seller (the "Commercial Operation Notice") confirming the occurrence of such Conditions and identifying the Commercial Operation Date. The Conditions are:

5.6.1 [redacted]

[redacted]

[redacted]

[redacted]

5.7 Storage Capacity Shortfalls. If, as of the Commercial Operation Date, the installed capacity of the Facility is less than the Expected Energy Capacity:

5.7.1 [redacted]

[redacted]

5.8 [redacted]

ARTICLE 6
DELIVERY AND METERING

6.1 Losses and Charges. Purchaser shall be responsible for all electric losses and delivery service arrangements and costs and penalties (including any imbalance penalties and costs or penalties associated with Curtailments) required to deliver Charging Energy to and at the Point of Delivery and Discharging Energy at and from the Point of Delivery.

6.2 Metering.

6.2.1 Seller, at its own expense, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness, such inspections and tests, *provided*, *however*, that any such representative of Purchaser shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all applicable safety standards as in effect and established by Seller from time to time. Upon reasonable request by Purchaser and approval by Seller, such approval not to be unreasonably withheld, Seller shall perform additional inspections or tests of any of Seller's Electric Metering Devices and shall permit a representative of Purchaser to witness the testing of any of Seller's Electric Metering Devices. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless upon such inspection or testing of an Electric Metering Device any such Electric Metering Device is found to register inaccurately by more than the allowable limits established in this Article 6, in which event the expense of the requested additional inspection or testing shall be borne by Seller.

If requested in writing and subject to any applicable confidentiality requirements, Seller shall provide copies of any inspection or testing reports to Purchaser.

6.2.2 Seller may elect to install and maintain, at its own expense, Back-Up Metering devices in addition to the Electric Metering Devices. Seller, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. Seller shall provide Purchaser with reasonable advance notice of, and permit a representative of Purchaser to witness and verify, such inspections and tests, *provided*, *however*, *that* any such representative of Purchaser shall not unreasonably interfere with or disrupt Seller's operation of the Facility and shall comply with all applicable safety standards as in effect and established by Seller from time to time. Upon reasonable request by Purchaser, and approval by Seller, such approval not to be unreasonably withheld, Seller shall perform additional inspections or tests of Back-Up Metering and shall permit a representative of Purchaser to witness the testing of Back-Up Metering; *provided*, *however*, *that* any such representative of Purchaser shall not unreasonably interfere with or disrupt Seller's operation of the Facility and shall comply with all applicable safety standards as in effect and established by Seller from time to time. The actual expense of any such requested additional inspection or testing shall be borne by Purchaser, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article 6, in which event the expense of the requested additional inspection or testing shall be borne by the Seller. If requested in writing, Seller shall provide copies of any inspection or testing reports to Purchaser.

6.2.3 If Electric Metering Devices or Back-Up Metering are not installed at the Point of Delivery, meters or meter readings shall be adjusted to reflect losses from the Electric Metering Devices or Back-Up Metering at the Facility to the Point of Delivery.

6.2.4 If any Electric Metering Device, or Back-Up Metering, is found to be defective or inaccurate, it shall be adjusted, repaired, replaced and recalibrated, as necessary, as near as practicable to a condition of zero error by the Party owning such defective or inaccurate Electric Metering Device or Back-Up Metering and at that Party's expense.

[redacted]

6.3 [redacted]

6.4 Aux Power. Seller shall procure and separately meter all Aux Power and shall pay all fees, costs, and other expenses associated with the procurement and use of Aux Power. Purchaser shall reimburse Seller and pay for all Aux Power and all actual, documented fees, costs, and other expenses reasonably incurred by Seller associated with the procurement and use of Aux

Power, including transmission and distribution fees and charges assessed by any utility or wires company in connection therewith.

ARTICLE 7
[RESERVED]

7.1 [RESERVED.]

ARTICLE 8
ENERGY STORAGE SERVICES

8.1 Charging Energy. Beginning on the Commercial Operation Date, and for the duration of the Delivery Term, Seller shall provide the Energy Storage Services to Purchaser, receive Charging Energy at the Point of Delivery, and deliver Discharging Energy to the Point of Delivery, all of the foregoing in accordance with the terms of this Agreement (including the Operating Limitations), and Purchaser shall provide at its cost Charging Energy to Seller at the Point of Delivery and accept and transfer Discharging Energy at and from the Point of Delivery, pursuant to the terms and conditions of this Agreement and the ERCOT Protocols.

8.2 Charging Energy Management.

8.2.1 Upon receipt of a valid Charging Notice, Seller shall take commercially reasonable actions to receive the Charging Energy at the Point of Delivery and discharge Discharging Energy in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to receive Charging Energy at the Point of Delivery.

8.2.2 Each valid Charging Notice will be effective unless and until Purchaser, the Designated QSE, ERCOT or the Interconnection Provider (as applicable) modifies such valid Charging Notice by providing Seller with an updated Charging Notice.

8.2.3 Seller shall not charge the Facility during the Delivery Term other than (a) pursuant to a valid Charging Notice, (b) confirmatory charging in connection with a Scheduled Maintenance Outage, (c) in connection with a Storage Test or cell balancing, (d) in accordance with an instruction issued by a Governmental Authority, (e) by ERCOT pursuant to the ERCOT Protocols, or (f) to respond to or account for a Force Majeure Event or Emergency Condition.

8.3 Scheduling, Charging Notices and Discharging Notices.

8.3.1 On or before the date that is one hundred and eighty (180) Days prior to the Expected Commercial Operation Date (without giving effect to any extensions thereof), Purchaser shall have designated to Seller an ERCOT Level 4 QSE that is either Purchaser, an Affiliate of Purchaser, or a third party that will serve as the QSE for the Facility (the "Designated QSE"). Reasonably promptly following such designation and otherwise in accordance with the applicable Network Operations Model change schedule notification deadlines established by ERCOT (if applicable), Seller shall take all actions and execute and deliver to Purchaser and ERCOT all documents required specifically of Seller by ERCOT in order to designate the Designated QSE with ERCOT as the QSE for the Facility, and Purchaser shall, or shall cause the Designated QSE

to, take all actions and execute and deliver to Seller and ERCOT all documents necessary to become and act as the QSE for the Facility. If Purchaser elects to designate a different Person to act as the QSE otherwise meeting the requirements set forth in this Section 8.3.1, then Purchaser shall give Seller prompt written notice of such designation (but at least sixty (60) Days before such QSE assumes its duties hereunder), and Seller is entitled to rely on such designation until it is revoked or a new Designated QSE is designated by Purchaser upon similar written notice. Purchaser shall reimburse Seller for any costs incurred by Seller in connection with transitioning to a new Designated QSE. Purchaser shall be responsible for all acts and omissions of the Designated QSE and for all cost, charges and liabilities incurred by the Designated QSE to the same extent that Purchaser would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Purchaser directly.

8.3.3 From and after the Commercial Operation Date, Purchaser shall cause the Designated QSE to conduct all scheduling, bidding, and dispatch instruction activities with respect to the Facility in compliance with the terms and conditions of this Agreement, the Operating Limitations, the Operating Procedures, the ERCOT Protocols, and Applicable Law. Consistent with the foregoing, the Designated QSE shall perform with respect to the Facility all obligations under the ERCOT Protocols that apply to a QSE for a storage facility comparable to the Facility, including (a) in accordance with information provided by Seller, submit and update the Current Operating Plan (as defined in the ERCOT Protocols) for the Facility; (b) timely transmit to Seller all Charging Notices, Discharging Notices, ERCOT dispatch instructions, charging or discharging limitations, deployment messages, and other notices concerning the Facility; and (c) timely transmit to ERCOT appropriate real-time data and status notices received from the Facility or Seller. Purchaser is responsible for administrative costs and expenses associated with the scheduling of the Facility by the Designated QSE.

8.3.4 The Parties shall cooperate as reasonably required in order to cause the Designated QSE to receive any applicable authorizations from ERCOT required in order to deliver applicable Products from the Facility to the Point of Delivery.

8.3.5 During the Delivery Term, Purchaser has the right to (a) offer or to direct the Designated QSE to offer, as applicable, the Facility in the ERCOT markets pursuant to such strategies as Purchaser, in its sole discretion, may elect, provided that such strategies are consistent with the Operating Procedures, Operating Limitations, Applicable Law, and any other requirements of ERCOT and (b) retain all credits and other payments attributable to such period received from, and, except as otherwise provided in this Agreement, is responsible for charges due to, ERCOT as a result of Charging Energy, Discharging Energy, and other Products from the Facility delivered (or not delivered, including due to Curtailment) to ERCOT or any applicable recipient designated by Purchaser, including any charges, fees or other costs arising from Purchaser's or the Designated QSE's failure to comply with this Agreement, the ERCOT Protocols or other Applicable Law.

8.3.6 At least ninety (90) Days prior to the end of the Delivery Term, or as soon as practicable following the date of any earlier termination of this Agreement, the Parties will conduct such coordination as may be necessary to facilitate the transfer of responsibility for performance of QSE services with respect to the Facility from the Designated QSE to such Person as Seller may designate to succeed the Designated QSE as the QSE for the Facility (the "Successor QSE"). The Parties shall endeavor to complete the designation of the Successor QSE concurrently with the end of the Delivery Term or as close thereto as is practicable based on the applicable Network Operations Model change schedule notification deadlines established by ERCOT (if applicable). If designation of the Successor QSE is completed prior to the end of the Delivery Term, Purchaser and Seller shall thereafter take such actions as are necessary to ensure that the Facility continues to be operated in accordance with Purchaser's instructions and that the costs and benefits of such operation continue to be allocated in accordance with this Agreement as if the Successor QSE were the Designated QSE for the Facility. If designation of the Successor QSE will occur after the end of the Delivery Term, then following the end of the Delivery Term the Designated QSE will (a) continue to represent the Facility as the Designated QSE until the first date on which ERCOT will recognize the resignation of the Designated QSE and the assignment of the Successor QSE, and (b) follow Seller's reasonable instructions regarding the offer and dispatch of the Facility provided all such offer and dispatch instructions are consistent with the Operating Procedures, Operating Limitations, Applicable Law, and any other requirements of ERCOT. All ERCOT revenues received by and ERCOT charges incurred by the Designated QSE with respect to periods following the end of the Delivery Term will be the responsibility of and for the account of Seller, and Purchaser shall remit to or Seller shall reimburse Purchaser for, as applicable, such amounts on a net basis. Purchaser shall provide such reasonable support as Seller may request in connection with the transition of responsibility for performance of QSE services for the Facility to the Successor QSE, and Seller shall within five (5) Business Days following written demand reimburse Purchaser for any out-of-pocket costs and expenses incurred by Purchaser or the Designated QSE, if not the Purchaser, in connection with providing such support, including costs of Charging Energy.

8.4 Guaranteed Availability Percentage.

8.4.1 The Facility shall maintain Actual Availability of no less than the Guaranteed Availability Percentage, as assessed and calculated by Seller in accordance with Exhibit C, without the need for testing.

8.4.2 If during any Guaranteed Availability Evaluation Period the Actual Availability is less than the Guaranteed Availability Percentage, Guaranteed Availability Percentage LDs will be calculated by and payable by Seller to Purchaser in accordance with Article 1.

8.4.3 Each Party agrees and acknowledges that (a) the damages that Purchaser would incur due to Seller's failure to achieve the Guaranteed Availability Percentage would be difficult or impossible to predict with certainty and (b) the Guaranteed Availability Percentage LDs are a reasonable forecast of just compensation for such damages and are the sole and exclusive remedy for (x) Seller's failure to meet the Guaranteed Availability Percentage and (y) on or after the Commercial Operation Date, any failure or inability of the Facility to receive Charging Energy or provide Discharging Energy or Ancillary Service Products.

8.5 Guaranteed Roundtrip Efficiency.

8.5.1 The Roundtrip Efficiency of the Facility will equal or exceed the Guaranteed Roundtrip Efficiency, as determined by the Storage Test and calculation processes set forth in Exhibit B.

8.5.2 If the Roundtrip Efficiency of the Facility as determined by a Storage Test is less than the Guaranteed Roundtrip Efficiency, Guaranteed Roundtrip Efficiency LDs will be calculated by and payable by Seller to Purchaser in accordance with Article 1.

8.5.3 Each Party agrees and acknowledges that (a) the damages that Purchaser would incur due to Seller's failure to achieve the Guaranteed Round Trip Efficiency would be difficult or impossible to predict with certainty and (b) the Guaranteed Round Trip Efficiency LDs are a reasonable forecast of just compensation for such damages and are the sole and exclusive remedy for Seller's failure to achieve the Guaranteed Round Trip Efficiency.

8.6 Title and Risk of Loss. Title to, and risk of loss related to, all Products delivered to Purchaser transfers from Seller to Purchaser at the Point of Delivery. As between the Parties, (a) Purchaser shall be deemed to be in control of all Charging Energy up to and including delivery at the Point of Delivery, (b) Seller shall be deemed to be in control of all Stored Energy from and after receipt of Charging Energy at the Point of Delivery and up to delivery of Discharging Energy to the Point of Delivery, and (c) Purchaser shall be deemed to be in control of such Discharging Energy from and after such delivery to the Point of Delivery. Purchaser shall retain title to Charging Energy and Discharging Energy at all times and all risk of loss associated with Curtailment. Notwithstanding anything to the contrary in this Section 8.6 but not in limitation of Section 8.5 and Section 11.1.7, Purchaser has all risk with respect to round-trip losses.

8.7 Future Products. If, during the Delivery Term, the Facility becomes eligible for any Future Products, Seller shall use commercially reasonable efforts to provide such Future Products

to Purchaser; *provided*, that (a) Purchaser shall not be required to receive any such Future Products and (b) Seller shall not be required to provide such Future Products if (i) such efforts (and any resulting requirements and other results thereof) require modifications to the Facility (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities or require Seller to incur additional costs or liabilities reasonably expected to be in excess of [redacted] or (ii) such actions are not permitted by (and capable of being implemented pursuant to) Applicable Laws; *provided further*, that, Purchaser shall reimburse Seller for all actual costs, expenses or charges that are evidenced by Seller and which are incident to the registration, qualification, verification, or determination by Seller of the Facility for qualification of the Facility to deliver the Future Products to Purchaser. Subject to the requirements of this Agreement, including this Section 8.7, Purchaser shall have the right, in coordination with the Designated QSE, to schedule, bid, sell or take any other action provided for under the ERCOT Protocols to deliver the Future Products to the ERCOT System and to receive all proceeds associated with the Future Products.

[redacted]

[redacted]

8.9 Operating Limitations.

8.9.1 Notwithstanding any other provision of this Agreement, Purchaser shall not issue, and Purchaser shall not cause to be issued, any instruction, order, Charging Notice, Discharging Notice or other communication requesting or requiring the Facility to be, charged, discharged, operated or maintained in any manner which results in, or gives rise to any of the following (a "Prohibited Instruction"):

[redacted]

8.9.2 Seller shall not be required to, and shall not bear any liability or loss for failure to, comply with any Prohibited Instruction and Purchaser shall remain liable for any resulting charges, fees, and other expenses (and shall reimburse Seller to the extent Seller incurs any such charges, fees, and other expenses), including ERCOT charges for basepoint deviations, charges and penalties associated with the ERCOT Supplemental Ancillary Service Market and any charges or penalties associated with Curtailments. In the event of any conflict or inconsistency between or among this Section 8.9, the Operating Limitations, or the Operating Procedures, the terms and conditions of this Section 8.9 will prevail.

8.10 Environmental Attributes. Purchaser is entitled to receive and Seller shall at the direction of Purchaser transfer to Purchaser any and all Environmental Attributes associated with the Facility. Upon Seller's receipt of notice from Purchaser of Purchaser's intent to claim such Environmental Attributes or the implementation of any Applicable Law, scheme, registry or other program for which the Facility qualifies for Environmental Attributes and Purchaser's notice to Seller that Purchaser wishes to claim the applicable Environmental Attributes, Seller shall take all reasonable actions required in order to enable Purchaser to claim all such Environmental Attributes; provided that Purchaser shall reimburse Seller for any incremental costs incurred by Seller in order to allow Purchaser to claim the applicable Environmental Attributes, [redacted]

[redacted]

ARTICLE 9
PAYMENTS

9.1 Energy Storage Services Payments. The amount due from Purchaser to Seller each Month during a Commercial Operation Year for Energy Storage Services shall be an amount equal to the Monthly Capacity Payment.

9.2 Seller's Invoices. No later than ten (10) Days after the end of each Month (beginning with the first Month that any amounts are payable to Seller from Purchaser hereunder), Seller shall provide to Purchaser, by electronic means or first-class mail, an invoice showing the invoice date, the invoice due date and all billing parameters, rates, and any other data reasonably pertinent to the invoice, for the amounts owing for (a) Energy Storage Services provided by Seller and purchased by Purchaser pursuant to the terms and conditions of this Agreement, (b) any other amounts owed to Seller pursuant to this Agreement and (c) any amounts owed to Purchaser pursuant to this Agreement, in each of the cases of clauses (b) and (c), such amount incurred during the current Billing Period or, if applicable, the previous Billing Period if not previously invoiced.

9.3 Reserved.

9.4 Payments. Unless otherwise specified herein, payments owed under this Agreement shall be due and payable by electronic funds transfer, in accordance with the instructions set out in the invoice, [redacted]

9.5 Billing Disputes. Purchaser may in good faith dispute the amounts invoiced by Seller, but shall be obligated to pay at least the undisputed portion of the invoiced amounts on or before the invoice due date pending resolution of the Dispute. Full payment of an invoice shall not waive Purchaser's right to later dispute the invoice provided that notice of a disputed invoice is presented by Purchaser to Seller within [redacted], accompanied by an explanation of the specifics of the Dispute as well as a request for a refund or adjustment to any such disputed invoice, whichever is appropriate. When a Dispute related to an invoice is resolved by agreement of the Parties (or finally determined pursuant to Article 12), Seller shall, if a payment is owed by Purchaser or refund is owed by Seller, reflect any such payment or refund as a line item on the invoice for the Billing Period next following the date of resolution of any such Dispute. Any amounts payable by Purchaser or to be refunded by Seller, shall include any late payment interest charges at the Interest Rate calculated from the original invoice due date.

9.6 Payment Adjustments. Except as otherwise expressly provided for in this Agreement, all payments between the Parties under this Agreement shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of set-off or otherwise. Payments to be made under this Agreement shall, for a period of [redacted], remain subject to adjustment based on billing adjustments due to error or omission by either Party or as may be provided subsequent to any Billing Period by ERCOT through the settlement processes set out in the ERCOT Protocols; *provided that,* except for any adjustment resulting from the settlement process of ERCOT, such adjustments have been agreed to between the Parties or resolved in accordance with the provisions of Article 12.

ARTICLE 10
SECURITY FOR PERFORMANCE

10.1 Seller Credit Support.

10.1.1 [redacted]

10.1.2 At least twenty (20) Days prior to the expiration of any Letter of Credit provided by Seller as Performance Security, Seller shall renew or substitute such outstanding Letter of Credit, establish one or more additional Letters of Credit, or provide another form of

Performance Security permitted hereunder or otherwise acceptable to Purchaser. If Seller fails to comply with its obligations under this Section 10.1.2, Purchaser may, upon notice to Seller, draw upon the entire, undrawn portion of any outstanding Letter of Credit and deposit the proceeds thereof (the "Seller Security Proceeds") with a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Purchaser; *provided* that upon Seller's providing, at a later time, replacement Performance Security in another form, Purchaser shall return to Seller an amount equal to the difference between (a) the Seller Security Proceeds, minus (b) any undisputed amounts due Purchaser by Seller under this Agreement, and minus (c) any amounts of such Seller Security Proceeds applied by Purchaser to satisfy any undisputed amounts due Purchaser by Seller under this Agreement.

10.1.3 Promptly (but no later than ten (10) Business Days) following the end of the Term, or the earlier termination of this Agreement, and the full and final satisfaction of all of Seller's obligations under this Agreement, Purchaser shall release the Performance Security held by Purchaser pursuant to this Section 10.1 (including any accumulated interest thereon, if any) to Seller and, if requested by Seller or the issuer of such Performance Security, Purchaser shall provide a written form of release and termination of such Performance Security in a form reasonably acceptable to Seller (or such issuer of the Performance Security) and Purchaser.

10.2 Purchaser Security.

10.2.1 To support Purchaser's obligations under this Agreement, subsequent to the Commercial Operation Date and within thirty (30) Days following the first date that Purchaser does not have an Investment Grade Credit Rating (a "Purchaser Downgrade"), Purchaser shall provide Seller with, and thereafter maintain at all times during the Delivery Term, Performance Security in an amount equal to the Purchaser Security Amount ("Purchaser Security"). Purchaser Security shall be in the form of: (a) cash deposited as security with a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Seller, (b) a Letter of Credit, (c) a Guaranty, or (d) any combination of the foregoing. If Purchaser provides Performance Security in the form of a Guaranty, in the event of a downgrade of a Guarantor such that the Guarantor no longer has an Investment Grade Credit Rating, Purchaser shall within ten (10) Business Days of Seller's notice to do so: (i) provide another Guaranty from a replacement Guarantor, which meets the requirements of this Section 10.2; (ii) supply a Letter of Credit; or (iii) supply cash to Seller, in each case, in the Purchaser Security Amount. Purchaser shall replenish the Purchaser Security if drawn upon by Seller in accordance with this Agreement within ten (10) Business Days after such draw.

10.2.2 At least twenty (20) Days prior to the expiration of any Letter of Credit provided by Purchaser as Performance Security, Purchaser shall renew or substitute such outstanding Letter of Credit, establish one or more additional Letters of Credit, or provide another form of Performance Security permitted hereunder or otherwise acceptable to Seller. If Purchaser fails to comply with its obligations under this Section 10.2.2, Seller may, upon notice to Purchaser, draw upon the entire, undrawn portion of any outstanding Letter of Credit and deposit the proceeds thereof (the "Purchaser Security Proceeds") with a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Seller; *provided* that upon Purchaser's providing, at a later time, replacement Performance Security in another form, Seller shall return to Purchaser an amount equal to the difference between (a) the Purchaser Security Proceeds, minus

(b) any undisputed amounts due Seller by Purchaser under this Agreement, and minus (c) any amounts of such Purchaser Security Proceeds applied by Seller to satisfy any undisputed amounts due Seller by Purchaser under this Agreement.

10.2.3 Promptly (but no later than ten (10) Business Days) following the end of the Term, or the earlier termination of this Agreement, and the full and final satisfaction of all of Purchaser's obligations under this Agreement, Seller shall release the Performance Security held by Seller pursuant to Section 10.2 (including any accumulated interest thereon, if any), and, if requested by Purchaser or the issuer of such Performance Security, Seller shall provide a written form of release and termination of such Purchaser Security in a form reasonably acceptable to Purchaser (or such issuer of the Performance Security) and Seller.

10.3 General Provisions Regarding Performance Security.

10.3.1 Security Interest in Cash Collateral. To the extent permitted by Applicable Law, each Party hereby grants to the other Party a continuing first priority security interest in, lien on, and right of setoff against all Performance Security provided by that Party in the form of cash pursuant to this Article 10. Upon the return by a Party or release to the other Party of such security, the security interest and lien granted hereunder shall be released automatically and, to the extent possible, without any further action by either Party.

10.3.2 [redacted]

10.3.3 Entirety of Credit Support; Waiver of Claim For Adequate Assurance of Performance. This Article 10 sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as set forth in this Article 10 neither Purchaser nor Seller shall have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever. Neither Party shall have reasonable grounds for insecurity with respect to the creditworthiness of the other Party that is complying with the relevant provisions of this Article 10 and for all purposes of this Agreement, each of the Parties waives any right to make a claim for performance assurance based on any such grounds, including any right provided to a Party under the provisions of the Section 2.609 of the Texas Business and Commerce Code (or any equivalent provision of the Uniform Commercial Code as and to the extent applicable hereunder) or any other Applicable Law allowing for a Party to claim adequate assurances from the other Party on any such grounds.

10.3.4 Draws Upon Performance Security.

(a) [redacted]

[redacted]

ARTICLE 11
DEFAULT AND REMEDIES

11.1 Seller Event(s) of Default. Except as otherwise excused under this Agreement, the occurrence of any of the following shall constitute an event of default of Seller upon notice by Purchaser specifying the event(s) of default (each a "Seller Event of Default"):

11.1.1 Seller fails to perform any of its material obligations under this Agreement, not otherwise provided for as a separate Seller Event of Default under this Section 11.1, and such failure is not corrected [redacted] (including to the extent such failure can remedied with the payment of monetary damages); [redacted]

11.1.2 Except for a Disputes as to any invoice for a Billing Period arising under this Agreement, disputed in good faith in writing and which remains in Dispute on the date on which payment of such amounts would have otherwise been due, if Seller fails to pay any amounts due hereunder, which failure continues [redacted] after the date on which written notice of a failure to pay is received from Purchaser;

11.1.3 Except to the extent set forth in Sections 11.1.8 and 11.1.9, failure by Seller to provide Performance Security required under this Agreement, including security requirements as set forth in Article 10, and such failure continues [redacted] after the date on which written notice thereof is received from Purchaser;

11.1.4 Any written representation or warranty set forth herein made by Seller proves to have been incorrect or misleading in any material respect when made, or deemed to be made, or repeated, and the circumstances that rendered such representation or warranty false or misleading continue, or are not otherwise addressed to the satisfaction of Purchaser, [redacted] after Seller receives notice thereof;

[redacted]

11.1.8 If Seller provides Performance Security in the form of a Letter of Credit:

(a) The Qualified Issuer becomes Bankrupt;

(b) The Qualified Issuer no longer satisfies the requirements set forth in the definition of 'Qualified Issuer';

(c) The failure of such Letter of Credit to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of Seller; or

(d) The Qualified Issuer repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Letter of Credit;

and if, in any such case other than clause (a), Seller fails to cure such matter by providing, within ten (10) Business Days after the date on which written notice thereof is received by Seller, another form of Performance Security permitted under this Agreement, including a replacement Letter of Credit from a Qualified Issuer or another Qualified Issuer, as the case may be; provided that in the case of clause (b), in the event such issuer is no longer a

Qualified Issuer as a result of a Credit Rating downgrade and after such downgrade such issuer has a Credit Rating of at least "BBB+" by S&P and "Baa1" by Moody's, such event shall not constitute an Event of Default until [redacted].

11.1.9 If Seller provides Performance Security in the form of a Guaranty:

(a) 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 covenant or obligation in any Guaranty made in connection with this Agreement;

(c) The Guarantor becomes Bankrupt;

(d) The failure of such Guaranty to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of Seller; or

(e) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty;

and if, in any such case other than clauses (b) and (c), Seller fails to cure such matter by providing, within three (3) Business Days after the date on which written notice thereof is received by Seller, another form of Performance Security permitted under this Agreement, including a replacement Guaranty from another Guarantor meeting the qualifications required under this Agreement.

11.1.10 Reserved.

11.1.11 [redacted]

11.3 Purchaser Event(s) of Default. Except as otherwise excused under this Agreement, the occurrence of any of the following shall constitute an event of default of Purchaser (each a "Purchaser Event of Default"):

11.3.1 Purchaser fails to perform any of its material obligations under this Agreement, not otherwise provided for as a separate event of default under this Section 11.3, and such failure is not corrected within thirty (30) Days after written notice thereof (including to the extent such failure can remedied with the payment of monetary damages); *provided* that such period shall be extended for an additional reasonable period if a cure cannot be reasonably effected within such thirty (30) Days and if corrective action is instituted by Purchaser within the initial thirty (30) Day-period and so long as such action is being diligently pursued until such default is corrected, but in no case shall such extended period exceed an additional ninety (90) Days;

11.3.2 Except for disputed charges arising under this Agreement which remain in dispute on the date on which payment of such amounts would have otherwise been due, if Purchaser fails to pay any amounts due hereunder, which failure continues for a period of ten (10) Business Days after the date on which written notice of a failure to pay is received from Seller;

11.3.3 Except to the extent set forth in Sections 11.3.7 and 11.3.8, failure by Purchaser to provide Performance Security required under this Agreement, including security requirements as set forth in this Article 10, and such failure continues for a period of ten (10) Business Days after the date on which written notice thereof is received from Seller;

11.3.4 Any written representation or warranty set forth herein made by Purchaser proves to have been incorrect or misleading in any material respect when made, or deemed to be made, or repeated, and the circumstances that rendered such representation or warranty false or misleading continue, or are not otherwise addressed to the satisfaction of Seller, for more than thirty (30) Days after Purchaser receives notice thereof;

11.3.5 Purchaser fails to comply with its obligations under Section 8.3 and such failure is not cured within fifteen (15) Days after written notice thereof;

11.3.6 Purchaser becomes Bankrupt; or

11.3.7 If Purchaser provides Performance Security in the form of a guaranty:

(a) 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 covenant or obligation in any Guaranty made in connection with this Agreement;

(c) The Guarantor becomes Bankrupt;

(d) The failure of such Guaranty to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of Purchaser; or

(e) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty;

and if, in any such case other than clauses (b), (c) and (e), Purchaser fails to cure such matter by providing, within three (3) Business Days after the date on which written notice thereof is received by Purchaser, another form of security permitted under this Agreement, including a replacement Guaranty from another Guarantor.

11.3.8 If Purchaser provides Performance Security in the form of a Letter of Credit:

(a) The Qualified Issuer becomes Bankrupt;

(b) The Qualified Issuer no longer satisfies the requirements set forth in the definition of 'Qualified Issuer';

(c) The failure of such Letter of Credit to be in full force and effect for purposes of this Agreement prior to the satisfaction of all obligations of Purchaser; or

(d) The Qualified Issuer repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Letter of Credit;

and if, in any such case other than clauses (a) and (d), Purchaser fails to cure such matter by providing, within ten (10) Business Days after the date on which written notice thereof is received by Purchaser, another form of Performance Security permitted under this Agreement, including a replacement Letter of Credit from another Qualified Issuer; *provided* that in the case of clause (b), in the event such issuer is no longer a Qualified Issuer as a result of a Credit Rating downgrade and after such downgrade such issuer has a Credit Rating of at least "BBB+" by S&P and "Baa1" by Moody's, such event shall not constitute an Event of Default until thirty (30) Business Days following such occurrence if not cured.

11.3.9 Reserved.

11.3.10 An assignment or Change of Control with respect to Purchaser occurs in contravention of Article 18;

11.4 Seller Remedies. Subject to the notice and cure provision set forth above, any Purchaser Event of Default shall give Seller the right, in its sole discretion, to (a) upon delivery of the notice of an Event of Default or notice of suspension of performance, suspend its performance under this Agreement until [redacted] to the extent cured by Purchaser prior to the exercise by Seller of its right under clause (b); (b) terminate this Agreement and recover Termination Payment pursuant to Section 11.5; (c) draw upon the Performance Security in accordance with Section 10.3.4; (d) setoff any amount owed by Seller to Purchaser hereunder against an equal amount owed by Purchaser to Seller hereunder; or (e) pursue any other remedy available under this Agreement, at law or in equity.

11.5 [redacted]

11.6 No Incidental, Consequential, or Indirect Damages. Except for the potential penalties assessed to Seller pursuant to Section 19.3 and a breach of Section 19.17, the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. To the extent any damages to be paid hereunder are liquidated, the Parties agree and acknowledge that the damages are difficult or impossible to determine, and the damages calculated hereunder constitute a reasonable forecast of the harm or loss to be incurred. **Neither Party shall be liable to the other Party for consequential, incidental, special, punitive, exemplary or indirect damages, lost profits, lost revenues, or other business interruption damages by statute, in tort or contract and each Party hereby waives any right it would otherwise have to such damages (except in each case to the extent expressly provided herein); provided that if either Party is held liable to a third party for such damages, and the Party held liable for such damages is entitled to indemnification under this Agreement, the Indemnifying Party shall be liable for, and obligated to reimburse the Indemnified Party for, such damages, all in accordance with the indemnification provisions of Article 17**.

11.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate any and all damages it seeks to recover from the other Party and agrees that it will use commercially reasonable efforts to minimize any damages that may incur as a result of the other Party's performance or non-performance of this Agreement.

11.8 Limitation on Damages. Notwithstanding any provision of this Agreement, and without derogating from the other liability limiting and liquidated damages provisions herein, Purchaser agrees and acknowledges that (a) Seller's aggregate liability under or arising out of or in connection with this Agreement (including for any Termination Payment (as applicable) and any liquidated damages) prior to the Commercial Operation Date shall not exceed the full amount of Seller's Performance Security [redacted]

ARTICLE 12
DISPUTE RESOLUTION

12.1 Negotiations. In the event that any claim, dispute, controversy, difference, disagreement, or grievance (of any and every kind or type, whether based on contract, tort, statute, regulation or otherwise) arising out of, connected with or relating in any way to this Agreement (including the application, construction, validity, interpretation, termination, enforceability or breach of this Agreement) (collectively, a "Dispute") cannot be resolved informally within fifteen (15) Days after a Party provides written notice of such Dispute (or such longer period of time if agreed to in writing by the Parties), each Party shall immediately designate a senior executive to attempt to resolve the Dispute. Each such senior executive shall have full authority to resolve the Dispute without a requirement for obtaining any other approvals or authority, and shall promptly begin discussions in an effort to agree on a resolution of the Dispute within thirty (30) Business Days after the passage of the foregoing fifteen (15) Day period.

12.2 Mediation. If the Dispute is not resolved under the procedures provided in Section 12.1, then either Party may request that the matter be submitted to non-binding mediation. If either Party requests non-binding mediation, then upon agreement of the Parties to participate in non-binding mediation, the Parties shall participate in such non-binding mediation before exercising their rights under Section 12.3. The costs of the mediation, including fees and expenses, will be borne equally by the Parties. All verbal and written communications between the Parties and issued or prepared in connection with the mediation will be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and will be exempt from discovery and production, and will not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the Dispute. If the Party receiving the request to participate in non-binding mediation rejects any such request, either Party may then exercise its rights under Section 12.3.

12.3 Arbitration.

12.3.1 Any Dispute not resolved pursuant to Section 12.1 or Section 12.2 (if applicable) shall be resolved pursuant to this Section 12.3. Any arbitration held under this

Agreement (a) shall be held in Dallas, Texas, unless otherwise agreed by the Parties, (b) shall be non-administered, and (c) shall, except as otherwise modified by this Section 12.3, be governed by the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association (the "AAA"). Three (3) arbitrators shall be chosen in accordance with Section 12.3.2 for the arbitration hearing. The arbitrators shall determine the rights and obligations of the Parties according to the express terms of this Agreement (including all limitations on damages expressly provided for herein) and the substantive law of the State of Texas, excluding its conflict of law principles; *provided*, *however*, the law applicable to the validity of the arbitration clause, the conduct of the arbitration, including resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act, 9 U.S.C.A. § 1 et seq. Issues concerning the arbitrability of any Dispute shall be decided by a court with proper jurisdiction over the subject matter and the parties, which court will be a Federal District Court located in Dallas, Texas, with respect to which the Parties submit to jurisdiction. The Parties shall be entitled to engage in reasonable discovery, including the right to production of relevant and material documents by the opposing Party and the right to take depositions reasonably limited in number, time and place; *provided* that in no event shall any Party be entitled to refuse to produce relevant and non-privileged documents or copies thereof requested by the other Party within the time limit set and to the extent required by order of the arbitrators. All disputes regarding discovery shall be promptly resolved by the arbitrators. To the extent permitted by Applicable Law, at either Party's option or by agreement, any other Person may be joined as an additional party to any arbitration conducted under this paragraph, *provided that* the Person to be joined is or may be liable to either Party in connection with all or any part of any Dispute between the Parties. The arbitration award shall be final and binding, in writing, signed by all arbitrators, and shall state the reasons upon which the award thereof is based. The Parties agree that judgment on the arbitration award may be entered by any court having jurisdiction thereof.

12.3.2 The arbitrators for any arbitration under Section 12.3.1 shall be selected in accordance with this Section 12.3.2. Seller and Purchaser shall each appoint one (1) arbitrator within thirty (30) Days of the filing of the demand for arbitration by a Party, and the two (2) arbitrators so appointed shall select the presiding arbitrator within thirty (30) Days after the latter of the two (2) arbitrators has been appointed by the Parties. If either Party fails to appoint its party-appointed arbitrator or if the two (2) party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then in accordance with the Rules, AAA shall appoint the remainder of the three (3) arbitrators not yet appointed. Each arbitrator shall be and remain at all times wholly impartial, and, once appointed, no arbitrator shall have any *ex parte* communications with any of the Parties or any other parties to the dispute concerning the arbitration or the underlying Dispute other than communications directly concerning the selection of the presiding arbitrator. The arbitrators shall be experienced in battery energy storage system related matters, have experience with issues pertinent to the particular subject matter of the Dispute between the Parties and shall not be a former employee, agent or representative of, or consultant (including a financial consultant) or counsel to, either Party or any of their respective Affiliates.

12.4 Cost of Dispute Resolution. The prevailing Party in any Dispute arising out of or relating to this Agreement shall be entitled to recover from the other Party, as determined by the arbitrators, up to the actual attorneys' fees, costs and expenses incurred by the prevailing Party in

connection with such Dispute, which shall be provided for in a final award issued by the arbitrators if any such amount is so awarded.

12.5 Remedies Cumulative. Except as provided herein, the exercise, by a Party of any one or more or the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein; provided, however, nothing in this Article 12 shall limit or otherwise be deemed to restrict either Party from enforcing any right to seek an injunction against the other Party related to or for purposes of prohibiting unauthorized disclosure of Confidential Information or other breach of the provisions of Section 19.17 hereof.

ARTICLE 13
FACILITY OPERATION AND CONTRACT ADMINISTRATION

13.1 Facility Operation. Seller shall staff, control, and operate the Facility at all times in a manner that:

[redacted]

13.1.2 complies in all material respects with all applicable national and regional reliability standards, including standards set by NERC, ERCOT and TRE, or any successor agencies setting reliability standards for the operation of energy storage or generation facilities interconnected to the ERCOT System; and

13.1.3 complies in all material respects with the Operating Procedures developed by the Parties.

13.2 Operating Procedures. Within one hundred eighty (180) Days prior to the Expected Commercial Operation Date, Seller shall develop and finalize (subject to reasonable review and approval by Purchaser) written operating procedures as shown in Exhibit F ("Operating Procedures") that shall include: [redacted]

13.3 Forced Outages. Seller shall notify Purchaser and the Designated QSE by telephone or e-mail (with confirmation to follow by written notice in each case) reasonably promptly upon discovering that the Facility is unable to deliver all or part of any scheduled quantity of Energy due to a Forced Outage, but in no event later than thirty (30) minutes after a Forced Outage commences, of (a) the existence of such Forced Outage, (b) the beginning date and time of the Forced Outage, (c) the nature of the Forced Outage, (d) the expected duration of the Forced Outage, (e) the Actual Power Capacity, if any, that will be available during such Forced Outage, and (f)

any other information or data as required by ERCOT from time to time; *provided*, that Seller has no obligation to notify Purchaser of any such information specified in clauses (a) through (f) to the extent that Purchaser has received such information from ERCOT from its Designated QSE and Seller does not have any information with respect to such Forced Outage that was not communicated to the Designated QSE or is not aware of the Forced Outage because Purchaser or the Designated QSE did not provide information received by Purchaser or the Designated QSE from ERCOT with respect to such Forced Outage in accordance with the Operating Procedures. Should Seller expect any further changes in the duration of any such Forced Outage, it shall promptly notify Purchaser and the Designated QSE of the same.

13.4 Scheduled Maintenance. [redacted]

13.5 Operating Parameters. Subject to the Operating Limitations and Operating Procedures and the terms of Charging Notices and Discharging Notices issued hereunder, Seller shall: (a) have the sole responsibility to, and shall at its sole expense, operate and maintain the Facility in accordance with all requirements set forth in this Agreement; and (b) comply with

reasonable requirements of Purchaser regarding day-to-day or hour-by-hour communications with Purchaser.

13.6 Operating Records. Seller and Purchaser shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including such records as may be required by Governmental Authorities in the prescribed format of those entities. Such requirements shall be specified in the Operating Procedures described in Section 13.2. All records of Seller and Purchaser pertaining to this Agreement or to the operation of the Facility, as specified herein or otherwise shall be maintained for a period of two (2) years in either hard copy (paper) or in electronic form in such format as may be required by Applicable Law or any Governmental Authority or, as applicable, for such longer time as may be required under Applicable Law or by any Governmental Authority.

13.7 Operating Log. Seller shall use reasonable efforts to maintain an accurate and up-to-date operating log in electronic format as to be defined in the Operating Procedures, with records of production for each hour and changes in operating status.

13.8 Availability Reporting. Seller shall comply in all material respects with all current NERC, ERCOT and TRE energy storage outage reporting requirements as they may be revised from time to time and as they apply to the Facility. Such outage reporting requirements shall be specified in the Operating Procedures.

13.9 Examination and Retention of Records. Seller or Purchaser may examine, and each at its own expense obtain copies, of the operating records and data kept by the other Party relating to transactions under and administration of this Agreement, at any time during the period the records are required to be maintained, upon no less than five (5) Business Days' prior written request and during normal business hours (but not more than four times each per calendar year). A Party's review of any such records and data shall in no way relieve the other Party of its responsibility for the professional quality, technical accuracy and completeness of such data. Each Party shall retain such operating records and data for the period of time required by Applicable Law.

ARTICLE 14
FORCE MAJEURE

14.1 Definition of a Force Majeure Event. The term "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 reasonable efforts, cannot be avoided by and is without the fault or negligence of the Party relying thereon as justification for such delay or nonperformance (such Party suffering the Force Majeure Event being the "Affected Party").

[redacted]

[redacted]

14.2 Applicability of Force Majeure.

14.2.1 Except as otherwise provided in this Agreement, neither Party shall be responsible or liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is caused by a Force Majeure Event.

14.2.2 The suspension of performance shall be of no greater scope and of no greater duration than the cure for the Force Majeure Event requires. Except as otherwise expressly provided for in this Agreement, the existence of a Force Majeure Event shall not relieve the Parties of their obligations under this Agreement to the extent that performance of such obligations is not precluded by a Force Majeure Event, *provided*, *however*, *that* a Force Majeure Event shall not excuse either Party from any failure or inability to make any payments hereunder when due.

14.3 Notification Obligations. In the event of any delay or nonperformance by the Affected Party, order to claim relief for such Force Majeure Event, such Affected Party shall provide written notice to the other Party (the "Non-Affected Party") as soon as practicable after becoming aware of the occurrence of such Force Majeure Event, including in any such notice [redacted] The Affected Party shall notify the Non-Affected Party of the cessation of the Force Majeure Event or of the conclusion of the Affected Party's cure for the Force Majeure Event, as soon as practicable thereafter.

14.4 Duty to Mitigate. Each Party shall [redacted] mitigate its damages caused by a Force Majeure Event.

14.5 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by a Force Majeure Event extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event for which relief is claimed pursuant to this Section 14.2 and that affects more than [redacted] of the Actual Energy Capacity or has prevented the occurrence of the Commercial Operation Date continues for an

uninterrupted period of [redacted] from its occurrence or inception (which will be extended an additional one hundred and eighty Days if prior to such [redacted] period the Affected Party has provided reasonable supporting evidence that the Force Majeure Event is reasonably likely to cease or no longer affect more than [redacted] of Actual Energy Capacity by the end of such extended [redacted], the Non-Affected Party may, so long as the Force Majeure Event is continuing to result in a delay or failure to perform by the Affected Party beyond the [redacted], terminate this Agreement upon [redacted] written notice to the Affected Party and without further obligation or liability by either Party, except as to the obligations incurred prior to the effective date of such termination. Once the right to terminate as provided in this Section 14.5 is triggered, the Affected Party must exercise such right to terminate [redacted] of the date such right is triggered, and the right to terminate this Agreement with respect the specific Force Majeure Event shall be waived after the expiration of such [redacted] period.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES AND ADDITIONAL COVENANTS

15.1 Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date that:

15.1.1 Authorization. Such Party has the full power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement have been duly authorized by such Party.

15.1.2 Enforceability. This Agreement constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Applicable Laws affecting creditor's rights generally and by general principles of equity.

15.1.3 Execution and Delivery. Neither the execution nor delivery of this Agreement results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any Applicable Laws, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.

15.1.4 Bankruptcy. It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

15.1.5 Organization. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, is in good standing.

15.1.6 Approvals. All authorizations, approvals, consents, notices and filings that are required by any Governmental Authority to have been obtained or submitted by it with respect to its entering into this Agreement have been obtained and are in full force and effect or have been submitted and all conditions of any such obtained authorizations, approvals, consents, notices and filings have been complied with.

15.1.7 Lonestar Infrastructure Protection Act. It is not owned by, and the majority of stock or other ownership interest in it is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country pursuant to the Texas Lone Star Infrastructure Protection Act; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country pursuant to the Texas Lone Star Infrastructure Protection Act; and it is not, and has no Affiliates who are headquartered in China, Iran, North Korea, Russia, or a designated country pursuant to the Texas Lone Star Infrastructure Protection Act.

15.1.8 Event of Default. No Event of Default with respect to it, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

15.1.9 Litigation. There is not pending or, to its knowledge, threatened against it in writing, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement, or other document relating hereto or thereto to which it is a party nor its ability to perform its obligations under the same.

ARTICLE 16
INSURANCE

16.1 Evidence of Insurance. Seller shall obtain and maintain the insurance coverages described in Exhibit E. Seller shall, upon request of Purchaser (but no more frequently than twice per calendar year), provide Purchaser with evidence that such insurance coverages for the Facility are in place and being maintained in accordance with the requirements herein.

16.2 Term and Modification of Insurance. If any insurance required to be maintained by Seller hereunder ceases to be reasonably available or reasonably commercially feasible for Seller in the commercial insurance market, Seller shall provide written notice to Purchaser, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available or commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity

[redacted]

ARTICLE 17
INDEMNITY

[redacted]

ARTICLE 18
ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS

[redacted]

18.2 Accommodation of Financing Parties.

18.2.1 Purchaser acknowledges that upon an event of default under any Financing Documents relating to the Facility, any of the Financing Parties (or their successors, assigns or designees) may (but shall not be obligated to) assume all of the interests, rights and obligations of Seller thereafter arising under this Agreement; *provided that* regardless of whether any such Financing Party assumes all of the interests, rights and obligations of Seller thereafter arising under this Agreement, Purchaser's interests, rights and obligations under this Agreement will remain in full force and effect and not subject to change, modification, amendment or adjustment in the absence of express consent by Purchaser.

18.2.2 To facilitate Seller's obtaining of approval of any existing Financing Parties or of any new financing of the Facility by any new Financing Parties, Purchaser shall provide such customary consents to collateral assignment, estoppels, certifications, representations, information, financial statements, warranties or other documents as may be commercially reasonably requested by Seller or the Financing Parties in connection with the existing or planned financing of the Facility and that are reasonably acceptable to Purchaser, in its reasonable discretion, *provided* that in the case of a Seller Event of Default, Purchaser shall provide the Financing Parties (if any) with notice of such Event of Default and the Financing Parties shall have the right (but not the obligation) for thirty (30) Days (which period for non-payment defaults requiring a longer period to cure or which require possession of the Facility to cure, shall be reasonably extended so long as the Financing Parties are diligently pursuing such cure) after receipt of such notice to cure all such Seller Event(s) of Default on behalf of Seller.

[redacted]

18.4 Assignment Without Consent Is Null and Void. Any assignment of this Agreement made in contravention of the terms and conditions set forth in this Article 18 shall be null and void *ab initio*.

ARTICLE 19
MISCELLANEOUS

19.1 Waiver. Unless specifically provided otherwise in this Agreement, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights or remedies under this Agreement, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights or remedies, but the same shall be and remain at all times in full force and effect.

19.2 Taxes.

19.2.1 Seller shall be solely responsible for:

(a) any and all present or future taxes relating to the construction, ownership or leasing, operation and maintenance of the Facility, or any components or appurtenances thereof, including taxes and impositions that vary based upon the amount of power produced, but in all of the foregoing cases only up to (with respect to Charging Energy) or from (with respect to Discharging Energy) the Point of Delivery, as the case may be hereunder;

(b) any and all present or future taxes on or with respect to Energy Storage Services or Energy delivered to or the transaction under this Agreement arising up to or from the Point of Delivery, as applicable, including sales tax, use tax and *ad valorem* taxes; and

(c) all *ad valorem* taxes relating to the Facility except for *ad valorem* taxes on or with respect to Energy Storage Services delivered to or the transaction under this Agreement arising at or beyond the Point of Delivery.

19.2.2 Seller shall not be responsible for payment of gross receipts taxes on Energy Storage Services to Purchaser.

19.2.3 Purchaser shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities on or with respect to Energy Storage Services provided by Seller to Purchaser hereunder, including any applicable *ad valorem* taxes.

19.2.4 In the event Purchaser is required by Applicable Law to remit or pay such taxes or other impositions of Governmental Authorities that are Seller's responsibility pursuant to Section 19.2.1, Seller shall promptly reimburse Purchaser for such amounts. If Seller is required by Applicable Law to remit or pay such taxes or other impositions of Governmental Authorities that are Purchaser's responsibility pursuant to Section 19.2.3, Purchaser shall promptly reimburse Seller for such amounts.

19.2.5 The Parties shall cooperate to minimize tax exposure; however, neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible under this Agreement.

19.3 Monetary Penalties. If Fines are claimed or assessed against Purchaser or Seller by any Governmental Authority that are in whole or in part contributed to or due to or result from noncompliance by the other Party with this Agreement or any requirements of Applicable Law, including any permit or contractual obligation, the other Party shall promptly reimburse Purchaser or Seller for related monetary penalties to the extent of such contribution or attribution. The Party against whom any such fines, penalties or costs are claimed or assessed bears the burden of proof as to the responsibility or liability of the other Party for all or any portion of any such Fines claimed or assessed; provided, however, to the extent reimbursement of any such Fines (or any portion thereof) is restricted by or otherwise prohibited under any Applicable Law, the Party from whom any such contribution or attribution is being sought shall have no obligation to make any such contribution or attribution.

19.4 Notices in Writing. Notices required by this Agreement shall be addressed to the Party's representative named in Exhibit D at the addresses noted in such Exhibit D. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed, postage paid, to the representative of the other Party. If mailed, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means (including email), to only the facsimile or other electronic number or address set out in Exhibit D. Any such notice, request, consent, or other communication shall be deemed to have been received by the Close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such Close of the Business Day, in which case it shall be deemed received at the Close of the Business Day for the next following Business Day). Subject to the provisions of the Operating Procedures, real-time or routine communications concerning Facility operations shall be exempt from this Section 19.4.

19.5 Changes to Representatives and Notice Information. Either Party may change its representative or the information for its notice addresses in Exhibit D at any time without the approval of the other Party, but with written notice to the other Party setting forth all such changes. All other changes or modifications to this Agreement, including any other Exhibits attached hereto, shall be subject to the second sentence of Section 19.11 below.

19.6 Other Changes.

19.6.1 The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term of this Agreement. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Sections 205 or 206 of the Federal Power Act.

19.6.2 Any portion of this Agreement proposed by a non-party, or PUCT acting *sua sponte*, will be the strictest standard of review permissible to preserve the intent of the Parties to uphold the sanctity of contracts without modification, which in no event will be lower than the "public interest" standard of "just and reasonable" review set forth in *High Plains Natural Gas Co. v. Railroad Commission*, Tex. Civ. App. – Austin 1971, writ ref'd n.r.e.

19.7 Disclaimer of Third-Party Beneficiary Rights. Nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, any liability to, or any rights or benefits in favor of any Person not a Party to this Agreement.

19.8 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party, save to the extent otherwise specifically provided for under this Agreement.

19.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including Payments (Article 9), Security for Performance (Article 10), Default and Remedies (Article 11), Dispute Resolution (Article 12), Representations and Warranties (Article 15), Indemnity (Article 17) and the applicable provisions of this Article 19, which shall survive for the period of the applicable statute(s) of limitation. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to any such termination and, as applicable, to provide for final billings and adjustments related to all Billing Periods occurring prior to any such termination, payment of any money due and owing to either Party pursuant to this Agreement, payment of principal and interest (if any) associated with the Performance Security, or the return thereof by one Party to the other Party, the indemnifications specified in this Agreement and the manner of resolving Disputes hereunder.

19.10 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits, or the application of any such terms, covenants, or conditions, shall be

held invalid, illegal, or unenforceable by any Governmental Authority having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; *provided*, *however*, that Purchaser and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing any such provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

19.11 Complete Agreement; Amendments. The terms and provisions contained in this Agreement and its Exhibits constitute the entire agreement between Purchaser and Seller with respect to Energy Storage Services (including the receipt of Charging Energy, the storage of Stored Energy, the discharge of Discharging Energy from the Facility, and the delivery of Energy to the Point of Delivery) and shall supersede all previous communications, representations, or agreements, either verbal or written, between Purchaser and Seller with respect thereto. This Agreement may be amended, changed, modified, or altered, provided that any such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and provided further, that Exhibit D attached hereto may be changed according to the provisions of Section 19.5 and in the absence of a written amendment to this Agreement.

19.12 Binding Effect. This Agreement, as it may be amended from time to time pursuant to Sections 19.5 and 19.11, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, legal representatives, and permitted assigns.

19.13 Headings. Captions and headings used in this Agreement or any Exhibits attached hereto are for ease of reference only and do not constitute a part of this Agreement.

19.14 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and all such counterparts shall form one and only one Agreement.

19.15 Governing Law, Choice of Forum. 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 TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY IRREVOCABLY CONSENTS AND AGREES THAT ANY SUIT, ACTION OR PROCEEDING TO ENFORCE ANY ARBITRAL AWARD GRANTED PURSUANT TO SECTION 12.3 SHALL BE BROUGHT EXCLUSIVELY IN THE DISTRICT COURTS OF DALLAS COUNTY, TEXAS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS LOCATED IN DALLAS COUNTY, TEXAS. BY EXECUTION AND DELIVERY HEREOF, EACH PARTY (A) ACCEPTS THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT OVER EACH PARTY FOR THE PURPOSE OF ANY PROCEEDING RELATED TO THIS AGREEMENT, (B) IRREVOCABLY AGREES TO BE BOUND BY ANY FINAL JUDGMENT (AFTER ANY AND ALL APPEALS) OF ANY SUCH COURT ARISING OUT OF SUCH DOCUMENTS OR ACTIONS, (C) IRREVOCABLY WAIVES, TO THE

FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDINGS ARISING OUT OF SUCH DOCUMENTS BROUGHT IN ANY SUCH COURT (INCLUDING ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM) IN CONNECTION HEREWITH, (D) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT ITS ADDRESS AS SET FORTH HEREIN, AND (E) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

19.16 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING BROUGHT TO ENFORCE ANY ARBITRAL AWARD GRANTED PURSUANT TO SECTION 12.3. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY SUIT, ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS SECTION 19.15 WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

19.17 Confidentiality.

19.17.1 In the event of any conflict between this Section 19.17 and any other confidentiality agreements or non-disclosure agreements entered into between the Parties, the terms and conditions of this Section 19.17 shall prevail.

19.17.2 Other than in connection with this Agreement or as otherwise required by Applicable Law or ERCOT Protocols, the Receiving Party shall not use the Confidential Information of the Disclosing Party and shall keep such Confidential Information confidential. The Confidential Information of the Disclosing Party may be disclosed to the Receiving Party's or its Affiliates' directors, officers, mangers, employees, financial advisors, legal counsel, contractors, vendors, accountants and actual and potential lenders and investors, including tax equity investors and tax credit purchasers (collectively, "Representatives"), but only if such Representatives need to know the Confidential Information in connection with this Agreement. The Parties agree that (a) such Representatives will be informed by the Receiving Party of the confidential nature of the Confidential Information and the requirement and the limitations of its use, (b) such Representatives will be required to agree to and be bound by the terms of this Section 19.17 as a condition of receiving the Confidential Information, and (c) in any event, the Receiving Party will be responsible for any disclosure of Confidential Information of the Disclosing Party, or any other breach of confidentiality provisions of this Agreement, by any of its Representatives. The Receiving Party shall not disclose the Confidential Information of the Disclosing Party to any Person other than as permitted hereby, and shall safeguard such

Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, the Disclosing Party shall use all available means to ensure that such Confidential Information is not made public; provided, however, notwithstanding anything to the contrary in this Section 19.17, Seller acknowledges that Purchaser must strictly comply with the Public Information Act, Chapter 552, Texas Government Code (the "Public Information Act") in responding to any request for public information related to this Agreement and that this obligation supersedes any conflicting provisions of this Agreement, including those set out in this Section 19.17. All Confidential Information submitted by Seller to Purchaser shall become property of Purchaser upon receipt. Any portions of such Confidential Information claimed by Seller to be confidential and proprietary must be clearly marked as such. Determination of the public nature of the Confidential Information of Seller is subject to the provisions of the Public Information Act. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement is confidential, commercially sensitive information protected from disclosure pursuant to the Public Information Act.

19.17.3 If the Receiving Party or its Representatives are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or by Applicable Law) to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement, if that notification can be made without violating the terms of such compelled disclosure, so that the Disclosing Party may seek an appropriate protective order to protect the confidentiality of the Confidential Information or waive compliance with this Section 19.17 with respect to such disclosure. If, in the absence of a protective order or the receipt of a waiver under this Agreement, the Receiving Party or its Representatives are, in the opinion of their legal counsel, compelled to disclose the Confidential Information, the Receiving Party and its Representatives may disclose only such of the Confidential Information to the party compelling disclosure as is required by any such request or requirement served on the Receiving Party and, in connection with such compelled disclosure, the Receiving Party and its Representatives shall use their reasonable efforts to obtain from the party to whom disclosure is made written assurance that confidential treatment will be accorded to such portion of the Confidential Information as is disclosed; provided, however, the Receiving Party shall not be in breach of this Agreement or its obligations under this Section 19.17 if no such written assurance is obtained or cannot otherwise be obtained due to Applicable Law.

19.17.4 As used in this Agreement, "Confidential Information" means all information that is furnished in connection with this Agreement to the Receiving Party or its Representatives the Disclosing Party, or to which the Receiving Party or its Representatives have access by virtue of this Agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other (including electronic) means), or which concerns this Agreement, the Disclosing Party or the Disclosing Party's stockholders, members, Affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" or "proprietary" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such Confidential Information furnished to the Receiving Party or its Representatives by any Representative of the Disclosing Party will be deemed furnished by the

Disclosing Party for the purpose of this Agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement:

(a) information that is or becomes generally available to the public other than as a result of an authorized disclosure by the Receiving Party or its Representatives;

(b) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis prior to being furnished to the Receiving Party by the Disclosing Party;

(c) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a Representative of the Disclosing Party if such source was not subject to any prohibition against transmitting the information to the Receiving Party; and

(d) information developed by the Parties during the negotiation of this Agreement that relates solely to this Agreement (as opposed to confidential business or operating information of either Party, including pricing), which information shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties prior to the negotiation of this Agreement.

19.17.5 The Confidential Information will remain the property of the Disclosing Party, subject to the provisions of Section 19.17.2 to the contrary. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this Agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this Agreement, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Representatives, unless the Parties agree otherwise or as may otherwise be required to be retained by Purchaser in accordance with Applicable Laws. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this Agreement or destroyed.

19.17.6 It is understood and agreed that neither this Agreement nor disclosure of any Confidential Information by the Disclosing Party to the Receiving Party shall be construed as granting to the Receiving Party or any of its Representatives any license or rights in respect of any part of the Confidential Information disclosed to it, including any trade secrets included in any such Confidential Information.

19.17.7 Each Party agrees that violation of the terms of this Section 19.17 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief; provided, however, Seller acknowledges and agrees that Purchaser's compliance with its obligations under the Public

Information Act shall not give rise to a right in favor of Seller to seek injunctive relief or other equitable remedies against Purchaser.

19.18 Compliance with Applicable Law. This Agreement and the obligations of the Parties under this Agreement are subject to all present and future Applicable Laws with respect to the subject matter hereof. The Parties agree to comply with any and all such Applicable Laws, in connection with the performance of their respective obligations under this Agreement. Subject to Section 19.18, each Party shall deliver or cause to be delivered to the other Party such certificates and documents, and shall make available such personnel and records relating to the Facility, to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist in any administrative proceedings relating to this Agreement or the Facility.

19.19 Press Releases and Media Contact. Upon the written approval of both Parties, in their sole discretion, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this Agreement, and other relevant factual information about the relationship. In the event during the Term, either Party is contacted by the media concerning this Agreement, the contacted Party shall inform the other Party of the existence of the inquiry, and the Parties shall jointly agree upon the substance of any information to be provided to the media. Nothing in this Section 19.19 shall be interpreted as limiting the ability of the Purchaser to make public presentations relevant to this Agreement and the transactions set out herein which are required to be made before the City Council of the Purchaser or any other Governmental Authority as required under Applicable Laws.

19.20 General Terms and Conditions. For all purposes of this Agreement, Seller shall and shall cause any one or more of its Affiliates involved in or otherwise undertaking any of Seller's obligations hereunder, to comply with the General Terms and Conditions. In the event of a conflict between the terms of this Agreement and those set out in the General Terms and Conditions, those of the General Terms and Conditions shall control.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER:

Tidwell Prairie IIA LLC

By:_____

Name: _____

Title: _____

PURCHASER:

City of Denton, Texas, a municipal corporation created under the laws of the State of Texas which owns and operates a municipal electric utility known as Denton Municipal Utility

By:_____

Name: _____

Title: _____

ATTEST:

[TBD], City Secretary

By: _____

Approved As To Legal Form:
[TBD], City Attorney

By: _____

EXHIBIT A

FACILITY DESCRIPTION AND SITE MAPS

1. Facility Description. Tidwell Prairie II is a battery energy storage system located in Robertson County, Texas.

2. Point of Delivery. [redacted]

3. Site Description. Anticipated [redacted] battery energy storage system located in Robertson County, Texas with a resource ID to be provided at a later date.

4. Projected Size:

   - Storage Capacity: [redacted]
   - Storage Capacity: [redacted]

5. Site Map:

   See attached.

EXHIBIT B

STORAGE TESTS

[redacted]

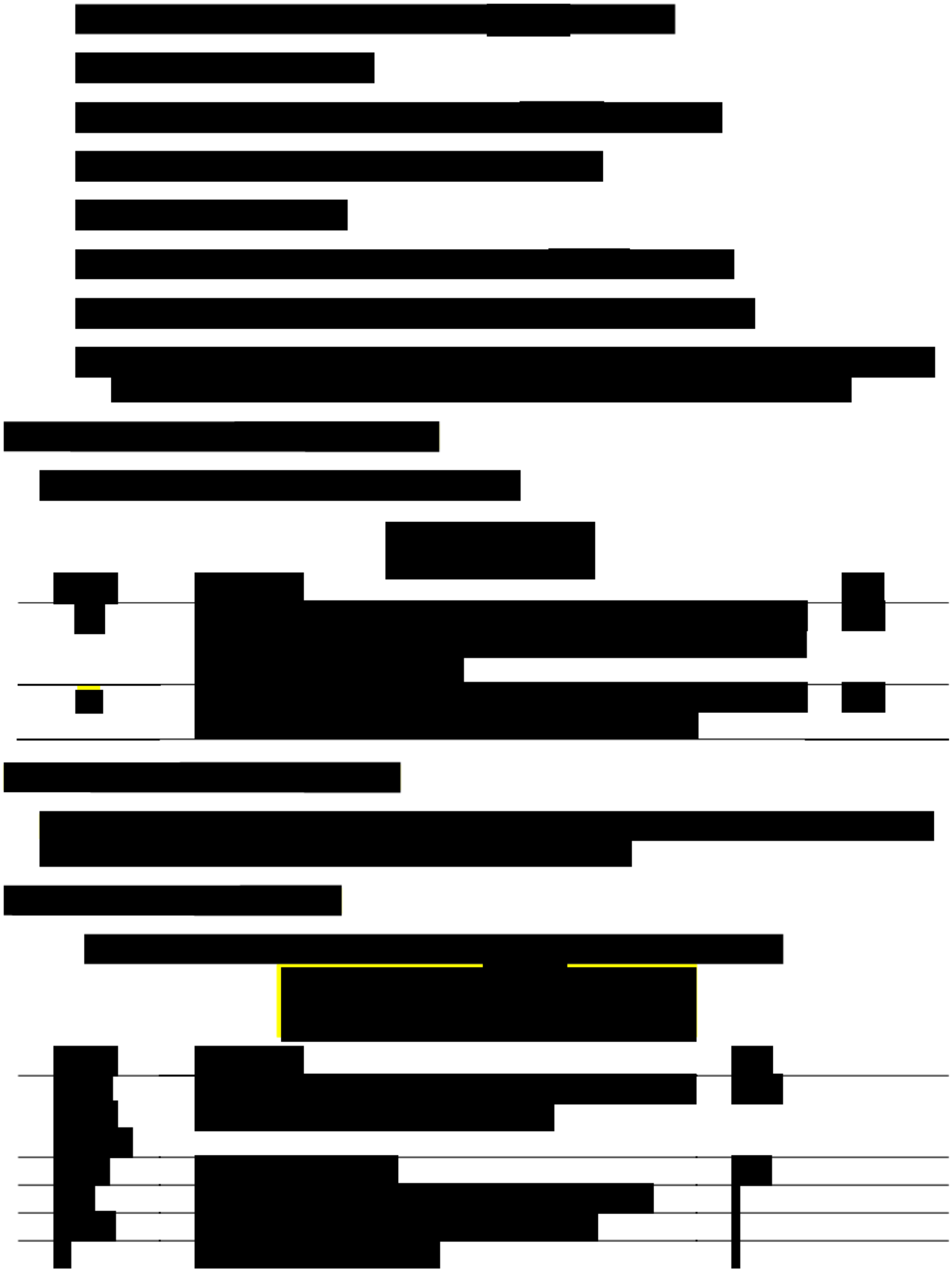

EXHIBIT C

ACTUAL AVAILABILITY CALCULATION

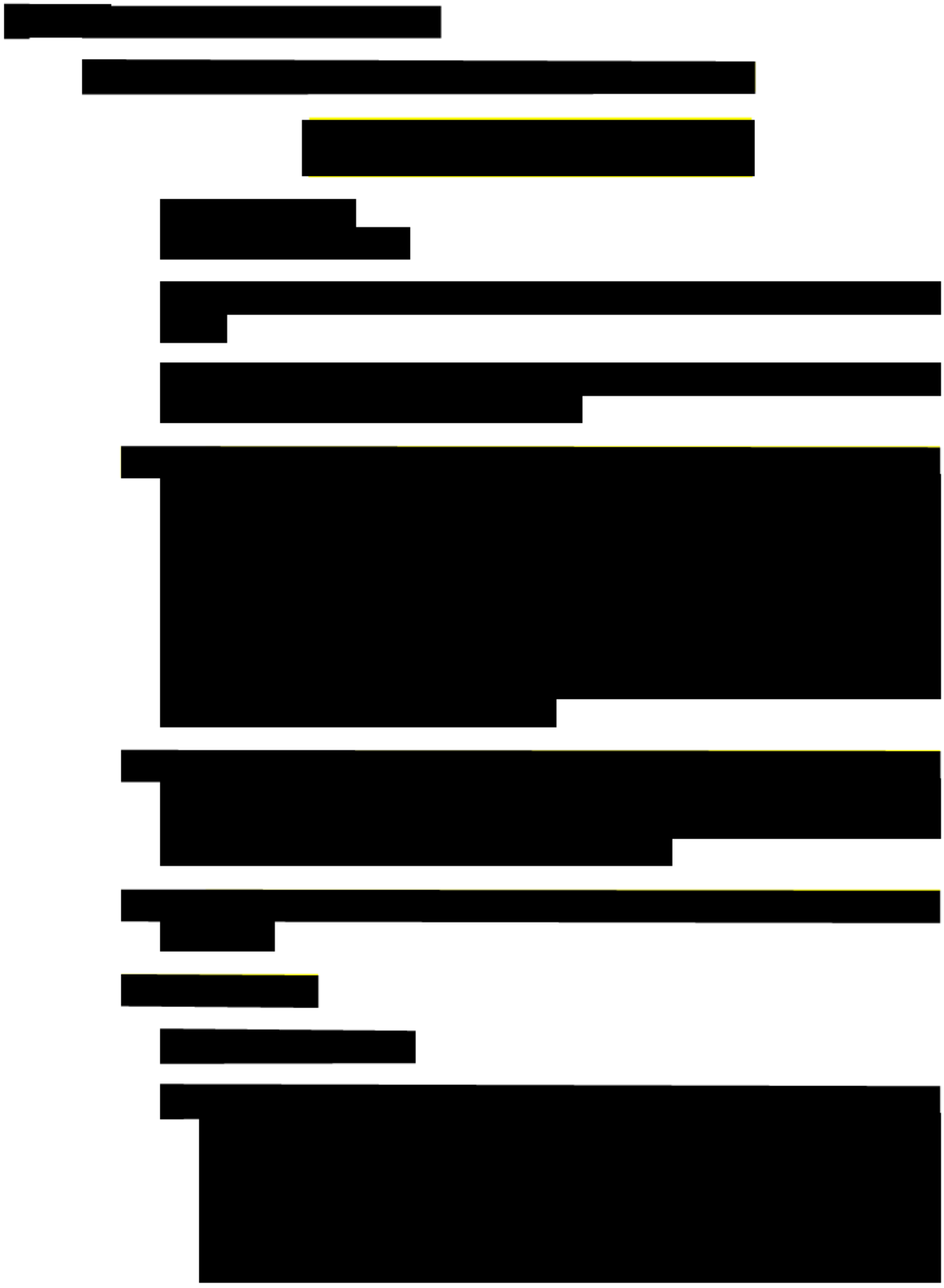

EXHIBIT D

[redacted]

EXHIBIT E

INSURANCE COVERAGE

EXHIBIT F

OPERATING PROCEDURES

The Operating Procedures will be developed in accordance with Section 13.2 of the Agreement. The Operating Procedures are to be reviewed annually (date and time to be mutually agreed to by the Parties as part of the Operating Procedures) to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures.

EXHIBIT G

OPERATING LIMITATIONS

Operating Limitations. The relevant Operating Limitation are listed below, which may be updated from time to time. Notwithstanding the below, the Facility operations and operating parameters must comply with applicable technical manuals, operating specifications, and warranty and guaranty parameters. Seller and Purchaser shall ensure that the Facility and Site operations are in compliance with the applicable technical manuals, operating specifications, and warranty and guaranty parameters. Seller may establish rules in the plant controller for the Facility to follow the applicable technical manuals, operating specifications, and warranty and guaranty parameters, which will take precedence over the bids, offers, and current operating plans submitted by Purchaser or the Designated QSE. The relevant technical manuals, operating specifications, and warranty and guaranty parameters include:

[redacted]

d. **Cycle Limitations**:

Maximum Annual Full Equivalent Cycles: [redacted] per Commercial Operation Year.

"Equivalent Full Cycle" means each time the cumulative amount of Energy discharged from the Facility equals the Actual Energy Capacity. This may occur in one continuous discharge or over multiple discharges.

EXHIBIT H

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SB-XXXXX

[redacted]

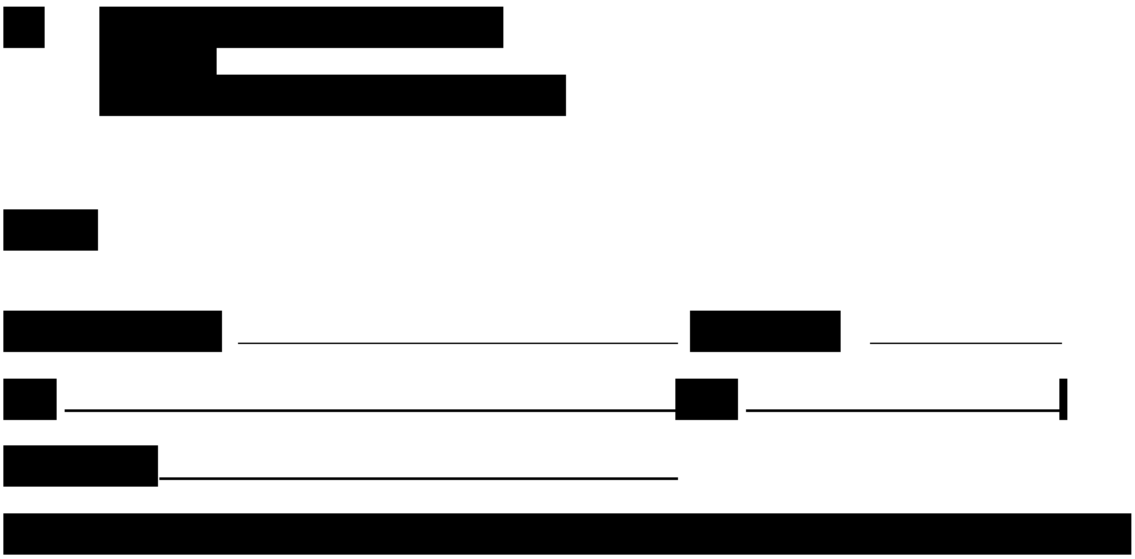

Exhibit B
Draw Certificate

The undersigned, a duly authorized signatory of the undersigned Beneficiary hereby certifies to [Issuing Bank], New York Branch, with reference to Irrevocable Standby Credit No. issued by [Issuing Bank], New York Branch in favor of the Beneficiary, that:

The Beneficiary is entitled to make this drawing in the amount of $_____ under the Letter of Credit.

The Beneficiary is making a drawing under the Letter of Credit with respect to the Applicant's default under that certain contract agreement between [insert beneficiary] and [insert applicant] for …[insert LC purpose covering contract]

The amount of the Sight Draft accompanying this Certificate is $_____.

By:_____

Name: _____

Title: _____

Date:_____

EXHIBIT I

FORM OF GUARANTY

GUARANTY

[redacted]

(c) [redacted]

[redacted]

5. [redacted]

(d) [redacted]

7. [redacted]

(d)

[redacted]

(g)

[redacted]

[redacted]

Exhibit A

NOTICE INFORMATION

If to Guarantor:

Address: [_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]

With a copy of all notices and other communications to:

Address: [_____]
[_____]
[_____]
Attn: [_____]
Email: [_____]

If to Beneficiary:

Address:	[_____]
	[_____]
	[_____]
Attn:	[_____]
Email:	[_____]

With a copy of all notices and other communications to:

Address:	[_____]
	[_____]
	[_____]
Attn:	[_____]
Email:	[_____]

EXHIBIT J

EXHIBIT K

SINGLE-LINE DIAGRAM

[See attached]

EXHIBIT L

GENERAL TERMS AND CONDITIONS

For all purposes of these General Terms and Conditions, (i) the use of the term "Contractor" or "Vendor" shall mean and refer to Seller, (ii) the use of the term "the City," "City," or "City of Denton" shall mean and refer to Purchaser and (iii) the term "the Agreement" shall mean the Energy Storage Tolling Agreement to which this Exhibit L is attached.

[redacted]

[redacted]

[redacted]