

El Paso Electric Company
2026 New Mexico All-Source Request for Proposals
Energy Storage Agreement

THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. THIS DRAFT REMAINS SUBJECT TO FURTHER EPE REVIEW AND EPE SENIOR MANAGEMENT APPROVAL.

ENERGY STORAGE AGREEMENT

BETWEEN

EL PASO ELECTRIC COMPANY

AND

[_____]

- [date] -

TABLE OF CONTENTS

| | PAGE |
|--|-----------|
| ARTICLE 1 - RULES OF INTERPRETATION..... | 1 |
| 1.1 Interpretation..... | 1 |
| 1.2 Interpretation with Other Agreements | 1 |
| 1.3 Good Faith and Fair Dealing..... | 2 |
| ARTICLE 2 - TERM AND TERMINATION | 2 |
| ARTICLE 3 - COMMERCIAL TERMS AND STORAGE FACILITY DESCRIPTION | 2 |
| ARTICLE 4 - PRE-COMMERCIAL OPERATION | 4 |
| 4.1 Storage Facility Development, Design, Construction..... | 4 |
| 4.2 Environmental Matters | 4 |
| 4.3 Permits | 4 |
| 4.4 Governmental Inspections | 5 |
| 4.5 Commercial Operation..... | 5 |
| 4.6 Registration..... | 6 |
| 4.7 Storage Power Capacity Shortfall Damages..... | 6 |
| ARTICLE 5 - DELIVERY..... | 7 |
| 5.1 Arrangements..... | 7 |
| 5.2 Market Events..... | 7 |
| 5.3 Electric Metering Devices..... | 7 |
| ARTICLE 6 - CONDITIONS PRECEDENT..... | 8 |
| 6.1 EPE Conditions Precedent..... | 8 |
| ARTICLE 7 - SALE AND PURCHASE..... | 9 |
| 7.1 General Obligation..... | 9 |
| 7.2 AGC..... | 9 |
| 7.3 Future Environmental Attributes | 10 |
| 7.4 Ancillary Services..... | 10 |
| ARTICLE 8 - PAYMENT CALCULATIONS..... | 10 |
| 8.1 Contract Price | 10 |
| 8.2 Test Energy | 10 |
| 8.3 Guaranteed Storage Facility Capabilities..... | 11 |
| 8.4 Failure to Satisfy Guaranteed Storage Facility Capabilities | 11 |
| ARTICLE 9 - BILLING AND PAYMENT | 12 |
| 9.1 Billing | 12 |
| 9.2 Payment | 12 |
| 9.3 Billing Disputes | 13 |
| ARTICLE 10 - OPERATION AND MAINTENANCE..... | 13 |
| 10.1 Operation and Administration..... | 13 |
| 10.2 Storage Facility Maintenance | 14 |
| 10.3 Books and Records | 14 |
| 10.4 Access to Storage Facility..... | 14 |
| 10.5 Real Time Data | 14 |

| | | |
|--|--|-----------|
| 10.6 | Accreditation..... | 14 |
| 10.7 | Operating Committee and Operating Procedures | 15 |
| ARTICLE 11 - SECURITY FOR PERFORMANCE | | 15 |
| 11.1 | Security Fund..... | 15 |
| 11.2 | EPE Rights and Remedies | 16 |
| 11.3 | Form..... | 16 |
| 11.4 | Replacement..... | 17 |
| 11.5 | Survival..... | 17 |
| ARTICLE 12 - DEFAULT AND REMEDIES | | 17 |
| 12.1 | Construction Defaults | 17 |
| 12.2 | Operational Events of Default | 18 |
| 12.3 | Default by Seller: Failure to Achieve COD..... | 19 |
| 12.4 | Default by EPE | 20 |
| 12.5 | Limitations on Damages | 21 |
| 12.6 | Bankruptcy..... | 21 |
| 12.7 | Cumulative Remedies | 21 |
| 12.8 | Duty to Mitigate..... | 21 |
| 12.9 | Specific Performance..... | 22 |
| ARTICLE 13 - DISPUTE RESOLUTION..... | | 22 |
| 13.1 | Negotiation..... | 22 |
| 13.2 | Mediation..... | 22 |
| 13.3 | Other Dispute Processes | 22 |
| 13.4 | Governing Law | 22 |
| 13.5 | Venue..... | 22 |
| 13.6 | Waiver of Jury Trial..... | 22 |
| ARTICLE 14 - FORCE MAJEURE | | 23 |
| 14.1 | Definition..... | 23 |
| 14.2 | Applicability of Force Majeure..... | 23 |
| 14.3 | Limitations on Effect of Force Majeure..... | 24 |
| ARTICLE 15 - REPRESENTATIONS, WARRANTIES AND COVENANTS..... | | 24 |
| ARTICLE 16 - INSURANCE | | 25 |
| 16.1 | Evidence of Insurance..... | 25 |
| 16.2 | Policy Requirements | 25 |
| 16.3 | No Implied Limitation | 25 |
| 16.4 | Term and Modification of Insurance | 25 |
| 16.5 | Application of Proceeds..... | 26 |
| ARTICLE 17 - INDEMNITY | | 26 |
| 17.1 | Indemnification: General | 26 |
| 17.2 | Indemnification: Environmental | 26 |
| 17.3 | Indemnification for Fines and Penalties | 26 |
| 17.4 | Limitations..... | 26 |
| 17.5 | Procedures..... | 26 |
| 17.6 | Amounts Owed | 27 |
| ARTICLE 18 - LENDER PROVISIONS | | 27 |

| | | |
|---|---|-----------|
| 18.1 | Accommodation of Facility Lender | 27 |
| 18.2 | Notices | 27 |
| ARTICLE 19 - ASSIGNMENT AND RIGHT OF FIRST OFFER | | 28 |
| 19.1 | Assignment by Seller | 28 |
| 19.2 | Assignment by EPE | 28 |
| 19.3 | Right of First Offer | 29 |
| ARTICLE 20 - MISCELLANEOUS..... | | 30 |
| 20.1 | Notices | 30 |
| 20.2 | Taxes..... | 30 |
| 20.3 | Applicable Laws | 31 |
| 20.4 | Fines and Penalties..... | 31 |
| 20.5 | Rate Changes | 31 |
| 20.6 | Certifications..... | 32 |
| 20.7 | Disclaimer of Third-Party Beneficiaries | 32 |
| 20.8 | Relationship of the Parties | 32 |
| 20.9 | Survival of Obligations | 32 |
| 20.10 | Severability | 32 |
| 20.11 | Complete Agreement; Amendments..... | 32 |
| 20.12 | Waiver 32 | |
| 20.13 | Binding Effect..... | 33 |
| 20.14 | Headings | 33 |
| 20.15 | Counterparts and Electronic Signatures..... | 33 |
| 20.16 | Press Release..... | 33 |
| 20.17 | Exhibits | 33 |
| 20.18 | Confidentiality | 33 |
| EXHIBIT A | DEFINITIONS | |
| EXHIBIT B | CONSTRUCTION MILESTONES | |
| EXHIBIT C | STORAGE FACILITY DESCRIPTION | |
| EXHIBIT D | NOTICES AND CONTACT INFORMATION | |
| EXHIBIT E | INSURANCE COVERAGE | |
| EXHIBIT F | PERMITS | |
| EXHIBIT G | FORM OF LETTER OF CREDIT | |
| EXHIBIT H | FORM OF GUARANTY | |
| EXHIBIT I | AGC PROTOCOLS | |
| EXHIBIT J | CONTRACT PRICE | |
| EXHIBIT K | FORM OF LENDER CONSENT | |
| EXHIBIT L | EXPECTED STORAGE FACILITY PERFORMANCE | |
| EXHIBIT M | STORAGE ENERGY CAPACITY TESTING; STORAGE POWER CAPACITY RATING GUARANTEE AND STORAGE POWER CAPACITY DAMAGES | |
| EXHIBIT N | METER AND COMMUNICATIONS REQUIREMENTS | |
| EXHIBIT O | OPERATING PROCEDURES | |
| EXHIBIT P | STORAGE AVAILABILITY GUARANTEE | |
| EXHIBIT Q | STORAGE ROUNDTRIP EFFICIENCY GUARANTEE | |
| EXHIBIT R | STORAGE RAMP RATE TEST | |

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this “**Agreement**”) is made as of this [] day of [], 20[], (“**Effective Date**”) by and between (i) El Paso Electric Company, a Texas corporation with a principal place of business at 100 North Stanton Street, El Paso, Texas (“**EPE**”), and (ii) [], a [] [] with a principal place of business at [] (“**Seller**”). EPE and Seller are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. EPE is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to (i) the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission and (ii) the laws of the State of Texas and the rules and regulations of the Public Utility Commission of Texas.

B. Seller desires to develop, design, construct, interconnect, own, operate, and maintain a battery energy storage facility on a site located in [] County, [], with the expected storage facility performance characteristics as set forth in **Exhibit L - Expected Storage Facility Performance** (as further defined herein, the “**Storage Facility**”); and

C. Seller desires to sell and deliver, and EPE desires to purchase and receive, the Product (as further defined herein) from the Storage Facility at the prices and on the terms and conditions set forth in this Agreement.

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 - RULES OF INTERPRETATION

1.1 Interpretation. Capitalized terms listed in this Agreement shall have the meanings set forth in **Exhibit A - Definitions** or as otherwise defined in this Agreement. Words not otherwise defined in this Agreement shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practices, and (iii) be given their well-known and generally accepted technical or trade meanings. The following rules of interpretation shall apply: (1) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement except as the context may otherwise require; (2) all Exhibits are incorporated into this Agreement; *provided however*, that in the event of a conflict with the terms of this Agreement, the Agreement shall control; and (3) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.” This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. None of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. “**AC**” means alternating electric current; “**DC**” means direct electric current.

1.2 Interpretation with Other Agreements.

(A) This Agreement does not provide Seller authorization to interconnect the Storage Facility or inject power into the Transmission Provider’s System. Seller shall contract for interconnection services in accordance with the applicable Transmission Tariff. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that (i) this Agreement is not binding on the Transmission Provider, (ii) this Agreement does not create any rights between Seller and the

Transmission Provider, and (iii) the Interconnection Agreement does not modify the Parties’ rights and obligations hereunder. The applicable Transmission Provider shall be deemed to be a separate and unaffiliated contracting party for purposes of this Agreement, regardless of whether such Transmission Provider is EPE or an Affiliate of EPE.

(B) This Agreement does not provide for the supply of Station Services. Seller, in its sole discretion, may (a) contract separately with EPE for the supply of Station Services, [(b) supply Station Services from energy concurrently generated by the Generating Facility] and/or (c) co-locate additional facilities designed to supply Station Services; provided, however, that excess energy produced from such co-located additional facilities shall not be delivered by Seller to EPE under this Agreement.

1.3 **Good Faith and Fair Dealing.** The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (a) when this Agreement specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned, or delayed, and (b) wherever this Agreement specifically gives a Party a right to determine, require, specify, or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

ARTICLE 2 - TERM AND TERMINATION

This Agreement shall become effective as of the Effective Date, and shall remain in full force and effect until 11:59 pm on the last Day of the calendar month during which occurs the twentieth (20th) anniversary of the Commercial Operation Date (the “**Term**”), unless earlier terminated in accordance with the terms herein. Applicable provisions of this Agreement shall continue in effect after expiration of the Term or earlier termination to the extent necessary to (a) provide for final billings, payments and adjustments, (b) enforce or complete the duties, obligations or responsibilities of the Parties (including under **Section 12.1, Section 12.2, Section 12.4, Article 13, Article 16** and **Article 17** below, and (c) address any remedies or indemnifications arising prior to termination.

ARTICLE 3 - COMMERCIAL TERMS AND STORAGE FACILITY DESCRIPTION

The following commercial terms apply to the transaction contemplated by this Agreement, as further defined or as more fully set forth in this Agreement:

COMMERCIAL TERMS

| | |
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| Point of Delivery: | The point on Transmission Provider’s System at which Seller receives the Charging Energy and delivers the Discharging Energy and other Product, as further described in <u>Exhibit C - Storage Facility Description</u> . |
| [Generating Facility Charging Point: | The point at which the Generating Facility delivers Charging Energy to the Storage Facility.] ¹ |
| Contract Price: | Set forth in <u>Exhibit J – Contract Price</u> |

¹ **Note to Form:** This form includes bracketed language in the event the BESS is co-located with a Generating Facility, which will be removed or otherwise adjusted based on the individual project design.

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| Storage Power Capacity Guarantee: | As determined in <u>Exhibit M – Storage Energy Capacity Testing, Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages.</u> |
| Storage Availability Guarantee: | Set forth in <u>Section 8.3(A).</u> |
| Storage Roundtrip Efficiency Guarantee | As determined in <u>Exhibit Q – Storage Roundtrip Efficiency Guarantee.</u> |
| Storage Ramp Rate Guarantee | As set forth in <u>Section 8.3(D).</u> |
| Signal Response Guarantee | As set forth in <u>Section 8.3(E).</u> |
| Day(s) of Week: | Monday through Sunday, including NERC holidays. |
| Hours: | Hour Ending 0100 - Hour Ending 2400, Monday through Sunday MPT. |
| Term: | Set forth in <u>Article 2.</u> |
| Scheduled Commercial Operation Date: | [_____], as may be extended as set forth herein. |

Seller shall construct, interconnect, own, operate, and maintain the Storage Facility according to Good Utility Practices and the Interconnection Agreement. The Storage Facility is described in Exhibit C - Storage Facility Description, which includes a scaled map that identifies the Site, the location of the Storage Facility, the Interconnection Point and Interconnection Facilities, the Point of Delivery, and other important attributes of the Storage Facility. The Storage Facility shall include all equipment up to the Point of Delivery necessary to fulfill Seller’s obligations hereunder, including all equipment necessary (i) to meet the requirements of the Operating Procedures and (ii) to interconnect successfully with the Transmission Provider’s System. Prior to the Commercial Operation Date and during the Delivery Term, Seller shall be permitted to make changes with respect to any equipment or the design of the Storage Facility, and any changes to Exhibit C –Storage Facility Description, so long as such changes do not adversely affect Seller’s ability to perform its obligations hereunder. Seller has the right and option in its discretion to augment, install, maintain, repair and replace capacity in excess of the Storage Power Capacity Rating Guarantee as back-up for the Storage Power Capacity Rating so long as such actions do not adversely affect Seller’s ability to perform its obligations hereunder. Promptly following the effectiveness or implementation of any modification permitted under this Section that causes the characteristics of the Storage Facility to be materially different from those set forth in the then applicable version of Exhibit C – Storage Facility Description, Seller shall deliver to EPE an updated version of Exhibit C – Storage Facility Description.

ARTICLE 4 - PRE-COMMERCIAL OPERATION

4.1 Storage Facility Development, Design, Construction.

(A) Seller shall (i) design, engineer, construct, and install the Storage Facility in accordance with Good Utility Practices and all Applicable Laws; (ii) obtain all Approvals; (iii) interconnect the Storage Facility to the Transmission Provider's System, and (iv) obtain any land rights necessary for the Storage Facility. In its efforts to achieve COD, Seller shall achieve the milestones set forth in **Exhibit B – Construction Milestones** and shall notify EPE promptly following achievement of each such milestone.

(B) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to EPE in a mutually agreed form, advising EPE of the current status of each Construction Milestone, any significant developments or delays (along with, in the case of any actual or anticipated delay in any Construction Milestone, a written action plan for making up delays and achieving Commercial Operation by the Scheduled Commercial Operation Date, which shall be subject to EPE's reasonable review and comment), and Seller's good faith estimate of the COD.

(C) Upon request and reasonable prior notice, EPE shall have the right to monitor the construction, start-up, testing, and operation of the Storage Facility at the Site to verify compliance with this Agreement; *provided however*, that EPE shall comply with all of Seller's applicable safety and health requirements. No action taken by EPE's hereunder shall be construed as endorsement by EPE of the design, engineering, construction, or testing of the Storage Facility nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Storage Facility.

4.2 Environmental Matters. Seller shall notify EPE promptly (i) if (and to what extent) any Environmental Contamination on the Site will preclude or interfere with Seller's ability to perform its obligations hereunder, and (ii) Seller's plan for remediation thereof that would allow Seller to perform this Agreement as and when due. Throughout the Term, Seller promptly shall:

(A) disclose to EPE and remediate, at Seller's sole cost and expense, any Environmental Contamination identified at the Site;

(B) provide EPE with copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by EPE); and

(C) disclose to EPE the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to protection of human health, the environment, or natural resources, including protected species.

4.3 Permits. Seller shall obtain and pay for all Permits necessary under Good Utility Practices for Seller to perform its obligations hereunder. Seller shall keep EPE informed of its permitting efforts in its progress reports to EPE described in **Section 4.1(B)**. In such progress reports, Seller shall promptly inform EPE of (i) any Permits which Seller is unable to obtain, that are delayed, limited, suspended, terminated, or otherwise constrained, along with a statement of whether and to what extent any such circumstance may limit or preclude Seller's ability to perform hereunder, and (ii) Seller's plan to overcome such issue(s) to allow Seller to perform its obligations hereunder as and when due. EPE shall have the right to inspect and obtain copies of all Permits held by Seller. Seller represents and warrants to EPE that, except for those Permits identified in **Exhibit F – Permits**, all Permits and other actions required by Governmental Authorities to authorize Seller's execution, delivery, and performance of this Agreement have been duly obtained and are in full force and effect. Throughout the Term, Seller shall promptly disclose to EPE the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller which could materially interfere

with Seller's performance hereunder.

4.4 Governmental Inspections. Seller shall notify EPE (i) in advance of any known upcoming material inspections by any Governmental Authority relating to the Storage Facility, to allow EPE the opportunity to attend, and (ii) after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than the Scheduled Commercial Operation Date. Seller shall notify EPE of the date on which Seller believes the Storage Facility has achieved Commercial Operation (a "**COD Notice**"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. EPE shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions. Seller may notify EPE of completion of one or more COD Conditions on an individual and incremental basis prior to COD; provided, however, that EPE shall in all cases have up to ten (10) Business Days to review and object to each such notice; provided, however, that Seller's COD Notice shall be deemed accepted by EPE if EPE fails to object within such time period.

(B) In the event Seller determines that the Commercial Operation Date is not feasible or is impossible to achieve by the Scheduled Commercial Operation Date, Seller shall promptly notify EPE.

(C) For purposes hereof:

(1) the "**Commercial Operation Date**" or "**COD**" means 12:01 am on the Day after which Seller's COD Notice has been accepted by EPE or deemed accepted by EPE pursuant to **Section 4.5(A)**; and

(2) the "**COD Conditions**" are:

(a) an authorized officer of Seller has confirmed in writing that (1) all Permits necessary to commence operations and interconnect the Storage Facility have been obtained and are in full force and effect; (2) Seller is in compliance with this Agreement in all material respects; and (3) the Storage Facility is available to commence normal operations in accordance with this Agreement;

(b) Seller has demonstrated that (1) the Storage Facility is interconnected to the Transmission Provider's System and has been fully tested, achieved initial synchronization, and been successfully operated in conformance with the Interconnection Agreement; (2) Seller has received confirmation from the Transmission Provider that the Facility has been approved for commercial operation, as that term is defined under the Interconnection Agreement; and (3) Seller has made all other arrangements necessary to receive Charging Energy, delivery Discharging Energy to the Point of Delivery and otherwise provide the Product as contemplated in this Agreement;

(c) Seller has obtained and provided to EPE a certification from an independent licensed professional engineer stating: (1) the Storage Power Capacity Rating of the Storage Facility at the anticipated time of COD, which must be at least equal to or greater than ninety-five percent (95%) of the Storage Power Capacity Rating Guarantee; (2) the Storage Round Trip Efficiency of the Storage Facility at the anticipated time of COD, which must be at least equal to or greater than the Storage Roundtrip Efficiency Guarantee; (3) the Storage Ramp Rate of the Storage Facility at the anticipated time of COD, which must be at least equal to or greater than the Storage Ramp Rate Guarantee; (4) the Signal

Response of the Storage Facility at the anticipated time of COD, which must be at least equal to or less than the Signal Response Guarantee; (5) all AGC equipment is installed and operational in accordance with the requirements of this Agreement; (6) that the warranties from the original equipment manufacturer for the batteries used in the Storage Facility have not been voided during the construction process and remain valid and in full force and effect; and (7) the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by and consistent with the terms and conditions of this Agreement.

(d) Seller has obtained and provided to EPE a certification from an independent licensed professional engineer stating that the Storage Facility has been completed in all material respects, except for “punch list” items that do not have a Material Adverse Effect on the ability of the Storage Facility to operate for its intended purpose and are not required for the safe operation of the Storage Facility, the efficiency, reliability, operability, safety, or mechanical or electrical integrity of the Storage Facility, or otherwise affect the Storage Power Capacity Rating or Storage Energy Capacity of the Storage Facility;

(e) Seller has demonstrated the functionality and reliability of the Storage Facility’s communications systems and AGC interface with EPE’s SCC by demonstrating the capability of the Storage Facility to receive and respond to signals from EPE’s SCADA System, and the accuracy of the Electric Metering Devices and their ability to communicate with EPE in accordance with **Exhibit N – Meter and Communications Requirements**;

(f) Seller and EPE have each confirmed the Operating Procedures are finalized and will be in full effect upon the Commercial Operation Date;

(g) Seller has demonstrated the accuracy and reliability of the data set forth in **Section 10.5** and the AGC data points to be sent from Seller to EPE via the SCADA System;

(h) The Security Fund remains in effect and in compliance with the terms of this Agreement; and

(i) Seller has executed and delivered to EPE all insurance documents or instruments required under **Article 16**.

4.6 **Registration**. To the extent requested by EPE, Seller shall provide EPE with the information necessary to have the Storage Facility registered with the Transmission Provider for inclusion in any generation modeling maintained by the Transmission Provider.

4.7 **Storage Power Capacity Shortfall Damages**. If the Commercial Operation Date has been achieved consistent with **Section 4.5** and the Storage Power Capacity Rating is less than the Storage Power Capacity Rating Guarantee, Seller shall use Commercially Reasonable Efforts to install the remaining portion of the Storage Power Capacity Rating Guarantee. If Seller has not installed and commissioned one hundred percent (100%) of the Storage Power Capacity Rating Guarantee on or before one hundred twenty (120) Days after the Commercial Operation Date, then no later than one hundred fifty (150) Days after the Commercial Operation Date, Seller shall pay to EPE as liquidated damages and not as a penalty the amount of [_____] Dollars (\$____) per kW of Storage Power Capacity Shortfall (“**Capacity Shortfall Damages**”) and the Guaranteed Storage Facility Capabilities shall be

proportionally reduced to reflect such amount of Storage Power Capacity Shortfall.

ARTICLE 5 - DELIVERY

5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining, and paying the costs associated with the interconnection of the Storage Facility to the Transmission Provider's System. Seller shall comply with the Transmission Provider's requirements for interconnection and shall comply with all requirements set forth in the applicable Transmission Tariff. Seller shall reasonably cooperate with any request by EPE to assist in EPE's efforts to have the Storage Facility approved as a Network Resource with the Network Service Provider.

(B) To the extent permitted by Applicable Law and **Section 20.18** of this Agreement, Seller hereby authorizes EPE to contact, discuss, and obtain information concerning the Storage Facility and Interconnection Facilities directly with/from the Transmission Provider. Promptly upon request by EPE, Seller shall confirm such authorization in writing to the Transmission Provider and any applicable transmission owners in such form as may be requested by EPE or the Transmission Provider.

(C) To the extent required, EPE shall arrange and be responsible for scheduling and transmission services of (i) Charging Energy to the Point of Delivery and (ii) Discharging Energy and other Product at and beyond the Point of Delivery. Seller must provide to EPE day-ahead notice of any outages or deratings of the Storage Facility. Seller must provide a 24-hour telephone number that EPE may contact to determine the then-current status of the Facility. EPE shall be the market participant with respect to the output of the Storage Facility, as defined by the Transmission Provider.

(D) Seller shall be responsible for all interconnection, electrical losses, transmission and Ancillary Services arrangements, and costs required to deliver the Product to the Point of Delivery. EPE shall be responsible for all electrical losses, transmission and ancillary services arrangements, and costs required to transmit and deliver Charging Energy to the Point of Delivery and to transmit and deliver Product at and beyond the Point of Delivery.

5.2 Market Events. If at any time during the Term, an alternative market design is implemented in which the Storage Facility will or can participate (a "**Market Event**"), and such Market Event materially changes the interconnection and delivery requirements of this Agreement or has a material adverse effect on either Party, the Parties shall negotiate in good faith amendments to facilitate the delivery of Charging Energy to the Storage Facility and delivery of Discharging Energy and other Product from the Storage Facility, or to change protocols for operation of the Storage Facility accordingly, in all cases consistent to the extent reasonably possible with the terms of this Agreement and consistent with the intended allocation of benefits and burdens between the Parties in this Agreement; provided, however that neither Party shall have any obligation to agree to any changes that would materially increase such Party's liabilities and obligations under this Agreement.

5.3 Electric Metering Devices.

(A) All Electric Metering Devices used to measure Charging Energy and Discharging Energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement, at no cost to EPE. All Electric Metering Devices shall meet the requirements of **Exhibit N - Metering and Communications Devices**.

(1) Meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

(2) Seller shall arrange any necessary authorization to provide EPE access to

all Electric Metering Devices via electronic remote communications and via physical access for purposes related to this Agreement and shall provide EPE the opportunity to be present at any time when such Electric Metering Devices are to be inspected, tested, or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”); *provided however*, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon reasonable advance written notice from the other Party, the installing Party shall test the Back-Up Metering. The actual cost of any such test shall be borne by the Party requesting the test, unless, upon such test, Back-Up Metering is inaccurate by more than one percent (1%), in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement is inaccurate by more than one percent (1%), an adjustment shall be made correcting all measurements as follows:

(1) If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy; *provided however*, that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent (1%), the Parties shall use the best available information for the period of inaccuracy, adjusted for losses to the Point of Delivery in accordance with applicable manufacturers’ parameters or as otherwise agreed by the Parties.

(2) If the Parties cannot agree on the actual period during which inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the immediately preceding accurate test of the Electric Metering Device relative to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(3) To the extent that an adjustment period covers a period for which payment has already been made by EPE, EPE shall use the corrected measurements as determined in accordance with this **Article 5** to re-compute the amount due for the period of the inaccuracy. The net difference shall be reflected as an adjustment on the next regular invoice.

ARTICLE 6 - CONDITIONS PRECEDENT

6.1 **EPE Conditions Precedent.** Unless expressly waived in writing by EPE, EPE’s obligation to accept and pay for any Product is subject to EPE’s determination that the following conditions set forth below have been satisfied to its satisfaction.

(A) **Network Transmission Service.** EPE’s obligation to accept and pay for any Product is subject to approval by the Network Service Provider of EPE’s (i) application for designation of the Storage Facility or this Agreement as a Network Resource for EPE’s native load customers; (ii) application for designation of the Storage Facility or this Agreement as a Network Load; each of (i) and (ii) above without conditions materially unsatisfactory to EPE or requirements of material transmission upgrades (collectively, the “**NSP Approvals**”). EPE shall no later than ten (10) Business Days after the Effective Date, make a written request for all NSP Approvals and thereafter use Commercially Reasonable Efforts to obtain such NSP Approvals within one hundred fifty (150) Days from the Effective Date (“**Designation Approval Date**”). EPE shall provide Seller prompt written notice upon receipt of all such NSP Approvals. If any or all of the NSP Approvals are not received by the Designation Approvals Date or any NSP Approval would require conditions materially unsatisfactory to EPE in its sole discretion, EPE shall promptly provide Seller written notice notifying Seller that EPE elects to terminate

this Agreement, upon which the Parties shall have no obligations or liabilities to each other hereunder, subject to EPE's obligation to return the Security Fund to Seller.

(B) Regulatory Approvals. EPE's obligation to accept and pay for any Product is subject to receipt of all required PRC/PUC Approvals with respect to the Agreement, as determined by EPE in its sole discretion. EPE shall no later than [_____] apply for all PRC/PUC Approvals, as EPE determines are required, and thereafter use Commercially Reasonable Efforts to obtain such PRC/PUC Approvals. Seller shall reasonably cooperate with EPE's efforts to obtain the PRC/PUC Approvals. EPE shall have the right to terminate this Agreement by written notice to Seller: (i) at any time within thirty (30) Days following issuance of a written order by the PUCT or NMPRC rejecting any PRC/PUC Approval, or granting any PRC/PUC Approval with conditions unacceptable to EPE in its sole discretion, (ii) at any time after the [____th] Day following the latest date that EPE submitted its PRC/PUC Approvals, if all PRC/PUC Approvals have not been received in a form acceptable to EPE in its sole discretion, (iii) at any time within thirty (30) Days following timely request for reconsideration (in whole or in any material part) by any Person, of any PRC/PUC Approvals, and/or (iv) at any time within thirty (30) Days following timely appeal by any Person, of any PRC/PUC Approvals. If EPE elects to terminate this Agreement as provided in this Section 6.1(B), neither of the Parties shall have any obligations or liabilities to each other hereunder as a result of such termination, subject to EPE's obligation to return the Security Fund to Seller.

ARTICLE 7 - SALE AND PURCHASE

7.1 General Obligation.

(A) Beginning on the first Day of the Delivery Term and continuing until the last day of the Term, subject to the terms and conditions of this Agreement (including the Operating Procedures), Seller shall accept Charging Energy provided by EPE at the Point of Delivery, comply with Charging Notices and Discharging Notices, discharge and deliver Discharging Energy from the Storage Facility to the Point of Delivery, and otherwise provide the Product in accordance with the terms of this Agreement. EPE shall purchase from Seller, on and after the Commercial Operation Date and for the remaining Term of this Agreement, all of the Product.

(B) Seller shall not sell the Product to any third party during the Delivery Term.

(C) Risk of loss with respect to Charging Energy delivered by EPE to Seller in accordance with this Agreement shall pass from EPE to Seller when the same is delivered by EPE at the Point of Delivery. Risk of loss with respect to Discharging Energy delivered to EPE by Seller in accordance with this Agreement shall pass from Seller to EPE when the same is delivered by Seller at the Point of Delivery. EPE shall retain title to all Charging Energy delivered by EPE and shall take title to Discharging Energy after the Point of Delivery. As between Seller and EPE, Seller shall be in exclusive control of, and responsible for, any damage or injury caused by, all Charging Energy after the Point of Delivery and all Discharging Energy up to and at the Point of Delivery. As between Seller and EPE, EPE shall be in exclusive control of, and responsible for, any damages or injury caused by all Charging Energy delivered by EPE prior to the Point of Delivery and all Discharging Energy after the Point of Delivery.

7.2 AGC. Beginning on the Commercial Operation Date, subject to the Operating Procedures, EPE shall provide instructions to Seller for the dispatch of Charging Energy and Discharging Energy of the Storage Facility through the SCC AGC system. Seller shall ensure that, throughout the Delivery Term, the SCADA System signal is capable of functioning in compliance with all applicable requirements of this Agreement and on all AGC Set-Points within the margin of error specified in the manufacturer's energy set point margin of error and the Storage Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.3 Future Environmental Attributes.

(A) If, during the Term, Seller becomes aware that the Storage Facility becomes eligible for any Future Environmental Attributes, Seller shall notify EPE and take Commercially Reasonable actions to secure for and transfer to EPE such Future Environmental Attributes; provided that such actions shall not (i) require changes to the design or other characteristics of the Storage Facility [or Generating Facility] or upgrades or other modifications to any Interconnection Facilities or transmission facilities, (ii) reduce the delivery or receipt, as applicable, of Charging Energy or Discharging Energy, (iii) reduce, or limit, in any manner, any Tax Benefits for which the Storage Facility [or Generating Facility] is eligible, or (iv) subject Seller to any third party costs or expenses exceeding Ten Thousand Dollars (\$10,000) unless EPE agrees to reimburse Seller for such cost and expenses in excess of such amount (collectively, the “**Eligibility Conditions**”). Seller shall take Commercially Reasonable Efforts to secure such Future Environmental Attributes for EPE’s benefit provided, that (y) the Eligibility Conditions are satisfied, and (z) such actions are permitted by and capable of being implemented pursuant to Applicable Laws. If EPE notifies Seller that it does not wish to receive the benefits of such Future Environmental Attributes, then Seller can monetize such Future Environmental Attributes for its own benefit or a third party; provided, such action does not interfere with the qualification, offering, bidding, planning, scheduling or other disposition of EPE’s Environmental Attributes.

(B) Seller shall not report in any public communication, or under any program, that any Environmental Attributes, or Future Environmental Attributes secured for EPE as provided in **Section 7.3(B)** belong to any Person other than EPE or EPE’s designee.

7.4 Ancillary Services.

(B) During the Term, Seller shall make available to EPE and EPE shall own, all Ancillary Services available from the Storage Facility, including but not limited to the sole right to sell the Ancillary Services associated with the Storage Facility and to retain all revenues therefrom, subject to the Operating Procedures.

(C) The Parties acknowledge and agree that the compensation that Seller receives from EPE under this Agreement includes full compensation for Seller’s fixed costs for providing reactive power service. Seller shall not file a rate schedule at FERC for reactive power compensation payable prior to the expiration of the Term or the earlier termination of this Agreement.

ARTICLE 8 - PAYMENT CALCULATIONS

8.1 Contract Price. For the period beginning on the Commercial Operation Date and thereafter each month during the Term, EPE will pay to Seller the Contract Price per MW of the Storage Power Capacity Rating. Seller shall not be entitled to any compensation for Product over and above what is provided for in this Section, including in respect of all Product delivered or made available by Seller to EPE in accordance with this Agreement.

8.2 Test Energy. Prior to the Commercial Operation Date, if requested by Seller, EPE shall at its own cost except as provided below, deliver to the Point of Delivery Charging Energy required for testing the Storage Facility. To the extent the Storage Roundtrip Efficiency associated with such testing is less than the Storage Roundtrip Efficiency Guarantee, Seller shall pay EPE an amount equal to the cost incurred by EPE in purchasing, scheduling, and delivering Charging Energy prior to the Commercial Operation Date multiplied by a fraction, the numerator of which shall be the Storage Roundtrip Efficiency Guarantee minus the actual Storage Roundtrip Efficiency for such period and the denominator of which shall be the Storage Roundtrip Efficiency Guarantee.

8.3 Guaranteed Storage Facility Capabilities.

(A) *Storage Availability.* The Storage Facility shall achieve a minimum Storage Availability of [_____ percent (___%)] (the “**Storage Availability Guarantee**”) for each Commercial Operation Year.

(B) *Storage Power Capacity Rating.* The Storage Facility shall have a Storage Power Capacity Rating for each Commercial Operation Year as set forth in **Exhibit L - Expected Storage Facility Performance** (the “**Storage Power Capacity Rating Guarantee**”).

(C) *Storage Roundtrip Efficiency.* The Storage Facility shall have a Storage Roundtrip Efficiency during each Commercial Operation Year as set forth in **Exhibit L - Expected Storage Facility Performance** (the “**Storage Roundtrip Efficiency Guarantee**”).

(D) *Storage Ramp Rate.* The Storage Facility shall have a Storage Ramp Rate throughout the Term of [_____] MW per millisecond (the “**Storage Ramp Rate Guarantee**”).

(E) *Signal Response.* The Signal Response shall be, throughout the Term, no greater than [___ () millisecond] (the “**Signal Response Guarantee**”).

8.4 Failure to Satisfy Guaranteed Storage Facility Capabilities.

(A) *Storage Availability Damages.* If Seller fails to satisfy the Storage Availability Guarantee then Seller shall be liable to EPE for the Storage Availability Damages calculated and paid in accordance with **Exhibit P – Storage Availability Guarantee**, subject to an aggregate cap of [_____ Dollars (\$___)] during each Commercial Operation Year. The invoice for such Storage Availability Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Availability Damages in accordance with this Agreement.

(B) *Storage Power Capacity Damages.* If Seller fails to satisfy the Storage Power Capacity Rating Guarantee in accordance with the requirements set forth in **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**, then Seller shall be liable to EPE for the Storage Power Capacity Damages calculated and paid in accordance with **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**, subject to an aggregate cap of \$[_____ Dollars (\$___)] during each Commercial Operation Year. The invoice for such Storage Power Capacity Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Power Capacity Damages in accordance with **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**.

(C) *Storage Roundtrip Efficiency Damages.* If Seller fails to satisfy the Storage Roundtrip Efficiency Guarantee in accordance with the requirements set forth in **Exhibit Q – Storage Roundtrip Efficiency Guarantee**, then Seller shall be liable to EPE for the Storage Roundtrip Efficiency Damages calculated and paid in accordance with **Exhibit Q – Storage Roundtrip Efficiency Guarantee**, subject to an aggregate cap of \$[_____ Dollars (\$___)] during each Commercial Operation Year. The invoice for such Storage Roundtrip Efficiency Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Roundtrip Efficiency Damages in accordance with **Exhibit Q – Storage Roundtrip Efficiency Guarantee**.

(D) *Storage Ramp Rate Damages.* If Seller fails to satisfy the Storage Ramp Rate Guarantee in accordance with the requirements set forth in **Exhibit R – Storage Ramp Rate Test**, then Seller shall be obligated to take such corrective actions as are contemplated in **Exhibit R – Storage Ramp Rate Test**, and Seller shall pay EPE Storage Ramp Rate Damages of [_____ Dollars (\$___)] per event (the “**Storage Ramp Rate Damages**”), which shall be capped at [_____ Dollars (\$___)] in any

Commercial Operation Year. The invoice for such Storage Ramp Rate Damages shall include a written statement explaining in reasonable detail the calculation of such Storage Ramp Rate Damages in accordance with this Agreement and **Exhibit R – Storage Ramp Rate Test**.

(E) *Signal Response Damages*. If Seller fails to satisfy the Signal Response Guarantee, then Seller shall be obligated to take such appropriate corrective actions, and Seller shall pay EPE Signal Response Damages of [_____] Dollars (\$) per event (the “**Signal Response Damages**”), which shall be capped at [_____] Dollars (\$) in any Commercial Operation Year. The invoice for such Signal Response Damages shall include a written statement explaining in reasonable detail the calculation of such Signal Response Damages in accordance with this Agreement. Within twenty (20) days of receipt of an invoice for Signal Response Damages, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Signal Response Damages not paid by Seller when due will bear interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) from the date due until the date paid. EPE reserves the right to set off any amounts owed by Seller hereunder against any amounts owed by EPE to Seller under this Agreement. The dispute resolution provisions of this Agreement shall apply with respect to any dispute between the Parties with respect to the calculation of Signal Response Damages.

(F) Each Party acknowledges and agrees that the actual damages EPE would incur due to Seller’s failure to satisfy the Storage Availability Guarantee, Storage Power Capacity Rating Guarantee, Storage Roundtrip Efficiency Guarantee, Storage Ramp Rate Guarantee and Signal Response Guarantee are (a) difficult or impossible to predict with certainty; (b) impractical and difficult to assess; and, therefore, (c) agreed to by the Parties as fair and reasonable calculations of damages and not a penalty.

ARTICLE 9 - BILLING AND PAYMENT

9.1 Billing. The billing period hereunder shall be the prior calendar month. As soon as practicable and in any event within five (5) Business Days after the end of each month, Seller shall submit an invoice to EPE in a form and by a method to be determined by the Parties, showing the amount due Seller for the relevant month, including Seller’s computation of, as applicable: (a) the Storage Availability of the Facility and any Storage Availability Damages during such month; (b) the Storage Roundtrip Efficiency of the Facility and any Storage Roundtrip Efficiency Damages during such month; and (c) the Storage Power Capacity Rating of the Facility and any Storage Power Capacity Damages during such month; (d) the Storage Ramp Rate of the Facility and any Storage Ramp Rate Damages during such month; (e) the Signal Response of the Facility and any Signal Response Damages during such month; and (f) any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation, in reasonable detail, upon which Seller relies.

9.2 Payment. All payments shall be remitted via check or electronic funds transfer, as designated by the owed Party, on or before the twentieth (20th) Business Day following receipt of the applicable invoice, provided that such invoice was submitted to the paying Party within twenty (20) Business Days after the end of the month as provided in **Section 9.1**. If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the greater of four percent (4%) per year and the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date). The invoicing Party at any time may offset against amounts owed to the other Party, any undisputed amounts, including liquidated amounts, accrued damages and other payments, and undisputed billing errors and

adjustments, which are owed by such other Party to the invoicing Party. Seller and EPE may and shall net their obligations to each other hereunder, and payment of the net amount shall discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to **Section 13.1**, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. Full payment of an invoice shall not waive a Party's right to later dispute the invoice provided that notice of a disputed invoice is presented by the disputing Party to the other Party within twelve (12) months of an invoice due date, accompanied by an explanation of the specifics of the dispute as well as a request for a refund or an additional payment, whichever is appropriate. When the billing Dispute is resolved, the owing Party shall pay the amount finally determined to be owed within fifteen (15) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with **Section 9.2**.

ARTICLE 10 - OPERATION AND MAINTENANCE

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Storage Facility with a Qualified Operator consistent with Applicable Law, Good Utility Practices, the Operating Procedures, and this Agreement. Personnel of Seller shall be available 24 hours a day 7 days a week via telephone or other electronic means with (i) the capability of remotely starting, operating, and stopping the Storage Facility within ten (10) minutes, and (ii) the ability to be present at the Site within sixty (60) minutes or sooner, to the extent required in accordance with Good Utility Practices.

(B) Seller shall comply with Good Utility Practices, its obligations hereunder, the requirements of all Governmental Authorities and all reasonable requirements of EPE in the operation of the Storage Facility.

(C) During the Term, EPE shall have the exclusive right to schedule or instruct the Storage Facility to deliver and make available the Product to EPE and/or accept Charging Energy, in accordance with the Operating Procedures and the requirements of this Agreement. Subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures, EPE will have the exclusive right to instruct Seller to charge and discharge the Storage Facility seven (7) Days per week and twenty-four (24) hours per Day (including holidays), by providing Charging Notices and Discharging Notices to Seller electronically. Each Charging Notice will be effective unless and until EPE modifies such Charging Notice by providing Seller with an updated Charging Notice, and each Discharging Notice will be effective unless and until EPE modifies such Discharging Notice by providing Seller with an updated Discharging Notice. Seller shall charge (from Charging Energy) and discharge the Storage Facility in strict compliance with EPE's Charging Notices and Discharging Notices.

(D) Seller shall provide to EPE day-ahead availability schedules for the Storage Facility in accordance with the Operating Procedures and any reporting requirements required for compliance with NERC reliability standards. Seller shall remain responsible to ensure the timeliness and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

(E) Seller shall not charge or discharge the Storage Facility during the Term other than pursuant to a Charging Notice, a Discharging Notice, the Operating Procedures, or in connection with a Storage Facility test conducted in accordance with the requirements of this Agreement.

(F) Notwithstanding any provision to the contrary contained in this Agreement, Seller shall not be required to operate the Storage Facility in a manner inconsistent with Applicable Law.

10.2 Storage Facility Maintenance.

(A) Seller shall maintain the Storage Facility in accordance with Applicable Law, Good Utility Practices, the Operating Procedures and this Agreement. Seller shall coordinate its regular maintenance requirements for the Storage Facility with EPE (“**Maintenance Schedules**”). Seller shall provide Maintenance Schedules, including planned outages, to EPE in writing and sufficiently in advance for EPE’s Commercially Reasonable review, and shall be subject to EPE’s Commercially Reasonable approval. Seller shall coordinate with EPE and the Transmission Provider on the timing and duration of planned outages. EPE has the right to not permit a planned outage if it conflicts with the requirements of the ERO or if the ERO rejects the planned outage request.

(B) Seller shall minimize the amount of scheduled maintenance during the months of January, February, June, July, August, September and December to the maximum extent consistent with Good Utility Practices. Seller shall coordinate with EPE and the Transmission Provider on the timing and duration of planned outages.

(C) Seller shall notify EPE’s SCC by telephone call or other automated means acceptable to EPE as promptly as possible upon discovering that the Storage Facility is unable to follow a Charging Notice or Discharging Notice due to a Forced Outage. Seller shall notify EPE’s SCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Seller shall immediately inform EPE’s SCC of changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by EPE’s SCC with respect thereto.

10.3 Books and Records. Seller shall maintain an accurate and up-to-date operating log at the Storage Facility, in electronic format, with records of Charging Notices and Discharging Notices; changes in operating status; Forced Outages; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by EPE or as set forth in the Operating Procedures. Seller and EPE shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including metering, Charging Notices and Discharging Notices, Storage Facility tests, billing and payment records, and such records as may be required by Governmental Authorities. Originals or copies of all Operating Records shall be maintained at the Site or such other location as may be specified by Seller from time to time. Seller shall retain all such records for a period of two (2) years following the end of the Term or such longer period as may be required by Applicable Law. EPE may examine and make copies of such Operating Records from time to time upon reasonable request, during normal business hours.

10.4 Access to Storage Facility. Representatives of EPE shall have access to the Storage Facility from time to time, upon providing Commercially Reasonable prior notice, to read meters, perform inspections, and take such other actions as may be appropriate to facilitate EPE’s performance of this Agreement. While at the Storage Facility, such Representatives shall observe Seller’s standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Storage Facility.

10.5 Real Time Data. Seller shall communicate all data necessary for EPE to integrate the Storage Facility into EPE’s SCC in real time through the Storage Facility’s SCADA System in accordance with the Operating Procedures. Seller shall maintain the Storage Facility’s SCADA System and communications systems so that they are capable of interfacing with and reacting to EPE’s AGC Set-Point and responding to signals from EPE’s SCC in accordance with the AGC Protocols.

10.6 Accreditation. Seller shall perform from time to time, at its expense, any reporting and testing of the Storage Facility required by Governmental Authorities.

10.7 Operating Committee and Operating Procedures.

(A) No later than thirty (30) Days prior to the Scheduled Commercial Operation Date, Seller shall notify EPE of its intent to establish an Operating Committee with respect to the Storage Facility. Following such notification from Seller, EPE and Seller shall each appoint one Representative and one alternate Representative to act as the Operating Committee in matters relating to the Parties' performance obligations hereunder and to develop operating arrangements for receipt of Charging Energy and the discharge and delivery of Discharging Energy and other Product. The Parties' initial Representatives on the Operating Committee are set forth in **Exhibit D – Notices and Contact Information**.

(B) The Operating Committee will develop mutually agreeable written Operating Procedures in addition to those set forth in **Exhibit O – Operating Procedures**, to address matters such as day-to-day communications; key personnel; operations center interface; metering, telemetering, telecommunications, and data acquisition procedures; clearances and switching practices; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. Seller shall be responsible for preparing a draft of the Operating Procedures initially set forth in **Exhibit O – Operating Procedures**, and any amendments or revisions thereto, for consideration by the Operating Committee.

(C) The Operating Committee shall review the requirements for AGC and data collection from time to time after the Effective Date and may agree on modifications thereto to the extent necessary or convenient for operation of the Storage Facility in accordance with this Agreement.

(D) The Operating Committee shall have authority to coordinate technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve potential Disputes; *provided however*, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this Agreement, including the Operating Restrictions. Seller shall schedule meetings of the Operating Committee no less frequently than once per quarter following the Commercial Operation Date.

ARTICLE 11 - SECURITY FOR PERFORMANCE

11.1 Security Fund.

(A) During the Term of this Agreement, Seller shall establish, fund, and maintain a security fund, pursuant to the provisions of this **Article 11** ("**Security Fund**") which shall be available to (i) pay any amount due EPE pursuant to this Agreement, whether arising before, on, or after the Commercial Operation Date or termination of this Agreement, (ii) provide EPE security that Seller will construct the Storage Facility to meet the Construction Milestones and achieve Commercial Operation by the Scheduled COD, and (iii) provide security to EPE to cover damages, including damages associated with the failure to satisfy the Guaranteed Facility Capabilities, failure or delay in achieving Commercial Operation or otherwise not operate in accordance with this Agreement. Seller shall establish the Security Fund at a level of One Hundred Dollars (\$100) per kW of Expected Storage Energy Capacity (the "**Required Amount**"), thirty percent (30%) of which shall be established no later than five (5) Business Days following the Effective Date. Seller shall increase the Security Fund to the Required Amount within five (5) Business Days following satisfaction or waiver of all conditions set forth in **ARTICLE 6**.

(B) Seller shall maintain the Security Fund at the Required Amount throughout the remainder of the Term; provided, that, commencing on the Commercial Operation Date, the Required Amount will be reduced to Seventy-Five Dollars (\$75) per kW of Expected Storage Energy Capacity. Seller shall replenish the Security Fund to the applicable portion of the Required Amount within five (5) Business Days after any draw on the Security Fund by EPE; provided, however, that Seller shall have no

obligation to replenish the Security Fund prior to the Commercial Operation Date.

11.2 EPE Rights and Remedies. In addition to any other remedy available to it under this Agreement or at law, EPE may, to the extent Seller fails to perform or abide by the terms of this Agreement, or by order of a Governmental Authority of competent jurisdiction, before, on, or after termination of this Agreement, draw from the Security Fund such amounts as are necessary to recover amounts owing to EPE pursuant to this Agreement. Such amounts include any damages due to EPE and any amounts for which EPE is entitled to indemnification under this Agreement. EPE must provide notice to Seller ten (10) Business Days prior to drawing such amounts from the Security Fund. If Seller fails to deliver payment of such amounts by check or electronic funds transfer to EPE within ten (10) Business Days of such notification, EPE may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Article, and from all such forms, and in any sequence EPE may select. Any failure to draw upon the Security Fund or other security for any damages or other amounts due to EPE shall not prejudice EPE's rights to recover such damages or amounts in any other manner.

11.3 Form.

(A) The Security Fund shall be established in the amounts specified in **Section 11.1**, shall be maintained at Seller's sole cost and expense, and shall be in the form described in **Section 11.3(A)(1)**, **Section 11.3(A)(2)** or **Section 11.3(A)(3)**; *provided however*, that Seller shall have the right at any time and from time to time to replace the forms and instruments provided with replacement forms or instruments meeting the requirements specified herein.

(1) An irrevocable standby letter of credit substantially in the form of **Exhibit G – Form of Letter of Credit**, from an Issuer that is a United States-based commercial bank or a U.S. branch of a foreign bank with at least Ten Billion Dollars (\$10,000,000,000) in assets and an unsecured bond rating (not enhanced by third-party support) equivalent to A- or better as determined by Standard & Poor's and a Credit Rating of A3 or better as determined by Moody's, or, if either one or both are not available, equivalent ratings from alternate rating sources acceptable to EPE (the "**Letter of Credit**"). In addition, if such unsecured bond rating of the Issuer is exactly equivalent to A-, the Issuer must not be on credit watch or similar classification, or have a negative outlook (or the equivalent) by a Rating Agency. Such Letter of Credit must be consistent with this Agreement and shall include a provision for at least thirty (30) Days advance notice to EPE of any expiration or earlier termination of the Letter of Credit, so as to allow EPE sufficient time to exercise its rights under the Letter of Credit should Seller fail to extend or replace the same. The form of the Letter of Credit must meet EPE's requirements to ensure that claims or draw-downs can be made unilaterally by EPE in accordance with the terms of this Agreement. Such security must be issued for a minimum term of three hundred and sixty-five (365) Days. Seller shall cause the renewal or extension of the security for additional consecutive terms of three hundred and sixty-five (365) Days or more (or, if shorter, the remainder of the Term) no later than thirty (30) Days prior to each expiration date of the Letter of Credit. If the Letter of Credit is not renewed or extended as required herein, EPE shall have the right to draw immediately upon the Letter of Credit.

(2) United States currency deposited with an Issuer ("**Cash Collateral**"), in which EPE holds a first and exclusive security interest perfected by control, either: (i) in an account under which EPE is designated as beneficiary with sole authority to draft from the account or otherwise access the security; or (ii) in an account held by Issuer as escrow agent with instructions to pay claims made by EPE pursuant to this Agreement, such instructions to be in a form satisfactory to EPE (each an "**Escrow Account**"). Security provided in this form shall include a requirement for immediate notice to EPE from Issuer and Seller in the event that the sums held as security in the Escrow Account do not at any time meet the required level for the Security Fund as set forth in this **Section 11.3**. Funds held in the Escrow Account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial

paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller.

(3) A guaranty substantially in the form of **Exhibit H – Form of Guaranty** (a “**Seller Guaranty**”) issued by a Person that (i) has and maintains a Credit Rating equal to or better than Investment Grade, or (ii) is otherwise acceptable to EPE.

(B) Promptly following the end of the Term and the completion of all of Seller’s obligations under this Agreement, EPE shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(C) If there is an early termination of this Agreement that is not due to an Event of Default by Seller and no amounts remain outstanding and unpaid by Seller under the Agreement, EPE shall take all actions necessary to release the balance of the Security Fund (including any accumulated interest, if applicable, and net of any taxes on such interest paid or payable by EPE) to Seller.

(D) Seller shall reimburse EPE for the reasonably incurred incremental direct third party and out of pocket expenses (including the reasonable fees and expenses of counsel) incurred by EPE in connection with the preparation, negotiation, execution or release of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller’s obligations under this **Article 11**, except for releases due to an Event of Default by EPE hereunder.

11.4 **Replacement.** In the event that the Security Fund ever fails to comply with the requirements of this **Article 11**, or EPE determines in a commercially reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this **Article 11**, Seller shall be required to replace the Security Fund with security in compliance with this **Article 11** within five (5) Business Days following notice thereof from EPE.

11.5 **Survival.** The Security Fund shall survive termination of this Agreement to be available to pay any amounts owed to EPE arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller’s obligations hereunder (excluding any obligations that survive the termination of this Agreement); or (ii) termination of this Agreement for any reason prior to the expiration of the Term, EPE shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this Agreement. EPE may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

ARTICLE 12 - DEFAULT AND REMEDIES

12.1 **Construction Defaults.** From the Effective Date through the Commercial Operation Date, subject to the notice and cure provision set forth in this **Section 12.1**, any Construction Event of Default shall give EPE the unconditional right, in its sole discretion, to pursue any or all of the remedies available under this Agreement, including: (i) terminate this Agreement; and (ii) draw upon or otherwise negotiate and liquidate the Security Fund to the extent of amounts owed by Seller to EPE hereunder. EPE shall provide notice to Seller thirty (30) Days prior to taking any of the actions set forth in this **Section 12.1** (which shall be in addition to the cure periods specified below for each Construction Event of Default), specifying the Construction Event(s) of Default triggering such action(s). Each of the following shall constitute a “**Construction Event of Default**”:

(A) Seller becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed or stayed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by Seller is false or misleading in any material respect, and Seller fails to comply with such representation or warranty within thirty (30) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(C) Seller fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.1(F)**) within sixty (60) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(D) Seller fails to deliver, increase or maintain the Security Fund as required by **Article 11**, and such non-performance is not cured within five (5) Business Days after EPE gives notice to Seller of such non-performance;

(E) Seller fails to obtain or maintain insurance in accordance with the requirements of **Article 16** and **Exhibit E – Insurance Coverage**, and such failure continues for ten (10) Business Days of Seller’s receipt of written notice from EPE thereof, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(F) Subject to **Section 13.1**, Seller fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ten (10) Business Days after notice is received by Seller.

12.2 **Operational Events of Default.** After the Commercial Operation Date and throughout the Delivery Term, subject to the notice and cure provisions set forth in this **Section 12.2**, any Operational Event of Default shall give EPE the unconditional right, in its sole discretion, to pursue any or all of the remedies available under this Agreement, including: (i) terminate this Agreement; and (ii) draw upon or otherwise negotiate and liquidate the Security Fund to the extent of amounts owed by Seller to EPE hereunder. EPE shall provide notice to Seller thirty (30) Days prior to taking any of the actions set forth in this **Section 12.2** (which shall be in addition to the cure periods specified below for each Operational Event of Default), specifying the Operational Event(s) of Default triggering such action(s). Each of the following shall constitute an “**Operational Event of Default**”:

(A) Seller becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity; and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed or stayed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by Seller is false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on EPE, and Seller fails to comply with such representation or warranty within thirty (30) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(C) Seller fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.2(D)**) within sixty (60) Days after a demand by EPE to do so, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(D) Subject to **Section 13.1**, Seller fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within ten (10) Business Days after notice is received by Seller;

(E) The Storage Power Capacity Rating of the Storage Facility determined pursuant to **Exhibit M – Storage Energy Capacity Testing, Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages** is less than eighty five percent (85%) of the Storage Power Capacity Rating Guarantee for two (2) consecutive Commercial Operation Years;

(F) The Storage Availability of the Storage Facility is less than eighty five percent (85%) of the Storage Availability Guarantee determined pursuant to **Exhibit P – Storage Availability Guarantee** for two (2) consecutive Commercial Operation Years;

(G) The Storage Roundtrip Efficiency of the Storage Facility determined pursuant to **Exhibit Q – Storage Roundtrip Efficiency Guarantee** is less than eighty five percent (85%) of the Storage Roundtrip Efficiency Guarantee for two (2) consecutive Commercial Operation Years;

(H) The Storage Ramp Rate of the Storage Facility is less than eighty-five percent (85%) of the Storage Ramp Rate Guarantee determined pursuant to **Exhibit R – Storage Ramp Rate Test** for more than three testing events over two (2) consecutive Commercial Operation Years.

(I) The Signal Response of the Storage Facility is less than eighty-five percent (85%) of the Signal Response Guarantee such that Seller owed Signal Response Damages to EPE for more than three events in each of two (2) consecutive Commercial Operation Years.

(J) Seller fails to deliver, increase or maintain the Security Fund as required by **Article 11**, and such non-performance is not cured within five (5) Business Days after EPE gives notice to Seller of such non-performance;

(K) Seller fails to obtain or maintain insurance in accordance with the requirements of **Article 16** and **Exhibit E – Insurance Coverage**, and such failure continues for ten (10) Business Days of Seller's receipt of written notice from EPE thereof, or such longer period as may be required to effectuate compliance if Seller has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(L) This Agreement is assigned by or the Storage Facility is transferred by Seller, or Seller undergoes a Change of Control without the requisite consent of EPE, in each case as required pursuant to **Section 19.1**.

12.3 Default by Seller: Failure to Achieve COD.

(A) *COD Delay*. EPE shall suffer damages if the Storage Facility fails to achieve COD by the Scheduled COD ("**COD Delay**"). Seller shall be liable to and pay EPE the amounts set forth below per MW of Storage Power Capacity Rating Guarantee per Day ("**Liquidated Delay Damages**") as liquidated damages and not a penalty, for any COD Delay.

(1) Two Hundred Fifty Dollars (\$250) beginning on the first (1st) Day of COD Delay and continuing through the one hundred twentieth (120th) Day of COD Delay; and

(2) One Thousand Dollars (\$1,000) beginning on the one hundred twenty-first (121st) Day of COD Delay and continuing through the one hundred fiftieth (150th) Day of COD Delay; and

(3) One Thousand Two Hundred Fifty Dollars (\$1,250) beginning on the one

hundred fifty-first (151st) Day of COD Delay and continuing for each additional Day of COD Delay.

Except as provided in **Section 12.3(D)** below, the payment of Liquidated Delay Damages shall be EPE's sole and exclusive remedy for a COD Delay. Liquidated Delay Damages shall begin to accrue on the Day after the Scheduled COD until the first to occur of COD or termination of this Agreement pursuant to **Section 12.3(D)** below.

(B) *Extension of Construction Milestones and the Scheduled Commercial Operation Date.* After executing this Agreement, Seller may extend any Construction Milestone (including the Scheduled COD) on a Day-for-Day basis for up to three hundred sixty five (365) Days in the aggregate as a result of any (a) Force Majeure events, or (b) Supply Chain Events (each of (i) or (ii), a "**Permitted Extension**") and Liquidated Delay Damages shall only begin to accrue at the end of such three hundred sixty five (365) Day period if COD has not been achieved by such time for any Permitted Extension.

(C) *Cure.* Seller shall have a cure period of forty-five (45) Days for its failure to achieve Commercial Operation by the Scheduled COD; provided, however, that if during such period Seller provides a written opinion from a mutually agreeable independent licensed professional engineer that Commercial Operation can reasonably be achieved within an additional forty-five (45) Day period, then Seller's cure period to achieve Commercial Operation shall be no more than ninety (90) Days after the Scheduled COD. Liquidated Delay Damages shall continue to accrue during any cure period.

(D) *Termination.* Upon the failure of Seller to cure a COD Delay within the applicable cure period set forth in **Section 12.3(C)**, EPE may, at its sole option, terminate this Agreement immediately upon notice to Seller. Seller's sole liability to EPE in the event of a termination pursuant to this **Section 12.3(D)** shall be the amount of then-applicable Security Fund minus any Liquidated Delay Damages paid and/or incurred by Seller to date.

12.4 *Default by EPE.* Subject to the notice and cure provision set forth in this **Section 12.4**, any EPE Event of Default shall give Seller the unconditional right, in its sole discretion, to terminate this Agreement. Seller shall provide notice to EPE thirty (30) Days prior to terminating this Agreement, specifying the Event(s) of Default triggering such termination, and shall not terminate if EPE has remedied the specified Event(s) of Default within the specified cure period, and if no such cure period is provided, within the thirty (30) Day period following Seller's notification. The following shall constitute "**EPE Events of Default**":

(A) EPE becomes insolvent, becomes a debtor in any bankruptcy or receivership proceedings, or dissolves as a legal business entity, and, in the case of any involuntary proceeding in respect of the foregoing, such proceeding is not dismissed within sixty (60) Days of the filing thereof or such longer period as may be required to effectuate compliance if EPE has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days;

(B) Any representation or warranty made by EPE is false or misleading in any material respect, and EPE fails to comply with such representation or warranty within thirty (30) Days after a demand by Seller to do so;

(C) EPE fails to comply with any other material terms and conditions of this Agreement (other than payment obligations, which are addressed in **Section 12.4(D)**) within sixty (60) Days after a demand by Seller to do so, or such longer period as may be required to effectuate compliance if EPE has commenced and is reasonably pursuing actions to effectuate compliance, not to exceed an additional thirty (30) Days; or

(D) Subject to **Section 13.1**, EPE fails to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within thirty (30) Days after notice is received

by EPE.

12.5 Limitations on Damages.

(A) If the non-defaulting Party elects to terminate the Agreement, as provided in **Sections 12.1, 12.2 and 12.4**, as applicable, the non-defaulting Party shall calculate (and provide detailed calculations to the defaulting Party), in a commercially reasonable manner, the Forward Settlement Amount as of the termination date of the Agreement. The non-defaulting Party shall aggregate all payments due and amounts owing under this Agreement into a single amount by netting out (a) all payments and other amounts that are due to the defaulting Party under this Agreement, plus, at the option of the non-defaulting Party, any cash or other form of security then available to, or held for the benefit of, the non-defaulting Party, against (b) the Forward Settlement Amount that is due to the non-defaulting Party, plus any or all other amounts due to the non-defaulting Party under this Agreement, so that all such amounts shall be netted out into a single liquidated amount (the “**Termination Payment**”). The defaulting Party shall be liable to the non-defaulting Party to the extent the Termination Payment exceeds zero dollars (\$0). In no event shall the non-defaulting Party be obligated to make a Termination Payment to the defaulting Party. If the defaulting Party disputes the non-defaulting Party’s calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within ten (10) Business Days of receipt of the non-defaulting Party’s calculation of the Termination Payment, deliver a Dispute Notice and commence the dispute resolution procedure provided in **Article 13**; *provided, however*, the defaulting Party shall first post collateral in the form of either cash, Letter of Credit or other security reasonably acceptable to the non-defaulting Party in an amount equal to the non-defaulting Party’s calculation of the Termination Payment.

(B) **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR TREBLE DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES REGARDLESS OF WHETHER THE RELEVANT CAUSE OF ACTION ARISES FROM STATUTE, IN TORT OR CONTRACT** (except to the extent expressly provided herein); *provided however*, 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 from the other Party hereto, the Indemnifying Party shall be liable for, and obligated to reimburse the Indemnified Party for all such damages.

(C) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.6 Bankruptcy. This Agreement grants each Party the contractual right to “cause the liquidation, termination or acceleration” of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies hereunder in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.

12.7 Cumulative Remedies. Except as explicitly provided to the contrary in this Agreement, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

12.8 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any

damages it may incur as a result of a default by the other Party hereunder.

12.9 Specific Performance. In addition to the other remedies specified herein, upon any Operational Event of Default of Seller that is not cured within the applicable cure period, EPE may elect to treat this Agreement as being in full force and effect and EPE shall have the right to seek specific performance.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 Negotiation.

(A) In the event of any dispute arising under or associated with the Parties' performance of this Agreement (a "**Dispute**"), within ten (10) Business Days following notice by either Party (a "**Dispute Notice**"), (i) each Party shall appoint a Representative, and (ii) the Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally, and inexpensively.

(B) In the event the Parties' Representatives cannot resolve the Dispute within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to Section 13.5.

13.2 Mediation. Disputes not resolved under Section 13.1 shall, upon mutual consent, be submitted to mediation pursuant to the Mediation Rules of the American Arbitration Association. The Parties shall select the mediator within fifteen (15) Days of the request for mediation. Mediation shall be conducted in Texas, at a location to be determined by the Parties, notwithstanding anything to the contrary under the Mediation Rules of the American Arbitration Association.

13.3 Other Dispute Processes. If neither the negotiations under Section 13.1 nor mediation successfully resolves the Dispute within ninety (90) Days of the delivery of the Dispute Notice, the Parties agree that an action may be filed in the appropriate state or federal court located in Texas.

13.4 Governing Law. The interpretation and performance of this Agreement and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Texas exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Texas for purposes of resolving any Dispute hereunder. Venue for any court proceedings shall lie exclusively in the District Courts of El Paso County, Texas or, if jurisdictionally available, the United States District Court for the Western District of Texas, El Paso Division.

13.6 Waiver of Jury Trial. **SELLER AND EPE EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND EPE RELATED HERETO, OR THE INTERPRETATION OF THIS AGREEMENT, AND EXPRESSLY AGREE TO HAVE ANY DISPUTES BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION, WITHOUT A JURY. THIS SECTION 13.6 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS**

AGREEMENT.

ARTICLE 14 - FORCE MAJEURE

14.1 Definition. For purposes hereof, “**Force Majeure**” means an event or circumstance that delays or prevents a Party from performing its obligations hereunder, which event or circumstance (i) was not within the control of or the result of the fault or negligence of the Party claiming excuse and (ii) which by exercise of due diligence could not reasonably have been avoided. “Force Majeure” includes actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, sabotage (including arson and vandalism), explosions and fires, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement), and pandemics and epidemics (provided, however, that each Party acknowledges the effects of the COVID-19 pandemic as of the Effective Date, and that no delay or failure in performance is expected based on the scope of such effects as of the Effective Date). Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this Agreement;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure to timely to apply for, or diligently pursue, the Permits set forth on **Exhibit F – Permits** hereto;
- d. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- e. Environmental Contamination at the Site;
- f. Increased costs of equipment, materials, or labor, or changes in market conditions affecting the economics of either Party (including a change in equipment prices or labor rates or increased inflation), or any other economic hardship (including lack of money) of either Party;
- g. failure or delays in delivery of equipment or materials that is not caused by an independent event of Force Majeure;
- h. an inability to obtain labor, manpower, spare parts, materials, or equipment for the construction of the Storage Facility that is not caused by an independent event of Force Majeure;
- i. any failure or inability to make payments when due; and
- j. labor strikes, slowdowns, work stoppages, or other labor disruptions only affecting the Storage Facility.

14.2 Applicability of Force Majeure.

(A) A Party shall be relieved of its obligations to perform this Agreement and shall not be considered to be in default with respect to any obligation hereunder if and to the extent such Party is delayed or prevented from fulfilling such obligation by Force Majeure, *provided however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations hereunder as soon as practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

(B) During the period of any Force Majeure affecting Seller after the Commercial Operation Date, the Contract Price shall be reduced in proportion and to the extent that such Force Majeure prevents the Storage Facility from delivering Product at the full Storage Power Capacity Rating consistent with the Guaranteed Storage Facility Capabilities.

14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this Agreement beyond its stated Term.

(C) If, (i) prior to COD, Force Majeure affecting either Party continues for a period of one hundred eighty (180) Days or (ii) after COD, Force Majeure affecting either Party continues for a period of three hundred sixty-five (365) Days, either Party may, at any time following the end of such period, terminate this Agreement upon notice to the other Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

ARTICLE 15 - REPRESENTATIONS, WARRANTIES AND COVENANTS

(A) Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(1) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Storage Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations hereunder.

(2) The Party's execution, delivery, and performance of all of its obligations hereunder have been duly authorized by all necessary organizational action, and do not and will not:

a. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which, subject to redaction for confidential or proprietary information, shall be delivered to the other Party upon its request);

b. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder;

c. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder; or

d. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations hereunder.

(3) This Agreement is a valid and binding obligation of the representing Party.

(4) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

(B) Subject to the rights of the Facility Lenders as provided in this Agreement, Seller further hereby covenants to EPE throughout the Term that Seller shall deliver to EPE the Product required by this Agreement free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.

ARTICLE 16 - INSURANCE

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at least five (5) Business Days prior to each applicable expiration date, Seller shall provide EPE with a copy of an insurance certificate acceptable to EPE evidencing that insurance coverages for the Storage Facility are in force and in compliance with the specifications for insurance coverage set forth in **Exhibit E – Insurance Coverage** to this Agreement. Such certificate shall:

(A) name EPE as an additional insured (except worker’s compensation);

(B) provide that EPE shall receive thirty (30) Days prior written notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such notice shall be ten (10) Days for non-payment of premiums);

(C) provide a waiver of any rights of subrogation against EPE, its Affiliates and their officers, directors, agents, subcontractors, and employees; and

(D) indicate that the Commercial General Liability policy has been endorsed as described above.

16.2 Policy Requirements. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor’s rating of at least A. All policies shall be written on an occurrence basis, except as provided in **Section 16.4**. All policies shall contain an endorsement that Seller’s policy shall be primary in all instances regardless of like coverages, if any, carried by EPE. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 No Implied Limitation. Seller’s liability hereunder is not limited to the amount of insurance coverage required herein.

16.4 Term and Modification of Insurance.

(A) All insurance required hereunder shall cover occurrences during the Term and for a period of two (2) years after the Term. In the event that any insurance as required herein is commercially available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the Effective Date and such insurance shall be maintained by Seller for a minimum of six (6) years after the Term.

(B) EPE shall have the right, at times deemed appropriate to EPE during the Term, to request Seller to modify the insurance minimum limits specified in **Exhibit E – Insurance Coverage** in order to maintain Commercially Reasonable coverage amounts. Seller shall make Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to EPE, accompanied by a certificate from an independent insurance advisor of recognized national

standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for utility-scale battery electric storage facilities of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 Application of Proceeds. Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Storage Facility following any material casualty that occurs more than eighteen (18) months prior to the end of the Term.

ARTICLE 17 - INDEMNITY

17.1 Indemnification: General. Each Party (the “**Indemnifying Party**”) shall indemnify, defend and hold the other Party (the “**Indemnified Party**”) harmless from and against all third party claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys’ fees) (generally, “**Indemnifiable Losses**”), to the extent caused by: (A) a violation or alleged violation of Applicable Laws by the Indemnifying Party; or (B) the negligence, intentional acts, and other misconduct of the directors, officers, employees, subcontractors, vendors, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold EPE harmless from and against all Indemnifiable Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller’s responsibility therefor.

17.3 Indemnification for Fines and Penalties. Any fines or other penalties incurred by a Party (other than fines or penalties due to the negligence or intentional acts or omissions of the other Party) for non-compliance with any municipal, state or federal laws shall be the sole responsibility of the non-complying Party.

17.4 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party’s liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s misconduct caused the damages.

(B) Neither Party shall be indemnified for Indemnifiable Losses resulting from the sole negligence or willful misconduct of the directors, officers, employees, or agents of such Party.

(C) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this **Article 17** shall enlarge or relieve Seller or EPE of any liability to the other for any breach of this Agreement.

17.5 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this **Article 17** may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided however*, that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party; *provided however*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall

reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

(C) If an Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim at the expense of the Indemnifying Party; *provided however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or otherwise warrants settlement.

17.6 Amounts Owed. In the event that a Party is obligated for indemnification under this **Article 17** the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 - LENDER PROVISIONS

18.1 Accommodation of Facility Lender.

(A) EPE shall provide such consents to collateral assignment, certifications, representations, estoppels, information or other documents, as may be reasonably requested by Seller in connection with the financing or refinancing of the Storage Facility (a "**Lender Consent**"). If Seller collaterally assigns this Agreement to Seller's financing parties or agents thereof, EPE shall, if requested, enter into a consent to collateral assignment with Seller's financing parties or agents thereof substantially in the form of **Exhibit K – Form of Lender Consent**. In providing any Lender Consent, estoppel or other certification or document, EPE shall have no obligation to:

- (1) modify the terms of this Agreement except as may be set forth in the form in **Exhibit K – Form of Lender Consent**;
- (2) provide any consent or estoppel that has a Material Adverse Effect on any of EPE's rights, benefits, risks, or obligations hereunder;
- (3) transfer or release any property or property interests of EPE;
- (4) release or subordinate (or cause the release or subordination) of any lien on any property of EPE for the benefit of Seller or the Facility Lender; or
- (5) permit any lien to be placed on property of EPE.

(B) Seller shall reimburse, or shall cause the Facility Lender to reimburse, EPE for the direct expenses (including the fees and expenses of counsel) incurred by EPE in the preparation, negotiation, execution and/or delivery of each Lender Consent and any documents requested by Seller or the Facility Lender pursuant to this **Section 18.1**.

18.2 Notices.

(A) Seller shall provide EPE with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, EPE shall provide to the Facility Lender a copy of each notice of alleged default delivered to Seller under **Section 12.1** or **Section 12.3**, and EPE will accept a cure thereof performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this Agreement or the relevant Lender Consent.

(B) Within ten (10) Days following Seller's receipt of each notice of default or Facility Lender's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of

such notice to EPE.

ARTICLE 19 - ASSIGNMENT AND RIGHT OF FIRST OFFER

19.1 Assignment by Seller.

(A) Seller shall not sell, exchange, or otherwise transfer the Storage Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of EPE (other than pursuant to **Section 19.1(C)**), which shall not be unreasonably withheld, conditioned or delayed. EPE shall have no obligation to provide any consent under this **Article 19** unless:

- (1) Seller has complied with **Sections 19.3**, if and as applicable
- (2) Seller has provided to EPE such information concerning the transferee's direct and indirect ownership as EPE reasonably requests;
- (3) the transferee has substantial experience in the operation of utility-scale battery electric storage systems substantially similar to the Storage Facility, either directly, through its affiliates or through an operator acceptable to EPE;
- (4) the transferee maintains or establishes a Security Fund in conformance with **Section 11.1** of this Agreement that is acceptable to EPE;
- (5) Seller has provided notice to EPE at least ninety (90) Days prior to the closing date of the proposed transaction; and
- (6) Seller pays or reimburses EPE for the direct expenses (including the fees and expenses of counsel) incurred by EPE in connection with reviewing the proposed transaction consistent with this **Section 19.1**.

(B) Any Change of Control effected without fulfilling the requirements of this Agreement shall be null, void and a breach of this Agreement.

(C) Notwithstanding this **Section 19.1**, EPE's consent shall not be required for: (i) any assignment or transfer of this Agreement by Seller to an Affiliate of Seller; (ii) any assignment of this Agreement by Seller to any Facility Lender in connection with any financing, refinancing or other financial arrangements and the transactions contemplated thereby pursuant to **Section 18.1**; or (iii) if Seller has complied with the requirements of **Section 19.3**, any sale, exchange or transfer of the Storage Facility or Change of Control of Seller to a Permitted Transferee; *provided*, in each case, that any such assignee or transferee has agreed to assume all obligations of Seller (accrued and prospective) hereunder via a writing reasonably satisfactory to EPE.

(D) Except as otherwise specified, no assignment shall relieve Seller of its obligations hereunder, nor impair any security posted by Seller unless such security is replaced in accordance with **Article 11**.

19.2 Assignment by EPE.

(A) EPE may assign this Agreement to any Affiliate, or to any successor that provides retail electric service in all or substantially all of EPE's service territory and is subject to rate and quality service regulation under the jurisdiction of the Commissions. Any other assignment of this Agreement by EPE shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) If an assignee of EPE possesses a Credit Rating equal to or better than Investment Grade or EPE's Credit Rating as of the date of assignment (whichever is higher), Seller shall release EPE

from its obligations hereunder if so requested by EPE. Except for the foregoing, no assignment shall relieve EPE of its obligations hereunder.

(C) Any assignee, transferee or successor of EPE shall assume all obligations of EPE (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this Agreement is assigned by EPE, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.3 Right of First Offer.

(A) Following the Commercial Operation Date, Seller shall not (i) sell or transfer all or substantially all of its interest in the Storage Facility or (ii) effect or permit a Change of Control, unless prior to commencement of binding negotiations with respect to any such sale, transfer or Change of Control, Seller provides written notice thereof to EPE (a “**Proposed Sale Notice**”), which Proposed Sale Notice shall include a description of the price and other material terms upon which Seller (or any direct or indirect parent of Seller) desires to sell or transfer such interest in the Storage Facility or direct or indirect equity interests in Seller resulting in a Change of Control. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that a Proposed Sale Notice shall not be required to be provided to EPE in connection with (x) the direct or indirect sale of the equity interests in Seller to one or more tax equity investors in connection with a tax equity financing of the Storage Facility (including pursuant to any sale-leaseback financing) or the exercise of rights or remedies by any tax equity investor, (y) an exercise of rights or remedies by a Facility Lender under an applicable financing document relating to the Storage Facility or this Agreement or (z) the direct or indirect sale or transfer of the equity interests in Seller to an Affiliate of Seller,

(B) Upon receipt of such Proposed Sale Notice, EPE shall have thirty (30) Days in which to provide notice to Seller indicating whether EPE is interested in negotiating the terms and conditions of the Proposed Sale Notice with Offeror (a “**Proposed Purchase Notice**”). If EPE provides such Proposed Purchase Notice, then EPE shall, and Seller shall cause Offeror to, negotiate in good faith for a period of up to ninety (90) Days from the date of EPE’s Proposed Purchase Notice and use Commercially Reasonable Efforts to determine if they are able to reach mutual agreement on a term sheet that sets forth the fundamental terms and conditions of the Proposed Sale Notice.

(C) If (i) EPE does not provide such Proposed Purchase Notice to Offeror within such fifteen (30) Day period set forth in **Section 19.3(B)** indicating that EPE is interested in negotiating the terms and conditions of the Proposed Sale Notice with Offeror following a Proposed Sale Notice (or provides notice to Seller that EPE elects not to enter into such negotiation), (ii) Offeror and EPE are unable to execute a term sheet that sets forth the fundamental terms and conditions of the Proposed Sale Notice within the ninety (90) Day period set forth in **Section 19.3(B)** or (iii) Offeror and EPE are unable to execute a definitive agreement consummating the terms of the Proposed Sale Notice within one hundred twenty (120) Days after the date of the Proposed Purchase Notice (each, a “**Proposed Purchase End Date**”), then Offeror shall be free to negotiate the sale or transfer of all or substantially all of its interest in the Storage Facility or Change of Control as described in the Proposed Sale Notice with any third party; provided, however, that, prior to consummating any such sale, transfer or Change of Control, Offeror shall provide EPE with a concise summary of the commercial terms negotiated by Offeror with such third party, subject to any confidentiality obligations to which Offeror is subject in connection with such sale, transfer or Change of Control (a “**Notice of Proposed Third Party Sale**”). In the event the Notice of Proposed Third Party Sale contains terms that taken as a whole are materially more favorable to such third party than those set forth in the Proposed Sale Notice or as presented by Offeror to EPE during any negotiations undertaken pursuant to **Section 19.3(B)**, then such Notice of Proposed Third Party Sale shall constitute an offer by Offeror to enter into an agreement with EPE on the same commercial terms outlined in the Notice of Proposed Third Party Sale, and EPE shall have thirty (30) Days following receipt of the Notice of Proposed Third Party

Sale to accept the offer consistent with the commercial terms set forth in the Notice of Proposed Third Party Sale or to waive such offer. If (x) the Notice of Proposed Third Party Sale does not contain terms that taken as a whole are materially more favorable to such third party than those set forth in the Proposed Sale Notice or as presented by Offeror to EPE during any negotiations undertaken pursuant to **Section 19.3(B)** or (y) EPE does not provide such written notice to Offeror accepting the offer described in the preceding sentence within the thirty (30) Day period following receipt of the Notice of Proposed Third Party Sale, then Offeror may proceed with negotiating and consummating the proposed transaction as described in the Notice of Proposed Third Party Sale with such third party.

(D) If Offeror fails to (i) present a Notice of Proposed Third Party Sale within one hundred twenty (120) Days after the applicable Proposed Purchase End Date, or (ii) consummate the sale of the Offered Interest to a third party consistent with the terms of the Notice of Proposed Third Party Sale within three hundred sixty five (365) Days after the applicable Proposed Purchase End Date, then Seller shall provide another Proposed Sale Notice consistent with the requirements set forth in **Section 19.3(A)** before Offeror commences or continues negotiations with any third party regarding, or consummates any, sale, transfer or Change of Control subject to this **Section 19.3**.

(E) This **Section 19.3** shall be specifically enforceable by EPE, without bond and without the need to prove irreparable harm.

(F) Subject to any confidentiality obligations to which Offeror is subject in connection with such sale, transfer or Change of Control, Seller shall cooperate in all respects reasonably necessary for EPE to exercise its rights pursuant to this **Section 19.3** and shall operate the Storage Facility in the ordinary course of business following the date of issuance of a Proposed Sale Notice.

ARTICLE 20 - MISCELLANEOUS

20.1 Notices.

(A) Notices required by this Agreement shall be in writing and addressed to the other Party at the addresses noted in **Exhibit D – Notices and Contact Information**, as either Party updates such addresses from time to time by notice to the other Party. A notice shall be deemed to have been received as follows: (1) if it is delivered by email, when the recipient, by an email sent to the email address for the sender stated in **Exhibit D – Notices and Contact Information** or by a notice delivered by another method in accordance with this **Section 20.1(A)**, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this **Section 20.1(A)**; and, (2) If it is delivered in writing, when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Storage Facility operations shall be exempt from this **Section 20.1(A)**.

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and Representatives, with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement.

20.2 Taxes.

(A) As between the Parties, EPE shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the receipt and purchase of Product hereunder, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of

Charging Energy to the Point of Delivery and the transmission of Discharging Energy beyond the Point of Delivery.

(B) Subject to **Section 20.2(A)**, Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Storage Facility and the Site (including *ad valorem* taxes on the Storage Facility and the Site), and any taxes imposed at and prior to the Point of Delivery with respect to the Product to be sold and delivered to EPE hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller's prices under **Article 8** are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the Effective Date.

(C) The Parties shall cooperate to minimize tax exposure, *provided however*, that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

20.3 **Applicable Laws.** Each Party shall comply with all Applicable Laws (including the Transmission Tariff).

(A) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other Party, any material violation of any Applicable Laws arising out of the Storage Facility and/or performance of this Agreement.

(C) Upon permanent retirement of the Storage Facility, Seller shall decommission and remove the Storage Facility and remediate the Site if and when required by Applicable Laws.

(D) Seller acknowledges that as a government contractor EPE is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. §60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to EPE. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

(E) Except as otherwise set forth herein, each Party assumes the risk of changes in Applicable Laws following the Effective Date that affect such Party's costs of ownership and operation of the assets, and its performance under this Agreement.

20.4 **Fines and Penalties.** Seller shall pay when due all fees, fines, penalties and costs incurred by EPE, Seller and/or their agents, employees or contractors arising from negligent action or inaction by Seller, its employees, or subcontractors with any provision of this Agreement, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination

20.5 **Rate Changes.**

(A) The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the Term hereof. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service hereunder pursuant to Section 205, 206 or 306 of the Federal Power Act.

(B) The standard of review for changes to this Agreement whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power*

Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (aka the “Mobile-Sierra doctrine”), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.6 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Storage Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before either of the Commissions.

20.7 Disclaimer of Third-Party Beneficiaries. In executing this Agreement, EPE does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third-party transacting with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement.

20.8 Relationship of the Parties.

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this Agreement to the contrary, 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.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the persons employed by Seller shall be considered employees of EPE for any purpose; nor shall Seller represent to any person that he or she is or shall become a EPE employee.

20.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.10 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 court or administrative body 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* EPE 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 the 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.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this Agreement constitute the entire agreement between EPE and Seller with respect to the Storage Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between EPE and Seller with respect to the sale and delivery of the product and services required by this Agreement. Any amendment of this Agreement, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Party/ies to be bound thereby.

20.12 Waiver. 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 hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

20.13 Binding Effect. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

20.14 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

20.15 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument. A manually signed copy of this Agreement, or a copy of this Agreement signed with an electronic or digital signature, delivered by e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a Party until such Party has delivered or caused to be delivered a signed copy of this Agreement.

20.16 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Storage Facility, the Term, and other relevant factual information about the relationship.

20.17 Exhibits. Either Party may change the information in **Exhibit D – Notices and Contact Information** at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this Agreement or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) For purposes hereof, “**Confidential Information**” means this Agreement and written information delivered by one Party to the other from time to time during the Term or in connection with this Agreement, which information is labeled prominently as “Confidential,” “Proprietary” or the like and specifically references this Agreement; *provided however*, that “Confidential Information” shall not include information that:

- (a) is publicly available as of the Effective Date, or becomes publicly available during the Term through no fault of the recipient Party;
- (b) can be documented was independently developed by the recipient Party; and/or
- (c) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this Agreement by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this Agreement. Confidential Information may be disclosed by the recipient Party to its Representatives, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this **Section 20.18** the recipient Party shall be responsible.

(C) Provided that Confidential Information is not disclosed by or for a recipient Party to a (i) J.P. Morgan Chase & Co. (together with its Affiliates, “**J.P. Morgan**”) business group other than J.P. Morgan Asset Management’s Alternatives-Infrastructure Investments Group, no such other business group(s) shall be deemed to be a “Representative” for purposes of this Agreement, and (ii) fund, investment vehicle, or separate account that is sponsored, advised, and/or managed by J.P. Morgan Investment Management Inc. and/or its Affiliates, no such fund, investment vehicle, or separate account shall be deemed to be a “Representative” for purposes of this Agreement.

(D) Either Party may disclose Confidential Information to the Commissions, its Representatives, intervenors, participants or consumer counsel in any regulatory or administrative proceedings before the Commissions, or pursuant to any regulatory requirement outside of a proceeding, without consent of or notice to the other Party, *provided*, that the disclosing Party shall submit such Confidential Information in accordance with the Commissions' confidentiality rules and procedures, Commission protective order or signed non-disclosure agreement.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the Effective Date.

Seller:

EPE:

[_____]

EL PASO ELECTRIC COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
DEFINITIONS

The following terms shall have the meanings set forth herein:

“AC” shall have the meaning set forth in Section 1.1.

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of the Storage Facility to automatically adjust the amount of Charging Energy, Discharging Energy and Ancillary Services within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Storage Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the amount of Charging Energy, Discharging Energy and Ancillary Services to and from the Storage Facility via the SCADA System.

“AGC Protocols” means the protocols for AGC included in Exhibit I - AGC Protocols, as such protocols may be modified from time to time in accordance with Section 10.7.

“AGC Remote/Local” means a handshake electronic signal sent from the Storage Facility to the SCC AGC system, and from the SCC AGC system to the Storage Facility, indicating the Storage Facility is receiving AGC Set-Point locally (from the Storage Facility) or remotely (SCC AGC system) and is following that AGC Set-Point.

“AGC Set-Point” means the EPE-generated analog or digital signal sent by the SCADA System to the Storage Facility. The AGC Set-Point is calculated by the SCC AGC system and communicated electronically to the Storage Facility via the SCADA System.

“Agreement” shall have the meaning set forth in the introductory paragraph.

“Ancillary Services” means any service associated, directly or indirectly, with the reliable generation and/or transmission of energy from the Storage Facility from time to time, including but not limited to: operating reserves, ramp capability, reactive supply, reactive supply capability, voltage control, voltage control capability, and any rights to compensation for any of these services, that the Storage Facility is capable of providing. “Ancillary Services” also includes any other identified as an “ancillary service” or “other ancillary service” in the Transmission Tariff.

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Storage Facility, now in effect or hereafter enacted, including amendments to or 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 and/or like actions.

“Approvals” means all approvals, authorizations, consents, filings, licenses, orders, Permits or similar actions by any Governmental Authority, the Transmission Provider or Market Operator, required

to be obtained by Seller to develop, construct, operate, and maintain the Storage Facility as contemplated by this Agreement.

“**Available Hours**” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Period Hours in such Commercial Operation Year, minus (b) the aggregate Unavailable Hours in such Commercial Operation Year.

“**Back-Up Metering**” shall have the meaning set forth in Section 5.3(B).

“**Balancing Authority**” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain interchange schedules with other such systems.

“**Business Day**” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“**Capacity Shortfall Damages**” shall have the meaning set forth in Section 4.7.

“**Cash Collateral**” shall have the meaning set forth in Section 11.3(A)(2).

“**Change in Tariff**” means any action by the U.S. government taking effect after the Effective Date that (a) increases the ad valorem rate of an existing tariff applicable to the Storage Facility equipment that is assessed or imposed on the importer of the Storage Facility equipment, (b) implements a new import tariff or import duty of any type applicable to the Storage Facility equipment, or (c) commences an investigation by a federal Governmental Authority for antidumping duties, countervailing duties, or similar import tariffs, customs, duties, price supports or similar Taxes or fees.

“**Change of Control**” means the occurrence of any one of the following events with respect to Seller: (a) a transfer that results in Ultimate Parent ceasing to own, directly or indirectly through one or more entities more than fifty percent (50%) of the ownership interests in Seller, excluding (for purposes of this clause (a)) any ownership or equity interests held in connection with a tax equity investment in the Storage Facility; or (b) a sale or conveyance of any direct or indirect ownership interest such that Ultimate Parent is no longer in control, either directly or indirectly through one or more intermediaries, of Seller; *provided however*, that a Change of Control shall not be deemed to have occurred as a result of: (i) transactions exclusively among Affiliates of Seller or any of its direct or indirect subsidiaries, (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents, including foreclosure on, deed, assignment or transfer in lieu of foreclosure, or similar acquisition or transfer of any equity or ownership interests in Seller, its Affiliates or the Storage Facility by any Facility Lender or secured party, (iii) the sale or issuance of equity or other ownership interests (or the change of economic and/or voting rights) by Seller or its Affiliates to a Facility Lender (or the subsequent transfer, assignment, or acquisition of such interest), including pursuant to any tax equity investment transaction, (iv) a direct or indirect transfer or assignment to, or acquisition by, any Person provided that following such transfer, assignment, and/or acquisition both (x) an Affiliate of Seller owns, directly or indirectly, at least ten percent (10%) of the equity or ownership interests of such Person, and (y) an Affiliate of Seller provides asset management services in connection with the Storage Facility, or (v) any direct or indirect transfer or assignment to, or acquisition by, a Permitted Transferee of, or other ownership interest in Seller. Without limiting the foregoing, and for the avoidance of doubt, a Change of Control of Seller will be deemed not to have occurred so long as Ultimate Parent remains the direct or indirect owner of at least fifty percent (50%) of the ownership or equity interests of Seller, excluding any ownership or equity interests held in connection with a tax equity investment in the Storage Facility.

“**Charging Energy**” means all energy supplied [by the Generating Facility at the Generating Facility Charging Point or all energy supplied] by EPE at the Point of Delivery, in all cases in accordance

with a Charging Notice.

“Charging Notice” means the operating instruction, including AGC Set-Point, and any subsequent updates, given by EPE to Seller, using AGC or other means provided for herein, directing delivery of Charging Energy to the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Operating Procedures. The Charging Notice shall specify the hours in which Seller shall charge the Storage Facility and the Stored Energy Level Seller shall charge the Storage Facility to, by the end of the last hour in which Seller shall charge the Storage Facility.

“COD Conditions” means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5(C)(2).

“COD Delay” shall have the meaning set forth in Section 12.3(A).

“COD Notice” shall have the meaning set forth in Section 4.5(A).

“Commercial Operation” means the period beginning on the Commercial Operation Date and continuing through the balance of the Term.

“Commercial Operation Date” or **“COD”** shall have the meaning set forth in Section 4.5(C)(1).

“Commercial Operation Year” or **“COY”** shall mean the twelve (12) month period following the prior Commercial Operation Year. For clarity, the first COY shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs.

“Commercially Reasonable” or **“Commercially Reasonable Efforts”** means, with respect to any action to be taken or attempted by a Party hereunder, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; and (c) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

“Commissions” means each of the NMPRC and PUCT.

“Confidential Information” shall have the meaning set forth in Section 20.18(A).

“Construction Contracts” means contracts required for the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the Storage Facility.

“Construction Event of Default” shall have the meaning set forth in Section 12.1.

“Construction Milestones” means the dates set forth in Exhibit B – Construction Milestones.

“Contract Price” shall have the meaning set forth in Exhibit J.

“Costs” means, with respect to a non-defaulting Party, brokerage fees, breakage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in terminating any arrangements entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement.

“Credit Rating” of any person or entity means the lowest rating assigned to such person or entity’s long-term debt or deposit obligations (unenhanced by third-party support) by Standard & Poors and Moody’s. If such person or entity has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, “Credit Rating” shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such person or entity by Standard & Poors or Moody’s.

“Day” means a calendar day.

“DC” shall have the meaning set forth in Section 1.1.

“Delivery Term” means the period of time commencing on the Commercial Operation Date and continuing through the end of the Term.

“Designation Approval Date” shall have the meaning set forth in Section 6.1(A).

“Discharging Energy” means all energy discharged by the Storage Facility pursuant to a Discharging Notice, less inverter, transformation and transmission losses, if any, measured at the Revenue Meter and delivered to the Point of Delivery.

“Discharging Notice” means the operating instruction, including AGC Set-Point, and any subsequent updates, given by EPE to Seller, using AGC or other means provided for herein, directing the Storage 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 the Operating Procedures. The Discharging Notice shall specify the hours in which Seller shall discharge the Storage Facility and the energy in each hour Seller shall discharge the Storage Facility.

“Dispute” shall have the meaning set forth in Section 13.1(A).

“Dispute Notice” shall have the meaning set forth in Section 13.1(A).

“Effective Date” shall have the meaning set forth in the introductory paragraph.

“Electric Metering Devices” means revenue quality meters, metering equipment and data processing equipment used to measure, record and transmit data with respect to the Charging Energy and Discharging Energy, including metering current transformers and metering voltage transformers. The Electric Metering Devices must be capable of storing five-minute revenue quality meter data for transmission to, and retrieval by, EPE.

“Eligibility Conditions” shall have the meaning set forth in Section 7.3(A).

“Emergency Condition” means any condition or situation that in the judgment of EPE and implemented by EPE on a nondiscriminatory basis, Seller or Transmission Provider (i) endangers or might endanger life or property; (ii) adversely affects or might adversely affect the reliability of the Transmission Provider’s System or its ability, or the ability of any other entity associated with the interconnected transmission system, to maintain safe and reliable electric service or otherwise pose a threat to public safety; or (iii) constitutes an “emergency” under the Interconnection Agreement. Emergency Condition shall include any condition that is considered an “Emergency” as defined by NERC in the Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“Environmental Attributes” means all existing (i) Renewable Energy Credits, (ii) environmental credits, benefits or attributes, (iii) emissions reductions, (iv) avoided emissions and

reporting rights for avoided emissions of pollutants to the air, soils or waters, such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), greenhouse gases (such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆)) that have been determined by the United Nations Intergovernmental Panel on Climate Change or by Applicable Law to contribute to the threat of climate change; (v) avoidances (including emission rate credits), offsets, allowances and green tags, and (vi) zero-emission electricity credits, that are attributable to the Storage Facility during the Term and/or the Charging Energy or the Product hereunder, recognized by Applicable Law, including any rights to compensation therefor.

“**Environmental Contamination**” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this Agreement, and/or (iii) will materially preclude or interfere with Seller’s ability to perform its obligations hereunder as and when due.

“**EPE**” shall have the meaning set forth in the introductory paragraph.

“**ERO**” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act or any successor organization. The certified ERO as of the Effective Date is the Western Electricity Coordinating Council (WECC) and SPP RC West.

“**Escrow Account**” shall have the meaning set forth in Section 11.3(A)(2).

“**Event of Default**” shall, collectively mean any Construction Event of Default, Operational Event of Default, or EPE Event of Default.

“**Excused Hours**” means, in any Commercial Operation Year, those hours during which Seller is unable to receive Charging Energy, or deliver Discharging Energy as a result of: (a) curtailments of the [Generating Facility or] Storage Facility directed by EPE, Transmission Provider or any Governmental Agency (but only to the extent such curtailment does not result from Seller’s failure to comply with this Agreement or the Interconnection Agreement or Seller’s failure to observe Good Utility Practices); (b) Force Majeure; (c) a Transformer Failure; and (d) EPE’s failure to perform its obligations under this Agreement.

“**Facility Debt**” means the obligations of Seller or its Affiliates to any lender or tax equity investor pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any fees or interest due with respect to any of the foregoing.

“**Facility Lender**” means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

“**Federal Power Act**” means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

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

“**Financing Documents**” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, equity contribution agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge,

construction, back-leverage or permanent debt financing and/or tax equity financing for the Storage 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 in connection with development, construction, ownership, leasing, operation or maintenance of the Storage Facility.

“Forced Outage” means any condition at the Storage Facility that requires the immediate and unplanned removal of the Storage Facility, or at least ten percent (10%) thereof, from service, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Storage Facility conditions or alarms.

“Forward Settlement Amount” means, with respect to the non-defaulting Party, the net Losses and Gains, and Costs, expressed in U.S. dollars, which such Party incurs as a result of a termination of this Agreement in accordance with Section 12.5(A) plus all amounts then owed to the non-defaulting Party by the defaulting Party. If the non-defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Forward Settlement Amount shall be zero.

“Future Environmental Attributes” means any Environmental Attribute for which the Storage Facility becomes eligible for after the Effective Date and during the Delivery Term. Future Environmental Attributes shall not include any Environmental Attributes or Product in existence as of the Effective Date, Tax Benefits, or transmission payments.

“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), resulting from the termination of this Agreement for the remaining Term, determined in a commercially reasonable manner, which economic benefit (if any) shall 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 during the remaining Term and the present value of the payments or deliveries that would be required to be made under a transaction(s) replacing this Agreement.

“Generating Facility” means the co-located [_____] facility owned by Seller Affiliate used to charge the Storage Facility at the Generating Facility Charging Point pursuant to a Charging Notice.]

“Generating Facility Charging Point” means the electric system point at which the Generating Facility delivers energy to the Storage Facility for purposes of charging the Storage Facility in accordance with the terms of this Agreement.]

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to storage facilities of the type, similar size and location to the Storage Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include, but are not limited to NERC, the ERO, the Market Operator (if any), the Commissions, the Transmission Provider and FERC, and successor organizations.

“Guaranteed Storage Facility Capabilities” means the Storage Availability Guarantee, Storage Power Capacity Rating Guarantee, Storage Ramp Rate Guarantee, Roundtrip Efficiency Guarantee, and the Signal Response Guarantee.

“Hazardous Material” means any substance, contaminant, chemical, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to public health, public welfare, or the natural environment (including protection of non-human forms of life, land, water, groundwater, and air), including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) per- and polyfluoroalkyl substances (vi) radioactive material; (vii) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (viii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (ix) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (x) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (xi) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

“Import Restriction Action” means any import or customs-related action by the U.S. government taking effect after the Effective Date that directly delays, prevents, or prohibits the delivery of Storage Facility equipment procured by Seller, including, without limitation, (i) a U.S. Customs and Border Protection withhold release order, issuance of a CF28 or CF29 instrument, detention or seizure related to the Uyghur Forced Labor Prevention Act, or (ii) any import restriction imposed by the U.S. government on (x) equipment sourced from the country of origin of any Storage Facility equipment, (y) equipment sourced from any supplier, vendor, or manufacturer of any Storage Facility equipment, and/or (z) equipment similar or identical to any Storage Facility equipment, except to the extent any such delay is caused by or attributable to the negligence of Seller or any Person acting on behalf of or at the direction of Seller (including any agent of Seller).

“Indemnifiable Losses” shall have the meaning set forth in [Section 17.1](#).

“Indemnified Party” shall have the meaning set forth in [Section 17.1](#).

“Indemnifying Party” shall have the meaning set forth in [Section 17.1](#).

“Interconnection Agreement” means the separate contract for interconnection of the Storage Facility to the Transmission Provider’s System, as such agreement may be amended from time to time. For purposes of this Agreement, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by the Transmission Provider to interconnect the Storage Facility in accordance with the Transmission Tariff.

“**Interconnection Facilities**” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Storage Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, the Transmission Provider or another entity. This equipment is conceptually depicted in **Exhibit C - Storage Facility Description** to this Agreement.

“**Interconnection Point**” means the physical point within the operational authority of the Transmission Provider as specified in the Interconnection Agreement as project [_____], at which electrical interconnection is made between the Storage Facility and the Transmission Provider’s System in accordance with the Transmission Tariff and the Interconnection Agreement.

“**Investment Grade**” means a Credit Rating of both (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by Standard & Poors.

“**IRA**” means P.L. 117-169 (commonly known as the Inflation Reduction Act of 2022) and any regulations or administrative guidance issued thereunder.

“**Issuer**” means a U.S. bank or, if approved by EPE, a U.S. branch of a foreign bank.

“**ITC(s)**” means any investment tax credits applicable to energy storage resources pursuant to 26 U.S.C. §48 or 26 U.S.C. §48E, as applicable, as in effect as of the Effective Date and as administered and interpreted under Applicable Law as of the Effective Date.

“**kW**” means kilowatt.

“**kWh**” means kilowatt hour.

“**Lender Consent**” shall have the meaning set forth in **Section 18.1(A)**.

“**Letter of Credit**” shall have the meaning set forth in **Section 11.3(A)(1)**.

“**Liquidated Delay Damages**” shall have the meaning set forth in **Section 12.3(A)**.

“**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), resulting from termination of this Agreement for the remaining Term, determined in a commercially reasonable manner, which economic loss (if any) will be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments or deliveries required to be made under this Agreement and the present value of the payments or deliveries that would be required to be made under transactions replacing this Agreement, each of which shall be calculated for the remaining Term of the Agreement. If EPE is the non-defaulting Party, its economic losses will include the cost of replacing the Environmental Attributes lost as a result of such termination.

“**Maintenance Schedules**” shall have the meaning set forth in **Section 10.2(A)**.

“**Market Event**” shall have the meaning set forth in **Section 5.2**.

“**Market Operator**” means the entity that instructs market participants and/or generators to regulate generation assets (including the Storage Facility) within any energy market in which EPE participates, based on price-based offer curves for the purpose of matching generation output to system

load demand while maintaining bulk electric system reliability. If such entity is the Transmission Provider, then “Market Operator” shall mean such entity acting in its capacity as such.

“**Material Adverse Effect**” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this Agreement.

“**MW**” means megawatt or one thousand (1,000) kW, and “**MWh**” means megawatt hours or one thousand (1,000) kWh.

“**NERC**” means the North American Electric Reliability Council or any successor organization.

“**Network Load**” has the meaning provided in Network Service Provider’s Transmission Tariff.

“**Network Resource**” has the meaning provided in Network Service Provider’s Transmission Tariff.

“**Network Service Provider**” means EPE operating under and in accordance with its Transmission Tariff.

“**NMPRC**” means the New Mexico Public Regulation Commission or any successor agency.

“**Notice of Proposed Third Party Sale**” shall have the meaning set forth in Section 19.3(C).

“**NSP Approvals**” shall have the meaning set forth in Section 6.1(A).

“**Offeror**” means the applicable Person, whether Seller or an Affiliate of Seller, proposing to enter into a transaction set forth in a Proposed Sale Notice with a third party.

“**Operating Committee**” means one Representative and one alternate each from EPE and Seller, pursuant to Section 10.7.

“**Operating Procedures**” means those procedures governing operation of the Storage Facility as set forth in Exhibit O – Operating Procedures and as further expanded, revised and amended by the Operating Committee pursuant to Section 10.7, including (a) the Operating Restrictions, (b) procedures for scheduling and dispatch, and (c) methods of day-to-day communications.

“**Operating Records**” means the final versions of all agreements associated with the Storage Facility, Charging Notices and Discharging Notices, operating logs, blueprints for construction, operating manuals, test reports, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Storage Facility.

“**Operating Restrictions**” shall have the meaning set forth in Exhibit O – Operating Procedures.

“**Operational Event of Default**” shall have the meaning set forth in Section 12.2.

“**Party**” and “**Parties**” shall have the meanings set forth in the introductory paragraph.

“**Period Hours**” means the actual number of hours in a given Commercial Operation Year or partial Commercial Operation Year, being either eight thousand seven hundred sixty (8,760) or eight thousand seven hundred eighty four (8,784) in each full Commercial Operation Year, as applicable.

“**Permit**” means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, licenses, and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the Storage Facility.

“**Permitted Extensions**” shall have the meaning set forth in **Section 12.3(B)**.

“**Permitted Lien**” means any of the following: (i) liens for the benefit of a Lender, (ii) inchoate liens that arise by operation of law which are associated with obligations that are not yet due and payable; (iii) liens cured or removed within thirty (30) Days after their incurrence; and (iv) liens incurred in the ordinary course of business in connection with worker’s compensation, unemployment insurance, social security and other employment related laws.

“**Permitted Transferee**” means any Person that (i) is a Qualified Operator; and (ii) individually or together with its Affiliates has a consolidated net worth of at least One Hundred Million Dollars (\$100,000,000).

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association, or Governmental Authority.

“**PI System**” means the “plant information” system for the Storage Facility.

“**Point of Delivery**” means the physical point within the operational authority of Transmission Provider at which Seller receives Charging Energy from EPE and makes available and delivers Product to EPE. The Point of Delivery is specified in **Article 3** and in **Exhibit C - Storage Facility Description**.

“**Proposed Purchase End Date**” shall have the meaning set forth in **Section 19.3(C)**.

“**Proposed Purchase Notice**” shall have the meaning set forth in **Section 19.3(B)**.

“**Proposed Sale Notice**” shall have the meaning set forth in **Section 19.3(A)**.

[“**PPA**” means the Power Purchase Agreement, dated as of the date hereof, by and between Seller Affiliate and EPE relating to the Generating Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.]

“**PRC/PUC Approval**” means each final order or other regulatory determination from either or both of the PUCT or the NMPRC, as determined by EPE in its sole discretion, required in connection with EPE’s execution and performance under the Agreement.

“**Product**” means the Discharging Energy, Storage Energy Capacity, and Ancillary Services, in ease case arising from or related to the Storage Facility.

“**PTC(s)**” means production tax credits under 26 U.S.C. §45 or the technology-neutral clean electricity production tax credits under 26 U.S.C. §45Y, as the same may be amended from time to time, and any successor provisions for which the Storage Facility or any portion thereof qualifies.

“**PUCT**” means the Public Utility Commission of Texas or any successor agency.

“**Qualified Operator**” means a Person that (a) has operated, for a period of at least two (2) years,

energy storage facilities in North America, of at least 200 MW energy storage capacity in aggregate with at least one facility that has at least 50 MW energy storage capacity; and (b) maintains an operating staff consisting of personnel with comparable experience in the operation and maintenance of energy storage facilities similar to the Storage Facility.

“**Rating Agency**” means any of S&P, Moody’s, or Fitch.

“**Renewable Energy Credits**” or “**RECs**” means the right to all non-energy attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the Charging Energy or the Product received from the Storage Facility, including environmental air quality credits, tags and allowances created by Applicable Law by virtue of the Storage Facility’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not necessarily limited to rights eligible for registration, trading and/or use under any current or future registration program.

“**Representatives**” shall mean a Party’s staff, agents, employees, directors, officers, consultants, auditors, and actual or potential Facility Lenders, equity investors and purchasers, including tax credit purchasers.

“**Required Amount**” shall have the meaning set forth in Section 11.1(A).

“**Revenue Meter**” means the revenue meter, or meters, for the Storage Facility.

“**SCADA System**” means supervisory control and data acquisition.

“**Scheduled Commercial Operation Date**” or “**Scheduled COD**” means the date set forth in Article 3, subject to extension as set forth in Section 12.3(B).

“**Security Fund**” shall have the meaning set forth in Section 11.1.

“**Seller**” shall have the meaning set forth in the introductory paragraph.

“**Seller Guaranty**” shall have the meaning set forth in Section 11.3(A)(3).

“**Seller Affiliate**” means [_____], a [_____] [_____].

“**Signal Response**” means the time measured between when the AGC control signal is received at the Storage Facility and the Storage Facility responds to the signal by changing the discharge or charge power value by more than one percent (1%) of the control setpoint.

“**Signal Response Damages**” is defined in Section 8.4(E).

“**Signal Response Guarantee**” is defined in Section 8.3(E).

“**Site**” means the parcel of real property on which the Storage Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Storage Facility. The Site is more specifically described in Exhibit C - Storage Facility Description to this Agreement.

“**Station Services**” means electrical power for purposes of operating the Storage Facility,

including start-up, shut-down, HVAC or any other purpose.

“**Storage Availability**” a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Available Hours divided by (ii) the sum of all Period Hours in the relevant Commercial Operation Year.

“**Storage Availability Damages**” shall have the meaning set forth in **Exhibit P – Storage Availability Guarantee**.

“**Storage Availability Guarantee**” shall have the meaning set forth in **Section 8.3(A)**.

“**Storage Energy Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge electric energy in MWh, and any other products that may be developed or evolve from time to time during the Term that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

“**Storage Energy Capacity Test**” means the testing procedures, requirements and protocols set forth in **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**.

“**Storage Facility**” means Seller’s electric storage facilities, associated balance of plant, parts, fixtures and equipment, and all equipment necessary to interconnect to the Transmission Provider’s System and to deliver the Product subject to this Agreement, as further described in **Exhibit C - Storage Facility Description**, including Seller’s rights to the Site and improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance of the foregoing, and generation and delivery of the Product.

“**Storage Power Capacity Damages**” shall have the meaning set forth in **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**.

“**Storage Power Capacity Rating**” means the total capacity (in MW) of the Storage Facility as determined from time to time in accordance with **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**.

“**Storage Power Capacity Rating Guarantee**” shall have the meaning set forth in **Exhibit M – Storage Energy Capacity Testing; Storage Power Capacity Rating Guarantee and Storage Power Capacity Damages**.

“**Storage Power Capacity Shortfall**” means, as of the determination date, the difference between (i) the Storage Power Capacity Rating Guarantee and (ii) the Storage Power Capacity Rating.

“**Storage Ramp Rate**” means the rate (measured in MW/millisecond) at which the Storage Facility can change power output.

“**Storage Ramp Rate Damages**” is defined in **Section 8.4(D)**.

“**Storage Ramp Rate Guarantee**” is defined in **Section 8.3(D)**.

“**Storage Ramp Rate Test**” means the testing procedures, requirements and protocols set forth

in Exhibit R – Storage Ramp Rate Test.

“**Storage Roundtrip Efficiency**,” or “**Storage RTE**,” means, in respect of a specified period of time, the ratio (expressed as a percentage) of (a) the total amount of energy (in MWh) discharged from the Storage Facility during such period of time and (b) the total amount of energy (in MWh) charged to the Storage Facility during such period of time, all as determined pursuant to Exhibit Q – Storage Roundtrip Efficiency Guarantee.

“**Storage Roundtrip Efficiency Damages**,” or “**Storage RTE Damages**,” is defined in Exhibit Q – Storage Roundtrip Efficiency Guarantee.

“**Storage Roundtrip Efficiency Guarantee**,” or “**Storage RTE Guarantee**,” is defined in Section 8.3(C).

“**Stored Energy Level**” means, at any particular time, the amount of electric energy stored in the Storage Facility, expressed in MWh.

“**Supply Chain Event**” means any delay in Seller’s performance of its obligations hereunder arising out of any Change in Tariff or Import Restriction Action applicable to the equipment or merchandise procured by Seller (or arranged for procurement by Seller) to be used in or for the Storage Facility and that arises after Seller has procured or arranged for the procurement of such equipment or merchandise to be used in or for the Storage Facility.

“**System Control Center**” or “**SCC**” means EPE’s merchant representatives responsible for dispatch of EPE’s generation and capacity resources, including the Storage Facility.

“**Tax Benefits**” means (a) federal, local and state investment and/or production tax credits (including ITCs and PTCs), and any other tax credits or other financial incentives (including grants) which are or will be generated with respect to the construction, ownership, operation, maintenance or other use of any portion of the Storage Facility, (b) any cash payments or outright grants of money provided by a Governmental Authority or non-Governmental Authority in lieu of such tax credits, and (c) depreciation deductions and depreciation benefits, and any other tax benefits arising from the construction, ownership, operation, maintenance or other use of any portion of the Storage Facility.

“**Term**” means the period of time during which this Agreement remains in full force and effect, as further defined in Article 2.

“**Transformer Failure**” means a failure for any cause to all or part of the high voltage equipment including the transformers, the associated circuit breakers and any and all other high voltage switchgear and associated equipment; provided, any such failure cannot exceed eighteen (18) months in duration.

“**Transmission Provider**” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Storage Facility pursuant to a Transmission Tariff, including, as applicable, (i) EPE operating under and in accordance with its Transmission Tariff, and (ii) all entity(s) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Storage Facility interconnects at the Interconnection Point and transmission system.

“**Transmission Provider’s System**” means the contiguously interconnected electric transmission and sub-transmission facilities, over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Interconnection

Point.

“**Transmission Tariff**” means the Open Access Transmission Tariff of the Transmission Provider or Network Service Provider, as applicable, as amended from time to time.

“**Ultimate Parent**” means [_____], a [_____] [_____].

“**Unavailable Hours**” means those hours, other than Excused Hours, that the Storage Facility unable to receive Charging Energy, or deliver Discharging Energy because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) subject to any maintenance outage; or (d) otherwise not operational or capable of delivering Discharging Energy or accepting Charging Energy; *provided*, that a nonoperational status, or inability to deliver Discharging Energy or accept Charging Energy, including any derate of the Storage Facility or other unavailability affecting part of the Storage Facility will count as an equivalent percentage of the applicable hour(s) for the calculation of Unavailable Hours.

* * * * *

EXHIBIT B
CONSTRUCTION MILESTONES

Construction

Milestone

Outcome

[Date]

Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Storage Facility.

[Date]

Seller and the Transmission Provider shall have executed the Interconnection Agreement.

[Date]

Seller shall have achieved closing on financing for the Storage Facility or provided EPE with proof of financial capability to construct the Storage Facility.

[Date]

The main battery systems and components and step-up transformer shall have been delivered and installed at the Site.

[Date]

Seller's Interconnection Facilities shall have been constructed, and such facilities are capable of being energized.

[Date]

Start-up testing of the Storage Facility commences.

EXHIBIT C
STORAGE FACILITY DESCRIPTION

[This Exhibit shall include a description of the Storage Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point.]

The Storage Facility shall be located on the Site and shall be identified as [_____]. Maps and one-line diagrams of the Storage Facility and associated equipment are included as part of this Exhibit.

Storage Facility Address: [_____]

Latitude: [_____] , Longitude: [_____]

Description of easements secured for physical entrance of permanent and temporary equipment (e.g. drive way and cable/wire easements): [_____]

Seller: [_____]

Ultimate Parent: [_____]

Storage Facility Operator: [_____]

Storage Facility Description:

Battery technology (& chemistry if chemical battery): [_____]

Type of Battery Storage Design: [_____]

Brand & Model: [_____]

Number of Units: [_____]

Battery Management System: [_____]

Operating Characteristics of Storage Facility:

Charging power capacity at the Point of Delivery: [] MW

Discharging power capacity at the Point of Delivery: [] MW

Maximum MW Output: []

Minimum MW Output: []

Allowed Depth of Discharge: []

Annual Average State of Charge Limit (SoC): []

Interconnection Point: [_____] (*which shall be the same as set forth in Interconnection Agreement*)

Point of Delivery: [_____]

Site Map: *See below in this Exhibit*

Storage Facility One-Line Diagram: *See below in this Exhibit*

The Storage Facility must include the following specific components and capabilities:

- * have the module space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the Agreement;
- * communication circuits from the Storage Facility to the SCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by EPE;
- * equipment and software necessary to receive, accept and react to an AGC signal from EPE's SCADA System and to comply with the AGC Protocols as further specified in **Exhibit I**, the Operating Procedures and the Operating Restrictions;
- * ramping capability, voltage control (on and off peak) and frequency control. pursuant to NERC guidelines/requirements.
- * capability of sending real time data and OPC interface to EPE's PI System;

[Additional Bid and Storage Facility Specific requirements to be added]

Site Map

[To be inserted]

Storage Facility One-Line Diagram

[To be inserted]

EXHIBIT D
NOTICES AND CONTACT INFORMATION²

If to Seller to:

[]
[]
[]
Attn: []
Email: []
Phone: []

and

[]
[]
[]
Attn: []
Email: []
Phone: []

Federal Tax ID Number: []

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: []
Phone: []
Email: []

Notices Regarding Proposed Commercial Operation Date:

Attn: []
Phone: []
Email: []

Scheduling (Current Day):

Attn: []
Phone: []
Email: []

If to EPE to:

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
Attn: General Counsel
Phone: 915-543-0001
Email: epelegal@epelectric.com

and

El Paso Electric Company
P.O. Box 962
El Paso, Texas 79960
Attn: []
Email: []

Federal Tax ID Number: []

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: General Counsel
Phone: 915-543-0001
Email: epelegal@epelectric.com

Notices Regarding Proposed Commercial Operation Date:

Attn: EPE COD Notices
Email: CODnotices@epelectric.com

Scheduling (Current Day):

Attn: Real Time Trading
Phone: 915-543-5808
Fax: 915-543-2204
Email: realtimetrading@epelectric.com

² NTD: To be populated

Scheduling (Day-Ahead):

Attn: []
Phone: []
Email: []

Scheduling (Day-Ahead):

Attn: Day Ahead Trading
Phone: 915-543-4036/915-543-2044
Fax: 915-543-2204
Email: dayaheadtrading@epelectric.com

Invoices:

Attn: []
Phone: []
Email: []

Invoices:

Attn:
Phone: 915-543-2055
Email: mktcheckout@epelectric.com

Payments:

Attn: []
Phone: []
Email: []

Payments:

Attn: Accounts Payable
Phone: 915-543-5961
Email: ap@epelectric.com

Wire Transfer:

Bank: []
ABA: []
Acct: []

Wire Transfer:

Bank: []
ABA: []
Acct: []

***Please send an email to cashmanagement@epelectric.com prior to sending wire payment with the purpose of the payment and EPE internal contact to ensure your wire transfer is accurately accounted.*

Credit and Collections:

Attn: []
Phone: []
Email: []

Credit and Collections:

Attn: Claims and Risk Management
Phone: 915-543-2061
Email: []

EXHIBIT E
INSURANCE COVERAGE

| Type of Insurance | Minimum Limits of Coverage |
|--|--|
| Commercial General Liability (CGL) and commercial umbrella | \$5,000,000 per occurrence and \$10,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Storage Facility. |

CGL insurance shall be written on ISO occurrence form CG 00 01 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of “Insured contract” to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

EPE shall be included as an additional insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall and EPE shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement.

| | |
|-------------------------------|---|
| Business Automobile Liability | \$1,000,000 combined single limit (each accident), including all Owned (if any), Non-Owned, Hired and Leased Autos. |
|-------------------------------|---|

Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

| | |
|----------------------|---|
| Workers Compensation | \$1,000,000 minimum and Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan. |
|----------------------|---|

[Exhibit E - continued]

| Type of Insurance | Minimum Limits of Coverage |
|--|--|
| Employers Liability | \$1,000,000 each accident for bodily injury by accident, or \$1,000,000 each employee for bodily injury by disease. |
| Excess Liability | \$10,000,000 general aggregate |
| Business Interruption insurance | \$2,000,000 general aggregate |
| Builder's Risk | Replacement value of the Storage Facility. |
| Sudden and Accidental Pollution | \$1,000,000 each occurrence, pollution coverage on a time element basis which may be included as part of Seller's CGL or commercial umbrella policy. |
| All-Risk Property insurance covering physical loss or damage to the Storage Facility | Full replacement value of the Storage Facility. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. |

Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy

All-Risk Property insurance shall include coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake.

EXHIBIT F
PERMITS

To be added - Bid Specific

EXHIBIT G
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No: _____ Date of Issuance: _____

Beneficiary: El Paso Electric Company

Initial Expiration Date: [Must be at least one year after date of issuance]

Applicant:

As the Issuing Bank (“Issuer”), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. _____ (this “Letter of Credit”) in favor of the above-named beneficiary (“Beneficiary”) for the account of the above-named applicant (“Applicant”) in the amount of US\$ _____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary’s draft(s) at sight in substantially the form attached hereto as Exhibit “A” (“Sight Draft”), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will affect payment under this Letter of Credit within five (5) Business Days after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer’s own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer’s letterhead office, the office located at _____ or any other full-service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Energy Storage Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the “Agreement”). Notwithstanding any reference in this Letter of Credit to the Agreement or any other documents, instruments or agreements, or references in the Agreement or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered or certified mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary’s address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer’s letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall affect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit “B.”

Such transfer will be affected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____

\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD
\$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address]. Drawn under [Name
of Issuer to be inserted] Standby Letter of Credit No. _____.

Dated: _____

El Paso Electric Company

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT
FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

El Paso Electric Company

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT H
FORM OF GUARANTY

This Guaranty (the "Guaranty"), dated as of [_____] [____], 20[____] (the "Effective Date"), is executed and delivered by [_____] [____], a [_____] [____] ("Guarantor"), in favor of El Paso Electric Company ("Company"), in connection with the performance by [_____] [____], a [_____] [____] ("Seller") of that certain Energy Storage Agreement, dated [_____] [____], 20[____], by and between Seller and Company (as amended, restated, supplemented or otherwise modified from time to time, the "ESA"). Capitalized terms used but not defined herein shall have the meanings set forth in the ESA.

RECITALS

- A. To induce Company to enter into the ESA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.
- B. Guarantor will benefit from the ESA between Company and Seller.

NOW, THEREFORE, in consideration of the foregoing and as an inducement for Company's execution, delivery and performance of the ESA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Company as follows:

AGREEMENT

- 1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the ESA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
 - a. The liability of Guarantor under this Guaranty is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the ESA or the pursuit by Company of any remedies which it now has or may hereafter have under the ESA;
 - b. Company may enforce this Guaranty for Seller's failure to meet any of its obligations under the ESA, including upon the occurrence of a default by Seller under the ESA notwithstanding the existence of a dispute between Company and Seller with respect to the existence of a failure or default;
 - c. The obligations of Guarantor under this Guaranty are independent of the obligations of Seller under the ESA and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Seller or any other guarantors and whether or not Seller is joined in any such action or actions;
 - d. Company may, at its election, foreclose on any security held by Company, or exercise any other right or remedy available to Company without affecting or impairing in any

way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Company by Seller have been paid;

- e. Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding: (i) any modification, amendment, supplement, extension, agreement or stipulation between Seller and Company or their respective successors and assigns, with respect to the ESA or the obligations encompassed thereby; (ii) Company's waiver of or failure to enforce any of the terms, covenants or conditions contained in the ESA; (iii) any release of Seller or any other guarantor from any liability with respect to the Obligations or any portion thereof; (iv) any release, compromise or subordination of any real or personal property then held by Company as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto; (v) without in any way limiting the generality of the foregoing, if Company is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit; (vi) Company's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty; (vii) Company's exercise of any other rights available to it under the ESA; (viii) Company's consent to the change, reorganization or termination of the corporate structure or existence of the Seller and to any corresponding restructuring of the Obligations; (ix) any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations; and (x) any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations; and
 - f. Guarantor agrees that upon a demand for payment under this Guaranty, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Seller may allege or assert against Company with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Seller may allege or assert against Company (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.
2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ (\$ _____), plus costs of collection with respect to any valid claim(s) made by Company hereunder that are incurred in the enforcement or protection of the rights of Company.
3. Performance; Payment. If any of the Obligations are not performed according to the tenor thereof ("Failure"), Guarantor shall immediately (but in no event later than three (3) Business Days) upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Failure, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct. All sums payable by Guarantor hereunder shall be made in immediately available funds in U.S. Dollars.
4. Term; Satisfaction.

- a. This Guaranty shall continue in full force and effect until the earlier to occur of: (i) the substitution of an alternative form of Security in accordance with the ESA; (ii) the satisfaction of all Obligations of Seller under the ESA; or (iii) the payment by Guarantor, without reservation of rights, of an aggregate amount equal to the maximum liability set forth in Section 2, together with any other amounts required to be paid by Guarantor pursuant to Section 9 hereof.
 - b. Satisfaction by Guarantor of any duty hereunder incident to a particular Failure or the occurrence of any other Failure shall not discharge Guarantor except with respect to the Failure satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full.
5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Company, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Seller. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal bankruptcy code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.
6. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:
 - a. all set-offs, counterclaims, withholdings or deductions and all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by applicable laws;
 - b. any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;
 - c. any defense based upon an election of remedies by Company;
 - d. any duty of Company to protect or not impair any security for the Obligations;
 - e. any defense based upon promptness, diligence, and any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - f. the benefit of any laws limiting the liability of a surety or any other circumstance that limits the liability of or exonerates a guarantor generally or provides any legal or equitable discharge of Guarantor's obligations hereunder;

- g. other than demand for payment, any requirement of notices between Company and Seller including, without limitation, notice of acceptance of this Guaranty, any information regarding Seller's financial condition, and all other notices whatsoever; and
 - h. until all Obligations in Failure have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder.
- 7. Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the ESA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.
- 8. Representations and Warranties. Guarantor represents and warrants to Company as follows:
 - a. Guarantor is a [corporation], duly organized, validly existing, and in good standing under the laws of the state of its [incorporation]. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
 - b. The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- 9. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.
- 10. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.
- 11. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.
- 12. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor. Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of Company, which consent may be withheld in its sole discretion. Company shall have the right to assign this Guaranty to any person or entity without the prior written consent of Guarantor; provided, however, that no such

assignment shall be binding upon Guarantor until it receives written notice of such assignment from Company.

13. Governing Law. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Texas, without regard to principles of conflicts of laws thereunder that would trigger the application of any other law. All dispute arising out of or related to this Guaranty shall be brought in the state or federal courts located in El Paso, Texas. Guarantor waives any claim or defense that such action or proceeding brought in any such court is an inconvenient forum, any objection to venue with respect to such action or proceeding, and any right of jurisdiction on the account of the place of residence or domicile of the Guarantor.

14. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing, addressed as set forth below, or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth herein. Any such notice, request, consent, or other communication shall either be hand delivered, sent via overnight service with signature required upon receipt, or delivered by electronic mail and shall be deemed to have been received by the close of the Business Day on which it was delivered or transmitted electronically (unless delivered or transmitted after such close in which case it shall be deemed received at the beginning of the next Business Day).

If to Company: El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Phone: (915) 543-0001
Email: legal@epelectric.com

With a copy to:

El Paso Electric Company
100 N. Stanton St.
El Paso, Texas 79901
Attn: [_____]
Email: [_____]

If to Guarantor: _____

Attn:
Phone: (____) _____
Email:

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered to Company as of the Effective Date.

[Name of Guarantor]

By: _____
Name:
Title:

EXHIBIT I
AGC PROTOCOLS

AGC Protocols

1. AGC Communications between EPE and Seller

EPE will receive and send AGC Set-Point and related data over an analog or digital line. The data points covered hereunder, as described below, may overlap data requirements for the Transmission Provider or EPE's applicable forecasting group. Latitude and longitude coordinates for the location of the AGC communications at the Storage Facility are: [_____].

2. AGC Data Points to be sent from Seller to EPE via SCADA

The following data points will be transmitted via SCADA from Seller to EPE and represent Storage Facility level data:

| <u>Description</u> | <u>Units</u> |
|----------------------|--------------|
| AGC Set-Point (echo) | MW |
| Actual power | MW |
| AGC Status | Remote/Local |

3. Response times and limitations of Storage Facility in regard to AGC

The following protocols outline the expectations for responding to the AGC Set-Point. Except in the case of the Frequency of Changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Storage Facility.

a. Range of AGC Set-Point. The range of set point values can be between 0% and 100% of the Storage Power Capacity Rating.

4. Backup Communications

In the event of an AGC failure, EPE and Seller shall communicate via telephone in order to correct the failure. Seller shall use Commercially Reasonable Efforts to restore AGC control as soon as practical.

* * * * *

EXHIBIT J
CONTRACT PRICE

| Commercial Operation Year | Contract Price (\$/MW/Month) |
|---------------------------------|---------------------------------|
| 1 | \$ _____ |
| 2 | \$ _____ |
| 3 | \$ _____ |
| 4 | \$ _____ |
| 5 | \$ _____ |
| 6 | \$ _____ |
| 7 | \$ _____ |
| 8 | \$ _____ |
| 9 | \$ _____ |
| 10 | \$ _____ |
| 11 | \$ _____ |
| 12 | \$ _____ |
| 13 | \$ _____ |
| 14 | \$ _____ |
| 15 | \$ _____ |
| 16 | \$ _____ |
| 17 | \$ _____ |
| 18 | \$ _____ |
| 19 | \$ _____ |
| 20 | \$ _____ |

EXHIBIT K
FORM OF LENDER CONSENT
CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20__, is entered into by and among El Paso Electric Company, a Texas corporation (the “Contracting Party”), [_____] , a [_____] [_____] (“Project Company” and “Assignor”) and [_____] , as collateral agent for the Secured Parties (in each case used herein, has the meaning given to “Secured Parties” in the below defined Financing Agreement) (the “Collateral Agent”). Unless otherwise defined herein, all capitalized terms have the meaning given in the Assigned Agreement (as defined below).

RECITALS

A. Project Company intends to develop, construct, install, test, own, operate and use an approximately [_____] facility to be constructed in [_____] , [_____] (the “Project”).

B. The Contracting Party and Project Company have entered into that certain Energy Storage Agreement, dated as of [_____] (as amended by the terms hereof and as may be further amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof ,the “Assigned Agreement”).

C. In order to finance the development, construction, installation, testing, operation and use of the Project, Assignor has entered into that certain [Financing Agreement], dated as of [_____] (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), by and among the Assignor, the financial institutions from time to time party thereto as lenders and letter of credit issuing banks (collectively, the “Lenders”), the Collateral Agent, and any other agents and persons party thereto, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, the Assignor.

D. As a condition of the financing under the Financing Agreement, the Assignor has entered into that certain [Security Agreement], dated as of [_____] , with Collateral Agent, among others (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), pursuant to which Assignor has agreed to assign all of its right, title and interest in, to and under the Assigned Agreement (the “Assigned Interest”) to the Collateral Agent, for the benefit of the Secured Parties, as collateral security for satisfaction of certain secured obligations (the “Secured Obligations”) under the Financing Agreement and the other related financing documents (collectively, and together with the Security Agreements, the “Financing Documents”).

E. It is a condition precedent to the Lenders’ obligations under the Financing Agreement that Contracting Party shall have entered into this Consent with the Project Company and Collateral Agent.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT; ACKNOWLEDGMENTS.

(a) The Contracting Party consents to an assignment of all of Assignor's rights and obligations under the Assigned Agreement by such Assignor to the Collateral Agent as collateral pursuant to the Financing Documents.

(b) The Contracting Party acknowledges that each Lender is a "Facility Lender" under and as defined in the Assigned Agreement.

2. LIMITATIONS ON ASSIGNMENT.

(a) The Collateral Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of the Assignor under the Assigned Agreement, subject to applicable conditions, including notice and cure periods, provided in the Assigned Agreement and as set forth herein. Upon receipt of a complying notice from the Collateral Agent, the Contracting Party agrees to accept such exercise and cure by the Collateral Agent if timely made by the Collateral Agent under and otherwise consistent with the terms of the Assigned Agreement and this Consent. Upon receipt of the Collateral Agent's written instructions and to the extent allowed by law, the Contracting Party agrees to make, directly to such account, as the Collateral Agent may direct the Contracting Party in writing from time to time, all payments to be made by Contracting Party to the Assignor under the Assigned Agreement from and after the Contracting Party's receipt of such instructions, and Assignor consents to any such action. The Contracting Party shall have no liability to the Assignor under the Assigned Agreement or this Consent for directing such payments to the Collateral Agent in accordance with this Section 2(a). As of the date hereof, such written instructions are as follows:

With respect to Project Company:

[_____]
Bank: [_____]
ABA: [_____]
Account Name: [_____]
Account Number: [_____]

(b) The Contracting Party agrees to deliver duplicates or copies of all notices of Events of Default (as defined in the Assigned Agreement) by the Assignor delivered by the Contracting Party under or pursuant to the Assigned Agreement to the Collateral Agent in accordance with the notice provisions of this Consent. In the event of an Event of Default by an Assignor in the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall not terminate the Assigned Agreement until it first gives written notice of such Event of Default to the Collateral Agent and affords the Collateral Agent, (i) if such Event of Default is the failure to pay amounts to the Contracting Party which are due and payable under the Assigned Agreement, a period of thirty (30) days from the later to occur of (y) the receipt of such notice and (z) the expiration of the Assignor's cure period under the Assigned Agreement, if any, or (ii) with respect to any other Event of Default, except those identified below as not being curable, ninety (90) days from the later to occur of (y) the receipt of such notice and (z) the expiration of the Assignor's cure period under the Assigned Agreement, if any.

(c) If (x) possession of the Project is necessary to cure such Event of Default or (y) if the Event of Default can only be cured by the Assignor and is not curable by the Collateral Agent, and the Collateral Agent thereafter commences foreclosure proceedings or any other proceedings necessary to take possession of the Project, the Collateral Agent or its successor(s), assignee(s) and/or designee(s) will be allowed a reasonable period to complete such proceedings and cure the Event of Default (not to exceed a total of one hundred eighty (180) days from the Collateral Agent's receipt of notice of such Event of Default as provided per subsection (b) above), provided that, once commenced, the Collateral Agent, or its successor(s), assignee(s) and/or designee(s), shall pursue such proceedings with due dispatch. Further, if the Event of Default can only be cured by the Assignor and is not curable by the Collateral Agent, such as the insolvency, bankruptcy, general assignment for the benefit of creditors, or appointment of a receiver, trustee, custodian or liquidator of such Assignor or its properties, and Collateral Agent or its successor(s), assignee(s) and/or designee(s) satisfies the requirements of the Assigned Agreement with respect to a Qualified Operator (or has retained a Qualified Operator), the Collateral Agent shall be entitled to assume the rights and obligations of such Assignor under the Assigned Agreement and provided such assumption occurs, the Contracting Party shall not be entitled to terminate the Assigned Agreement or suspend its performance thereunder based on such Event of Default. If during any of the foregoing periods, the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of the Assignor from curing the Event of Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition (not to exceed one hundred twenty (120) days from the Collateral Agent's receipt of notice of such non-curable Default) as provided per subsection (b) above; provided that the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch, diligently pursues such cure to completion and continues to perform any payment obligations under the Assigned Agreement. The Contracting Party shall recognize the Collateral Agent or its designee(s) or assignee(s) as the applicable party under the Assigned Agreement; provided that the Collateral Agent or its designee(s) or assignee(s) assumes the obligations of the Assignor under the Assigned Agreement, including, without limitation, such Assignor's obligation to provide the applicable Delivery Term Security as required under the Assigned Agreement.

(d) In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if the Collateral Agent shall so request in writing to the Contracting Party within ten (10) Business Days of such rejection, the Contracting Party will, subject to any required regulatory approval, execute and deliver to the Collateral Agent a new agreement, which shall be on the same terms and conditions as the original Assigned Agreement, for the remaining term of the original Assigned Agreement before giving effect to such rejection; provided, however, that the Collateral Agent, prior to or concurrently with such replacement agreement becoming effective shall (a) pay all sums that would, at the time of the execution and delivery thereof, be due under such Assigned Agreement but for such rejection or termination, and (b) otherwise agree in writing to cure any defaults under such Assigned Agreement that are capable of being cured.

(e) In the event that the Collateral Agent or its designee(s) or assignee(s) succeed to the Assignor's interest under the Assigned Agreement, the Collateral Agent or its designee(s) or assignee(s) shall cure any then-existing payment and performance defaults and Events of Default under the Assigned Agreement, except any performance defaults and Events of Default of the Assignor itself, which by their nature are not susceptible of being cured because they are specific to such Assignor (e.g. bankruptcy of such Assignor). The Collateral Agent and its designee(s) or assignee(s) shall have the right to assign its interest in the Assigned Agreement to a person or entity to whom the Assignor's interest in the Project is transferred and provided such transferee (i) assumes and agrees in writing to be bound by the obligations of the Assignor under the Assigned Agreement and furnishes a copy of the assignment or transfer document to Contracting Party; (ii) demonstrates reasonably to Contracting Party that it meets the

requirements of a Qualified Operator or has retained, prior to such assumption, a Qualified Operator to operate the Project; and (iii) if applicable, shall have complied with the obligations to provide applicable security in conformance with the Assigned Agreement. Upon such assignment, the Collateral Agent and its designee(s) or assignee(s) (including its agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

3. REPRESENTATIONS AND WARRANTIES. Contracting Party hereby represents and warrants to the Collateral Agent that as of the date of this Consent:³

(a) It (i) is duly formed and validly existing under the laws of the State of Texas, and (ii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance of this Consent and the Assigned Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) to Contracting Party's actual knowledge, this Consent and the Assigned Agreement are in full force and effect;

(d) the Assigned Agreement has not been amended;

(e) the Assigned Agreement has not been assigned by the Contracting Party;

(f) this Consent and the Assigned Agreement have been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(g) there is no litigation, arbitration, investigation or other proceeding pending for which the Contracting Party has received service of process or, to Contracting Party's actual knowledge, threatened against Contracting Party relating solely to this Consent and the Assigned Agreement which could have a material adverse effect on its ability to perform its obligations under this Consent or the Assigned Agreement;

(h) the execution, delivery and performance by it of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

³ Note: EPE will conduct customary due diligence prior to making any of these representations.

(i) neither Contracting Party nor, to Contracting Party's actual knowledge, any other party to the Assigned Agreement, is in default of any of its obligations thereunder, and no disputes exist between Contracting Party and the Assignor thereunder;

(j) to Contracting Party's actual knowledge, no Force Majeure Event exists under the Assigned Agreement; and

(k) all conditions precedent to the obligations of Contracting Party and Assignor under the Assigned Agreement as set forth in the Assigned Agreement have been satisfied.

4. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand-delivered, (b) upon telephonic verification of receipt if sent by facsimile, (c) upon confirmation of receipt if sent by email and (d) if otherwise delivered, upon the earlier of receipt or five (5) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Contracting Party:

El Paso Electric Company
P.O. Box 982
El Paso, Texas 79960
Attn: General Counsel
Telephone: (915) 543-0001
Email: epelegal@epelectric.com

If to Collateral Agent:

[]
[]
[]
[]
Attn: []
Email: []

If to Assignor:

[]
[]
[]
[]
Attn: []
Email: []

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving written notice to the other parties in the manner set forth above.

5. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the

obligations under any of the Financing Agreement). Contracting Party agrees to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) the Assignor, the Collateral Agent or any of its respective successors, transferees or assigns. No amendment or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder. Assignor and Collateral Agent shall provide written notice to Contracting Party upon the expiration or termination of the Financing Agreement.

6. GOVERNING LAW. This Consent shall be governed by the laws of the State of Texas, excluding any law related to conflict or choice of law which would result in the application of any law to this Consent other than the laws of the State of Texas. THE FEDERAL AND STATE COURTS SITUATED IN THE STATE OF TEXAS SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT WITH CONTRACTING PARTY, EACH ASSIGNOR, AND THE COLLATERAL AGENT IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT.

7. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement and each executed counterpart delivered by facsimile or other electronic means shall have the same force and effect as an original instrument.

8. SEVERABILITY. In case any provision of this Consent or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

9. ACKNOWLEDGMENTS AND AGREEMENTS. The Assignor, by its execution hereof, acknowledges and agrees that none of the execution of this Consent, the performance by Contracting Party of any of the obligations of Contracting Party hereunder, the exercise of any of the rights of Contracting Party hereunder, nor the acceptance by Contracting Party of performance of the Assigned Agreement by any party other than such Assignor shall (i) release such Assignor from any obligation of such Assignor under the Assigned Agreement, (ii) constitute a consent by Contracting Party to, or impute knowledge to Contracting Party of, any specific terms or conditions of any of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (iii) constitute a waiver by Contracting Party of any of its rights under the Assigned Agreement.

10. COLLATERAL AGENT. All references to the Collateral Agent contained herein refer to the Collateral Agent not acting in its individual capacity but solely as Collateral Agent under the Financing Agreement.

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

EL PASO ELECTRIC COMPANY,
a Texas corporation
as Contracting Party

By: _____
Name:
Title:

[PROJECT COMPANY],
a [_____] [_____]]
as Assignor

By: _____
Name:
Title:

[COLLATERAL AGENT],
as Collateral Agent

By: _____
Name:
Title:

EXHIBIT L
EXPECTED STORAGE FACILITY PERFORMANCE⁴

I. Storage Power Capacity Rating; Storage Energy Capacity

| Commercial Operation Year⁵ | Storage Power Capacity Rating Guarantee (MW_{AC}) | Storage Energy Capacity (MWh_{AC}) | Storage Roundtrip Efficiency Guaranty (%) |
|--|--|---|--|
| Commercial Operation Date | | | |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| 7 | | | |
| 8 | | | |
| 9 | | | |
| 10 | | | |
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| 12 | | | |
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| 14 | | | |
| 15 | | | |
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| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |

II. Station Services

The maximum station service load of the Storage Facility in any Commercial Operation Year shall not exceed: [_____] MWh.⁶

III. Maximum Charges Per Year

⁴ NTD: Prior to executing this Agreement, Seller will be required to provide EPE information sufficient to allow it to reasonably verify the various Storage Facility performance criteria stated in Exhibit C and this Exhibit L.

⁵ NTD: Table to be updated based on Term of the Agreement.

⁶ NTD: Seller to confirm energy for Station Services is being arranged separately and not embedded in Roundtrip Efficiency.

The maximum number of equivalent full Depth of Discharge (“DOD”) cycles during any Commercial Operation Year, as shown in Part 3 in Exhibit O.

IV. Maximum Charges Per Day

The “Daily Cycle Limit” per Day, as shown in Part 3 of Exhibit O.

V. Average Annual State of Charge

The average annual state of charge for the Storage Facility must be between [] and [].

* * * * *

EXHIBIT M

STORAGE ENERGY CAPACITY TESTING; STORAGE POWER CAPACITY RATING GUARANTEE AND STORAGE POWER CAPACITY DAMAGES

A. Storage Energy Capacity Test.

1. Prior to Commercial Operation Date. Upon no less than ten (10) Business Days prior notice to EPE, and at any time prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Energy Capacity Test to determine the Storage Power Capacity Rating of the Storage Facility for the first Commercial Operation Year. Storage Energy Capacity Tests shall be completed according to the procedures set forth in Part B of this Exhibit. The Storage Energy Capacity Test shall require Seller to maintain Discharging Energy from the Storage Facility for [DURATION] consecutive hours and the Storage Power Capacity Rating in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the [DURATION] hour test period, as measured at the Point of Delivery, divided by [DURATION] hours.

2. Subsequent Testing. At least once per Commercial Operation Year (starting after the first Commercial Operation Year) within the first three (3) months of each Commercial Operation Year or at such other time during the Commercial Operation Year as the Parties may mutually agree, upon no less than five (5) Business Days prior notice to EPE, Seller shall schedule and complete a Storage Energy Capacity Test. EPE shall have the right to require a retest of the Storage Energy Capacity Test at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Storage Energy Capacity has varied materially from the results of the most recent Storage Energy Capacity Test.

3. Witnessing Test; Costs and Expenses. EPE shall have the right to send one or more representative(s) to witness all Storage Energy Capacity Tests. All costs of a Storage Energy Capacity Test shall be borne by Seller (other than any Charging Energy required to perform such Storage Energy Capacity Test).

4. Test Results. No later than five (5) Business Days following any Storage Energy Capacity Test, Seller shall deliver a testing report to EPE detailing results and findings of the Storage Energy Capacity Test (the "Storage Energy Capacity Testing Report"), including reasonable supporting data. The Storage Energy Capacity Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. If the actual Storage Power Capacity Rating determined pursuant to a Storage Energy Capacity Test is less than or greater than the then current Storage Power Capacity Rating, then the actual Storage Power Capacity Rating determined pursuant to such Storage Energy Capacity Test shall become the new Storage Power Capacity Rating at the beginning of the Day following the completion of such Storage Energy Capacity Test for all purposes under this Agreement until a new Storage Power Capacity Rating is determined pursuant to a subsequent Storage Energy Capacity Test in accordance with the terms of this Agreement, provided, however, that in no event shall the Storage Power Capacity Rating be deemed greater than the Storage Power Capacity Rating Guarantee.

B. Storage Energy Capacity Test Procedures.

Seller will perform each Storage Energy Capacity Test in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2;

2. Seller will fully charge the Storage Facility so that it is in a state that it is made commonly and typically available to EPE as fully charged and dispatchable. Depending on the equipment supplier, this figure may be when the SoC is at or near 100% as indicated by SCADA;

3. Seller shall select the appropriate operating mode on the Storage Facility matching normal, dispatchable operation.

4. Seller will discharge the Storage Facility at the higher of full capacity or the Storage Power Capacity Rating, over a duration of [DURATION] consecutive hours. In the event discharging must be stopped early due to the Storage Energy Capacity having been fully discharged or due to critically low SoC or other safety and stability reasons, Seller will have been deemed to fail the test and Seller and EPE will mutually agree on changes to the test for the purposes of running a re-test;

5. Seller will add the quantity of MWh discharged by the Storage Facility during the [DURATION] consecutive hours to produce a sum quantity of MWh for the [DURATION] consecutive hours full discharge of the Storage Facility;

6. Seller will divide the sum quantity of MWh discharged over the [DURATION] consecutive hours full discharge of the Storage Facility by a factor of [DURATION] to produce a value that will become the Storage Power Capacity Rating for the Commercial Operation Year.

Example, assuming a [4] hour duration battery resource:

Hour 1 Discharge = [25] MWh

Hour 2 Discharge = [25] MWh

Hour 3 Discharge = [25] MWh

Hour 4 Discharge = [25] MWh

Duration = [4] hour discharge

Storage Energy Capacity = [25] + [25] + [25] + [25] = [100] MWh

Storage Power Capacity Rating = [100] MWh / [4] hours = [25] MW

7. Seller will complete the Storage Facility rest period, as applicable according to equipment supplier specifications. If following the rest period, the Storage Facility will not follow a Charging Notice, Seller will return the Storage Facility to the minimum SoC specified by the equipment supplier for standby operations.

8. Each Storage Energy Capacity Test shall be conducted under environmental conditions contemplated in Seller's design specifications and deemed to be appropriate by the equipment manufacturers. Either Party shall have the right to cancel a Storage Energy Capacity Test if it can be shown that test conditions or other reasons are causing erroneous data. Any cancelled each Storage Energy Capacity Test shall not be deemed to have been successfully run.

C. Storage Energy Capacity Damages and Invoicing.

1. If the Storage Power Capacity Rating determined as a result of the Storage Energy Capacity Test is less than the Storage Power Capacity Rating Guarantee, then Seller shall be liable to pay EPE liquidated damages (“Storage Power Capacity Damages”) equal to the product of:

a) [The number of months between the failed Storage Energy Capacity Test and the most recent prior Storage Energy Capacity Test

Multiplied by

b) The difference between the Storage Power Capacity Rating Guarantee and the new Storage Power Capacity Rating

Multiplied by

c) The Contract Price.]

2. If a Storage Power Capacity Rating determined as a result of a Storage Energy Capacity Test is less than the Storage Power Capacity Rating Guarantee, then within thirty (30) Days after receipt by EPE of the Storage Energy Capacity Testing Report and reasonable supporting data, EPE shall deliver to Seller an invoice showing EPE’s computation of the Storage Power Capacity Damages calculated pursuant to this Exhibit. Within twenty (20) Days of receipt of the invoice, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage Power Capacity Damages not paid by Seller when due under this Section C will bear interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) from the date due until the date paid. EPE reserves the right to set off any amounts owed by Seller hereunder against any amounts owed by EPE to Seller under this Agreement. The dispute resolution provisions of this Agreement shall apply with respect to any Dispute between the Parties with respect to the Storage Energy Capacity Testing Report or EPE’s invoice of Storage Power Capacity Damages.

EXHIBIT N

METER AND COMMUNICATIONS REQUIREMENTS

These meter requirements shall apply to all Electric Metering Devices.

- Electric Metering Devices shall meet requirements set forth in American National Standards Institute (ANSI) C12.1 and 12.20. Current transformers and voltage transformers supplying this meter should meet requirements of IEEE/ANSI C57.13 and ANSI C57.13.6. In addition to meeting these requirements the current transformers should be high accuracy extended range transformers with at least .15% accuracy from 1% to full rating factor. Prior to the purchase of Electric Metering Devices, current transformers and potential transformers and associated communication equipment, Seller must submit relevant information such that EPE can review and verify that the equipment meets EPE requirements.
- No later than ninety (90) Days prior to initial operation of the Storage Facility, Seller shall provide to EPE in mutually agreeable format all necessary specifications related to the Electric Metering Devices and/or communication therewith including, but not limited to, the make, model, port configuration, connection assignments, and physical locations.
- EPE may inspect and verify that the equipment was approved and properly installed. In addition, EPE may elect to test the Electric Metering Devices for accuracy, current transformers and potential transformers and verify that the communication circuits to EPE are operational.
- Upon EPE's reasonable prior written notice, Seller shall make reasonable modifications to Seller's metering equipment and configurations in order to ensure accurate telemetering and communication.
- EPE shall have the right to install any telemetering and communication equipment EPE deems reasonably necessary for purposes related to this Agreement. Seller shall, upon prior written notice sufficiently in advance, cooperate with any such installation.
- Electric Metering Devices shall be programmed to, at any time of remote electronic communications and access, provide a time and date stamp of downloaded delivery information.
- Electric Metering Devices shall be programmed to, at any time of manual read of the meter's display, provide the time and date of the information gathered. The Seller shall provide the communication channels for EPE's remote terminal unit and EPE's Itron Enterprise Edition Meter Data Management Agent. The implementation of these communication paths and RTU shall follow EPE's latest standard. The Seller must have these communication paths installed, tested, and functional prior to commencing initial synchronized operations of the Storage Facility.
- EPE shall have the right, via read-only access, and upon prior reasonable written notice to Seller, to independently audit Seller's meters and any records pertaining to the amount of energy generated by the Storage Facility and any associated losses. Any audit shall be performed at the Storage Facility or if applicable, other location within the same state as the Storage Facility which is mutually agreed upon by both EPE and Seller. Records related to such audits, inspections, testing or adjustments shall be maintained and subject to audit by EPE for a period of 24 months. EPE shall further have the right to request and receive in physical or electronic form any and all records

or data files related to such audits, inspections, testing or adjustments.

- Seller shall provide secure and reliable communication from the Electric Metering Devices as follows:
 - DNP output from the meter to EPE's SCC via a remote terminal unit located near the Electric Metering Devices and hardwired from the meter to the remote terminal unit.
 - Time stamped meter register and interval data from the meter to EPE's Itron Enterprise Edition Meter Data Management Agent with servers located in El Paso, Texas. Electric Metering Devices must have an Itron approved Translation Interface Module to facilitate correct data transmission over this communication path.
 - No later than six (6) months prior to initial synchronization of the Storage Facility, Seller shall provide to EPE the issued for construction one-line electrical drawings of the Facility, certified by a registered professional engineer, showing the electrical location of the Electric Metering Devices.
 - No later than one hundred twenty (120) days after the Commercial Operation Date, Seller shall provide to EPE the final as-built electric drawings of the Facility, stamped by a licensed professional engineer, showing the electrical location of the Electric Metering Devices.

EXHIBIT O
OPERATING PROCEDURES ⁷

I. Storage Facility Operations. Seller shall comply with the following requirements with respect to the operation of the Storage Facility:

A. BESS SCADA, Telemetry, Interoperability and Data Historian

- 1) BESS SCADA. The entire Storage Facility shall be controlled by a BESS SCADA system and BESS master controller (collectively, "BESS SCADA"). The Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures.
 - a. The Storage Facility is to operate without on-site operations personnel on a 24 hour a Day, 7 Day per week basis. Seller shall ensure design, SCADA and control systems to operate automatically with appropriate industry standards and controls. The Storage Facility must meet all NERC and critical infrastructure protection requirements (CIPs) requirements.
 - b. Seller shall provide as part of the Storage Facility a proven and established instrumentation and control system for the BESS SCADA. EPE's control systems ("EPE SCADA") will supervise and monitor the BESS SCADA system while Seller's BESS SCADA will act as the master for the Storage Facility. EPE SCADA shall be the master for the Interconnection Point breaker.
 - c. The BESS SCADA system shall be compatible with the EPE SCADA (including historian database and AGC). The BESS SCADA shall incorporate an RTU, to which Seller shall provide read/write access to EPE.
 - d. The monitoring system shall provide data as described in Section II of this Exhibit O. Seller shall design the system so that the data can be retrieved remotely.
- 2) BESS Telemetry. Detailed metering, relay and protection requirements will be specified in the Interconnection Agreement. Seller must provide as part of the Storage Facility telemetry equipment and facilities capable of transmitting the information listed in Section II of this Exhibit O, concerning the Storage Facility on both a Day-ahead and real-time basis.
 1. Such real-time data must be made available to EPE on the same basis as Seller receives the data.

⁷ NTD: Initial Exhibit O is a preliminary, placeholder draft, subject to change based on project-specific details and further negotiation.

2. In the event of loss of communication between EPE and the BESS SCADA system, the BESS SCADA system must institute EPE's desired behavior in such circumstance, including maintaining the previously communicated operating behavior, accepting a curtailment command from a local terminal, or a safe and linear shutdown.
- 3) Measurement and Verification. As described above, EPE will have real-time access to view Seller's energy management system and data historian that will monitor the Storage Facility's state of health metrics as well as usage metrics such as equivalent full cycles to date. EPE will be able to monitor the amount of cycles that have occurred over the life of the Storage Facility on a real-time basis.

B. The Power Conversion System (PCS)

The PCS is the interface between the DC battery system and the AC system and provides for charging and discharging of the Storage Facility and may consist of one or more parallel units.

- 1) The Parties agree to mutually cooperate to ensure the PCS shall be a smart static device (charger and inverter) using solid-state electronic switch arrays in a self-commutated circuit topology. The PCS, in conjunction with the BESS master controller, shall be capable of complete automatic unattended operation, including electrical self-protection, synchronizing and paralleling with the utility, and disconnect functions.
- 2) The control of the PCS shall be integrated with the overall BESS SCADA master controller. A proven and established combined instrumentation and control system shall be provided for the BESS SCADA. The BESS SCADA system shall feed into an RTU that shall be the primary interface with the EPE SCADA and shall be compatible with the EPE SCADA. The self-protective features shall not allow the PCS to be operated in a manner that may be unsafe or damaging.
- 3) The PCS shall be capable of operating continuously at rated output under the voltage and frequency ranges as specified by equipment manufacturers and as required at the Interconnection Point by the Interconnection Agreement and providing full output for the required Storage Facility operation modes specified.

C. Storage Facility Operation Mode. The Storage Facility shall be capable of four quadrant (full power circle) operation to provide for various operating modes including peak power limiting operations, potential hybrid renewable energy plant smoothing, charge/discharge operations, VAR support, and other operating modes.

D. Charging and Discharging – Requirements and Limitations

- 1) Seller shall specify charging and discharging requirements and limitations. Seller shall design the Storage Facility to ramp up from zero to the maximum

capacity and back at a mutually agreed upon, specified range of EPE selectable ramp rates to avoid shocking the Transmission Provider's System and allow generation to follow load easily.

- 2) Seller shall ensure that the BESS SCADA or control system has protective features ensuring that charge and discharge setpoints cannot exceed charge and discharge limits reported by battery management system (BMS) and PCS SCADA System.
- 3) The BESS SCADA control system shall allow EPE's dispatcher to initiate remotely Seller-specified/programmed charge and discharge cycles.
- 4) Automatic or programmed charge cycles shall be implemented to prevent the state of charge ("SoC") going above or below the battery vendor specified SoC limits.
- 5) Seller will indicate any required rest (neither charging nor discharging of the Storage Facility) periods, their duration and what event they must follow or precede.
- 6) The maximum rest period allowed (Days, weeks, months) is provided in Section II of this Exhibit O.
- 7) Seller shall be excused from its obligation to charge or discharge the Storage Facility in response to an instruction from EPE, including a Charging Notice or Discharging Notice, as applicable, if and to the extent the Storage Facility is not able to charge or discharge, as applicable, because of Force Majeure, or Forced Outage.

E. Cooperation. Seller will design the Storage Facility per the current specification and will cooperate with EPE to modify the Storage Facility to accommodate technology and Market Events, if requested.

F. Charging and Discharging Notices and Modifications

- 1) EPE will provide to Seller, per the applicable pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging Notice and Discharging Notice will incorporate Seller's resource availability per the Day-ahead forecasts provided or made available by Seller to the Agreement.
- 2) On the Day of operation, to the degree that it is technically feasible, EPE shall have the right to make adjustments to its Charging Notices and Discharging Notices. To this end, Seller will provide to EPE real-time access to BESS SCADA data through a secure communication link.
- 3) To make intraday adjustments on the Day of operation, EPE will communicate with Seller through (i) BESS SCADA which allows EPE to directly adjust the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility or (ii) a real-time dispatch signal which will be the primary control of the Storage Facility.
- 4) Intraday adjustments will be subject to limitations and a predetermined control system.

- 5) Seller’s systems will automatically communicate with EPE to confirm EPE’s requested adjustment to the charge or discharge schedule, including the hour(s) requested, as well as the rate of charge or discharge requested.

G. Reports. Seller will deliver to EPE a quarterly written report highlighting performance from Operating Restrictions with respect to the performance of the Storage Facility, including: 1) impacts to physical availability greater than five percent (5%) of capacity; 2) with respect to throughput, average SoC or physical availability; 3) issues related to the battery management system and PCS; 4) ambient conditions including temperature maximums and minimums; and 5) performance score, if applicable.

II. Operating Restrictions

“**Operating Restrictions**” are comprised of three (3) tables containing lists of parameters Seller must provide and update throughout the Term of this Agreement: (a) Specifications; (b) Day Ahead PCI Table Inputs; and (c) Real Time SCADA Points. All real time data points shall be reported and communicated via SCADA and stored in data historian on a real time basis.

Part 1: Specifications

| # | Operating Parameter | Values | Notes |
|---|--|--------------------------|---|
| | Charging Source | System | |
| | Minimum CP-rate for Charging the Storage Facility | | Maximum rate in MW at which energy can be charged. Measured at the Point of Delivery. |
| | Maximum CP-rate for Charging the Storage Facility | | Provide Constant Power charge and range (e.g., power from 0 MW to maximum MW output of Storage Facility in Exhibit C) |
| | Minimum CP-rate for Discharging the Storage Facility | | Maximum rate in MW at which energy can be discharged. Measured at the Point of Delivery. |
| | Maximum CP-rate for Discharging the Storage Facility | | Provide Constant Power discharge and range (e.g., Power from 0 MW to maximum MW output of Storage Facility in Exhibit C) |
| | Storage Ramp Rate | [] MW per [milli]second | |
| | Rated Apparent Power | | The real or reactive power (leading/lagging) that the Storage Facility can provide at the Point of Delivery continuously without exceeding the operating limits of the Storage Facility |

| | | | |
|--|---|--|---|
| | Rated Discharge Energy | | Total Discharging Energy the fully-charged Storage Facility can deliver to the Point of Delivery at the rated continuous discharge power without recharging |
| | Rest Period | | Between full discharge and charge Between charge and full discharge |
| | Resting SoC of the Storage Facility (average per Commercial Operation Year) | | When not actively charging or discharging for more than a period of __ hours, the SoC of the Storage Facility shall be maintained in this range |
| | Operational SoC Limits | | |
| | Operating Mode | | List operating modes Storage Facility is designed and capable of and any limitations, for example Standby Mode |
| | Additional operating limitations e.g. thermal or seasonal limits | | Min/Max temperatures for example |

Part 2: Day Ahead Inputs

| # | Day Ahead Inputs | Values | Notes |
|---|------------------------------|--------|---|
| | Min. Charge (MWh) | | The minimum physical storage limit (non-negative) of energy the Storage Facility can hold |
| | Max SoC Max. Charge (MWh) | | The maximum physical storage limit (non-negative) of energy the Storage Facility can hold |
| | Roundtrip Efficiency (%) | | The measure of in/out losses of the Storage Facility during a charge/discharge cycle as measured at the Storage Facility transformers |

Part 3: Real Time SCADA Points

| # | Day Ahead Inputs | Values | Notes |
|---|-------------------------|--------|--------------------------|
| | Instantaneous MW output | | At the Point of Delivery |

| | | | |
|--|---|--|---|
| | Pmax | | Storage Power Capacity Rating Guarantee (MW) |
| | Pmin | | |
| | SoC | | Measured in % equal to Stored Energy Level divided by the Storage Energy Capacity determined as a result of the most recent Storage Energy Capacity Test, with fully charged being 100% and fully discharged being 0% |
| | Max. SoC | | Measured in percentage (%) or MWh. As updated based on the most recently completed Storage Energy Capacity Test |
| | Number of equivalent full Depth of Discharge (DOD) cycles used during Commercial Operation Year | | |
| | Current status and physical ability of the Storage Facility | | |
| | Daily Cycle Limit | | Percentage of daily limit met |
| | Operating Mode | | |
| | Current Faults | | |

EXHIBIT P

STORAGE AVAILABILITY GUARANTEE

A. Calculation of Storage Availability. Within thirty (30) Days after the end of each Commercial Operation Year, Seller shall calculate the Storage Availability of the Storage Facility in accordance with the terms of the Agreement.

B. Calculation of Storage Availability Damages. If the Storage Availability for any Commercial Operation Year is less than the Storage Availability Guarantee, then Seller shall be liable to pay EPE liquidated damages (“Storage Availability Damages”). Storage Availability Damages for such Commercial Operation Year shall be equal to the product of the following:

The positive difference between the Storage Availability Guarantee and the actual Storage Availability for the Commercial Operation Year

Multiplied by

0.01 (being the quantity to convert the above derived number into a percentage)

Multiplied by

The Storage Power Capacity Rating

Multiplied by

The Contract Price

Multiplied by

Twelve (12) months

C. Invoicing. If the Storage Availability for any Commercial Operation Year is less than the Storage Availability Guarantee, then within forty-five (45) Days of the end of such Commercial Operation Year, Seller shall deliver to EPE a statement showing Seller’s computation of the Storage Availability Damages calculated pursuant to this Exhibit. Within ten (10) Days of delivery of the statement, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such statement. Any Storage Availability Damages not paid by Seller when due under this Section C will bear interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) from the date due until the date paid. EPE reserves the right to set off any amounts owed by Seller hereunder against any amounts owed by EPE to Seller under this Agreement. The dispute resolution provisions of this Agreement shall apply with respect to any Dispute between the Parties with respect to the calculation of Storage Availability or amounts owed as Storage Availability Damages.

EXHIBIT Q

STORAGE ROUNDTRIP EFFICIENCY GUARANTEE

A. Storage Roundtrip Efficiency (RTE) Test.

1. Prior to Commercial Operation Date. Upon no less than ten (10) Business Days prior notice to EPE, and at any time prior to the Commercial Operation Date, Seller shall schedule and complete a Storage RTE Test to verify that the Facility can satisfy the Storage RTE Guarantee. Storage RTE Tests shall be completed according to the procedures set forth in Part B of this Exhibit.

2. Subsequent Testing. At least once per Commercial Operation Year (starting after the first Commercial Operation Year) in either the month of December or January (as agreed by the Parties) on a day mutually acceptable to the Parties, other months as the Parties mutually agree or at such other time during the Commercial Operation Year as the Parties may mutually agree, upon no less than five (5) Business Days prior notice to EPE, Seller shall schedule and complete a Storage RTE Test. EPE shall have the right to require a retest of the Storage RTE at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Storage RTE has varied materially from the results of the most recent Storage RTE Test. Any Storage RTE Test requested by EPE in accordance with this Section that Seller fails shall not count against the total number of Storage RTE Tests that EPE requests in any Commercial Operation Year. Seller may retest in its sole discretion.

3. Witnessing Test; Costs and Expenses. EPE shall have the right to send one or more representative(s) to witness all Storage RTE Tests. All costs of a Storage RTE Test shall be borne by Seller (other than any Charging Energy required to perform such Storage RTE Test).

4. Test Results. No later than five (5) Business Days following any Storage RTE Test, Seller shall deliver a testing report to EPE detailing results and findings of the Storage RTE Test (the "Storage RTE Testing Report"), including reasonable supporting data. The Storage RTE Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility.

B. Storage Roundtrip Efficiency (RTE) Test Procedures. Each Storage RTE Test will be performed in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the Facility equipment suppliers, including charging or discharging the Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2.

2. Seller will fully discharge the Facility to the minimum recommended SoC which, subject to equipment manufacturer specifications, will be at 0% as registered in the SCADA.

3. The Parties will agree upon and select the appropriate operating mode.

4. Seller will set the Storage Ramp Rate parameter to the value specified in the Operating Procedures.

5. Seller will charge the Facility to the maximum SoC which, subject to equipment manufacturer specifications, will be at 100% as registered in the SCADA.

6. If applicable based on equipment manufacture specifications, Seller will complete the specified Facility rest period in accordance with the Operating Procedures.

7. Seller will review the metering point data and determine and record the “EnergyIN,” which is the amount of energy used to charge the Facility from minimum SoC to maximum SoC.

8. Seller will discharge the Facility according to the Storage Energy Capacity Test procedures at the higher of the full capacity or the Storage Power Capacity Rating for the full [DURATION] hours and not cease discharging until the Facility has reached the lower of (a) the minimum SoC specified in the Operating Procedures and (b) occurrence of a critically low SoC, power foldbacks, or other safety and system stability reasons.

9. If applicable based on equipment manufacture specifications, Seller will complete the specified Facility rest period in accordance with the Operating Procedures.

10. Seller will review the metering point data, and determine and record the “EnergyOUT,” which is the amount of energy used to discharge the Facility from maximum SoC to minimum SoC.

11. If the Facility will not follow a Discharging Notice within the rest period as specified in the Operating Procedures, then Seller shall return the SoC to within the range specified by equipment manufacturer for standby operations.

C. Storage RTE Damages and Invoicing.

1. If Storage RTE determined as a result of the Storage RTE Test is less than Guaranteed Storage RTE, then Seller shall be liable to pay EPE liquidated damages (“Storage RTE Damages”). Storage RTE Damages for such Commercial Operation Year shall be equal to the product of the following:

The positive difference between “Actual RTE” and RTE Guarantee (*where “Actual RTE” is equal to the quotient of “EnergyOUT” divided by “EnergyIN,” and where “EnergyOUT” is defined in Section B.10 of this Exhibit and “EnergyIN” is defined in Section B.7 of this Exhibit*)

Multiplied by

The then applicable Storage Power Capacity Rating;

Multiplied by

The then applicable cost of Charging Energy;

Multiplied by

The number of months that have elapsed since the last Storage RTE Test.

If Storage RTE determined as a result of the Storage RTE Test is less than the Guaranteed Storage RTE, then within thirty (30) days after receipt by EPE of the Storage RTE Testing Report and reasonable supporting data, EPE shall deliver to Seller an invoice showing EPE’s computation of the Storage RTE Damages calculated pursuant to this Exhibit. Within twenty (20) days of receipt of the invoice, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage RTE Damages not paid by Seller when due under this Section C will bear interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) from the date due until the date paid. EPE reserves the right to set off any amounts owed by Seller hereunder against any amounts owed by EPE to Seller under this Agreement. The dispute resolution provisions of this Agreement shall apply

with respect to any dispute between the Parties with respect to the Storage RTE Testing Report or EPE's invoice of Storage RTE Damages.

EXHIBIT R

STORAGE RAMP RATE TEST

A. Storage Ramp Rate Test.

1. Storage Ramp Rate Testing. Upon no less than ten (10) Business Days prior notice to EPE, and at any time prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Ramp Rate Test to verify that the Facility can satisfy the Storage Ramp Rate Guarantee.

2. Subsequent Testing. At least once per Commercial Operation Year (starting after the first Commercial Operation Year) in either the month of December or January (as agreed by the Parties) on a day mutually acceptable to the Parties, other months as the Parties mutually agree or at such other time during the Commercial Operation Year as the Parties may mutually agree, upon no less than five (5) Business Days prior notice to EPE, Seller shall schedule and complete a Storage Ramp Rate Test. EPE shall have the right to require a retest of the Storage Ramp Rate at any time upon five (5) Business Days prior written notice to Seller if EPE reasonably believes that the Storage Ramp Rate has varied materially from the results of the most recent Storage Ramp Rate Test. Any Storage Ramp Rate Test requested by EPE in accordance with this Section that Seller fails shall not count against the total number of Storage Ramp Rate Tests that EPE requests in any Commercial Operation Year.

3. Witnessing Test; Costs and Expenses. EPE shall have the right to send one or more representative(s) to witness all Storage Ramp Rate Tests. All costs of any Storage Ramp Rate Test shall be borne by Seller (other than any Charging Energy required to perform such Storage Ramp Rate Test).

4. Test Results. No later than five (5) Business Days following any Storage Ramp Rate Test, Seller shall deliver a testing report to EPE detailing the results and findings of the Storage Ramp Rate Test (the "Storage Ramp Rate Testing Report") and reasonable supporting data. The Storage Ramp Rate Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Facility.

5. Failed Storage Ramp Rate Test. If actual Storage Ramp Rate is not within +/- five percent (5%) of the Storage Ramp Rate Guarantee, then Seller shall have thirty (30) days in which to conduct such maintenance or improvements with respect to the Facility and to conduct another Storage Ramp Rate Test to ensure that it satisfies the Storage Ramp Rate Guarantee. If Seller fails to demonstrate pursuant to a Storage Ramp Rate Test that the Facility satisfies the Storage Ramp Rate Guarantee within such thirty (30)-day period, then Seller shall owe to EPE Storage Ramp Rate Damages. Within twenty (20) days of receipt of an invoice for Storage Ramp Rate Damages, Seller shall pay to EPE, by wire transfer of immediately available funds to an account specified in writing by EPE or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage Ramp Rate Damages not paid by Seller when due will bear interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date) from the date due until the date paid. EPE reserves the right to set off any amounts owed by Seller hereunder against any amounts owed by EPE to Seller under this Agreement. The dispute resolution provisions of this Agreement shall apply with respect to any dispute between the Parties with respect to the calculation of Storage Ramp Rate Damages.

B. Storage Ramp Rate Test Procedures. Each Storage Ramp Rate Test will be performed in the following manner and utilizing the following steps:

1. The Parties agree and Seller selects the appropriate operating mode (usually "Manual Mode (Real + Reactive)") in the Facility SCADA and will be dispatched with a starting setpoint of 0 MW

(“Starting Setpoint”) and an ending setpoint of the Facility’s Storage Power Capacity Rating (“Ending Setpoint”).

2. Seller measures the time elapsed to ramp power output between the Starting Setpoint and the Ending Setpoint.
3. The “Storage Ramp Rate” is determined by dividing the change in power by the time elapsed.