

**DISTRIBUTED ENERGY RESOURCE
BATTERY ENERGY STORAGE
SERVICES AGREEMENT**

BETWEEN

PUGET SOUND ENERGY, INC.

as PSE

AND

[●]

as Seller

dated as of

[●], 2023

[●] COUNTY, [●]

NOTICE: This Draft Prototype Agreement sets forth the current requirements that PSE wants the Respondent to address or incorporate into any proposal made to PSE that contemplates the sale of clean energy products to PSE, either on a unit-contingent or not unit contingent basis. It is intended to identify certain, but not all, of the elements of a potential transaction that would be embodied in a definitive battery energy storage services agreement (“BESSA”). This Draft Prototype Agreement may serve as the basis for a proposal involving a clean energy generating facility in development or in operation. The terms presented and/or bracketed herein are indicative of PSE’s expectations and may be subject to negotiation depending upon the particular nature of the proposal and other factors. By submitting its proposal, Respondent acknowledges that the RFP, including this Draft Prototype Agreement, has been prepared by PSE as part of PSE's ongoing process of integrated resource planning and that PSE is considering alternative arrangements for the procurement of energy products. This Draft Prototype Agreement is an integral part of, and subject to, the terms and conditions of the RFP. This Draft Prototype Agreement shall not be interpreted as an offer, agreement or commitment by PSE to acquire any energy product. Also, this Draft Prototype Agreement shall not limit, restrict or obligate PSE with regard to the conduct of its integrated resource planning process, the potential implementation of any plan or program of resource procurement or the actual procurement of any energy product. PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other energy products and/or seek to acquire energy products from one or more parties other than any Respondent. PSE may also modify, change, supplement or delete any and all provisions of this Draft Prototype Agreement, or withdraw and cancel the RFP.

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SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

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**DISTRIBUTED ENERGY RESOURCE BATTERY ENERGY
STORAGE SERVICES AGREEMENT**

This Distributed Energy Resource Battery Energy Storage Services Agreement (this "BESSA") is entered into as of the Execution Date by and between Puget Sound Energy, Inc., a Washington corporation ("PSE") and [_____], a [state of organization] [type of entity] ("Seller"). PSE and Seller may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Seller desires to sell, and PSE desires to purchase, all of the Battery Capacity and all other Attributes generated by or associated with Seller's Facility.
- B. The Parties desire to set forth the terms and conditions upon which the sale of Battery Capacity and other Attributes may be conducted between the Parties.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein set forth, and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, PSE and Seller, each intending to be legally bound, hereby agree as follows:

1 Definitions. Capitalized terms have the meanings assigned in Section 1 unless otherwise defined herein.

"AC" means alternating current.

"Affiliate" means for any specific Person, any other Person directly or indirectly controlling or controlled by or under common control with such specified Person. For purposes of this definition, "control" when used with respect to any entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For purposes of this BESSA, it is assumed that the direct or indirect owner of fifty percent (50%) or more of the outstanding stock or other equity interest of a Person has "control" of such Person; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"After-Tax Basis" means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the "Base Payment") supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations doing business in Washington, if applicable and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

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“Annual Period” means any one of a succession of consecutive twelve (12) month periods, the first of which will begin on the first (1st) Day following the Commercial Operation Date.

“Applicable Law” means, with respect to any Person or the Facility, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, tariffs, regulations, governmental approvals, licenses and permits, directives and requirements of all regulatory and other governmental authorities as may be amended, in each case applicable to or binding upon such Person or the Facility (as the case may be), including the standards and criteria of the North American Electric Reliability Corporation, Federal Energy Regulatory Commission, and Western Electricity Coordinating Council.

“Attributes” means any and all present or future (known or unknown) defined characteristics, certificates, tags, credits, or ancillary service attributes, including but not limited to Battery Capacity and Environmental Attributes, whether general in nature or specific as to the location or any other attribute of the Facility or charging or discharging of Energy from the Facility, intended to value any aspect of the capacity or ability of the Facility to provide capacity or produce Energy or ancillary services. Attributes include all rights to report ownership of any of the foregoing to any entity, organization, governmental body, or otherwise at PSE’s sole discretion. Attributes do not include Incentives.

“Auto Liability” has the meaning set forth in Section 19.3.

“Automobile Insurance” has the meaning set forth in Section 19.1.3.

“Availability Event” has the meaning set forth in Section 17.1.3.

“Battery Capacity” means the capabilities of the BESS to discharge Energy to and store Energy from the BESS Metering Point, including the Storage Contract Capacity and all of the other “BESS Capabilities” set forth in Section 2 of Appendix A, and to provide other capabilities that may be developed or evolve from time to time during the Term that relate to the capability of the BESS to discharge and store Energy. Battery Capacity also includes all the associated Attributes produced by and associated with the BESS.

“Battery Energy” means Charging Energy and Discharging Energy as defined in Annex 1 (BESS Requirements and Operations).

“BESS” means the battery energy storage system that is part of the Facility as described in Section 2.B of Appendix A.

“BESS Metering Point” means the metering point for the BESS identified in Section 2.B of Appendix A, where Seller furnishes Battery Capacity and Battery Energy pursuant to this BESSA and Battery Energy is measured.

“BESS Size” has the meaning assigned in Section 2 of Appendix A.

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

“Capacity Cure Plan” has the meaning set forth in Section 17.1.4.

“Capacity Event” has the meaning set forth in Section 17.1.4.

“Clean Energy Transformation Act” means the Clean Energy Transformation Act, chapter 19.405 RCW.

“Commercial Operation” means that the following conditions have been fulfilled: (i) 100 percent (100%) of Battery Capacity is continuously available for charging and discharging from and to the Point of Interconnection through the BESS Metering Point, each as for sale to PSE pursuant to the terms of this BESSA; (ii) the Facility has been fully and satisfactorily tested and commissioned and all related facilities and rights have been completed or obtained to allow for normal and continuous operation of the Facility at 100 percent (100%) of the Battery Capacity; (iii) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Appendix C with respect to the Facility; (iv) Seller shall have delivered the true, correct, and complete Commercial Operation Certificate from Seller and the Independent Engineer in the form attached as Appendix C; (v) all related facilities and rights have been completed or obtained, so as to allow for normal and continuous operation of the Facility, including the furnishing, dispatch, and utilization of Battery Capacity for sale to PSE pursuant to this BESSA; (vi) the BESS Metering Point and the Point of Interconnection have been constructed and commissioned, and (vii) Seller shall have received all local, state, and governmental and regulatory approvals and other approvals as may be required by Applicable Law for the construction, operation, and maintenance of the Facility.

“Commercial Operation Authorization” has the meaning assigned in Section 9.1.

“Commercial Operation Certificate” means the certificate attached hereto as Appendix C.

“Commercial Operation Date” means that Day on which Commercial Operation Authorization occurs.

“Construction Start Date” means the Milestone date by which a “Final Notice to Proceed” (or similar phrase, as applicable) must be issued by Seller under the applicable engineering, procurement and construction contract in respect of the Facility.

“Creditworthy” means a Person (a) with an investment grade rating from two (2) of the three (3) Rating Agencies such that its senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least (1) BBB- by S&P, if rated by S&P, (2) Baa3 by Moody's, if rated by Moody's, and (3) BBB- by Fitch, if rated by Fitch, respectively, and (b) has satisfactory and verifiable creditworthiness determined in PSE's sole discretion.

“Day” means a calendar day.

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“Delay Damages” means liquidated damages in an amount equal to the lesser of (i) [] per kW (\$[]/kW) of the Facility (prorated for partial kW) per Day, or (ii) [] (\$[]) per Day (including partial Days).

“Delivery Period” has the meaning assigned in Section 3 of Appendix A.

“Electrical Losses” means all line, transformation, and other losses: (i) between the BESS and the BESS Metering Point, (ii) deemed to occur between the BESS Metering Point and the Point of Interconnection, as reasonably determined by PSE, and (iii) associated with the delivery of Charging Energy to the BESS.

“Eligible Collateral” means (a) cash deposited into a Security Account or as otherwise deposited with PSE as the Parties may agree, (b) a Letter of Credit, or (c) a Seller Guaranty.

“Energy” means electric energy in the form of three (3) phase, sixty (60) Hertz, alternating current.

“Energy Independence Act” means the Washington Energy Independence Act, chapter 19.285 RCW.

“Environmental Attributes” means (a) any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, including RECs, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, demand reductions or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and renewable energy credits, CO₂ credits, emissions reduction credits and all those that otherwise arise or result from the charging or discharging of Energy at or from the Facility, and all those arising or resulting from the existence of the Facility) (i) howsoever titled and whether known or unknown, (ii) whether existing as of the Execution Date or at any time during the Term, and (iii) whether such Environmental Attributes have been certified or verified under any renewable standard, including all those that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, or other environmental program, incentive, mandate or objective, in each case whether voluntary or mandatory, and (b) any environmental benefit PSE otherwise would have realized from or related to the Facility if PSE rather than Seller had constructed, owned or operated the Facility. Environmental Attributes do not include Incentives.

“EPC” has the meaning assigned in Section 20.1.

“Event of Default” has the meaning assigned in Section 17.1.

“Execution Date” means the date on which PSE executes this BESSA.

“Facility” means Seller’s distributed energy resource facility consisting of the BESS, as described in Section 2 of Appendix A. “Facility” does not include any part of the Premises that is not part of the BESS.

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“Final Facility Documents” means the final Facility documents required by PSE for use in the design, procurement, construction and installation of its interconnection facilities (including the final Facility one-line diagram, Site plan, and panel and inverter specifications), which are not subject to change in any material way.

“Force Majeure Event” means any occurrence, non-occurrence or set of circumstances that is beyond the reasonable control of such Party, is not reasonably foreseeable, and is not caused by such Party’s negligence, inaction, lack of due diligence, breach of this BESSA, or failure to follow Prudent Operating Practices. The term Force Majeure Event will not include: (a) the inability to meet a legal requirement or the change in a legal requirement; (b) any inability to obtain or maintain, or delay in obtaining, any permit, approval or other consent required from a governmental authority; (c) equipment failure or equipment damage in the case of the Facility or any failure of Seller’s contractors, suppliers or vendors, unless such failure or damage results directly from an event that would otherwise constitute a Force Majeure Event hereunder; (d) change in market conditions that affects the cost or availability of equipment, materials, supplies or services, unless such cost or availability change results directly from an event that would otherwise constitute a Force Majeure Event hereunder; and (e) failure or inability to obtain or retain sufficient funds for any reason, or Seller’s loss of or inability to obtain or retain any Incentives with respect to any portion of the Facility.

“HB 1589” has the meaning assigned in Section 20.1.

“Incentive Change Benefit” has the meaning set forth in Section 12.10.

“Incentives” means (i) any and all present or future (whether known or unknown) state and federal production tax credits (including any Production Tax Credits, defined as the tax credits applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Internal Revenue Code), investment tax credits (including any Investment Tax Credits, defined as the tax credits applicable to certain property described in Section 48 of the Internal Revenue Code) and any other tax credits which are or will be generated by the Facility, and (ii) present or future (whether known or unknown) cash payments, alternative digital currencies or cryptocurrencies provided or made available by non-governmental entities to the Facility or otherwise to renewable energy generators, or outright grants of money relating in any way to the Facility. Incentives do not include Attributes.

“Initial Synchronization” means the energization of the interconnection facilities under the Interconnection Agreement to allow trial parallel operation of the Facility (including export of test electric energy to the designated PSE Distribution Circuit for no more than seven (7) consecutive Days).

“Interconnection Agreement” means PSE’s interconnection agreement that Seller is required to execute for the interconnection of the Facility to the PSE Distribution Circuit.

“Interconnection Costs” means all costs and expenses (including overheads) arising in connection with the technical review, design, procurement, construction, and installation of facilities required for the interconnection of the Facility to the PSE Distribution Circuit and ongoing maintenance of

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such interconnection facilities (including costs associated with obtaining property or property rights required for interconnection, such as easements).

“Interconnection Limit” means the maximum power output (kW) established by PSE, as the interconnecting utility and counterparty to the Interconnection Agreement, that is specified in Section 2 of Appendix A.

“kW” means kilowatt (AC).

“kWh” means kilowatt-hour (AC).

“Letter of Credit” means an irrevocable standby letter of credit, the form of which is attached as Appendix G, that is (a) is issued by a U.S. commercial bank or a U.S. branch of a foreign bank with total assets of at least ten billion dollars (\$10,000,000,000) and having a general long-term senior unsecured debt rating of A minus or higher as rated by S&P, or A3 or higher as rated by Moody's, or A minus or higher as rated by Fitch, and (b) otherwise acceptable to PSE in PSE's reasonable discretion.

“Licensed Professional Engineer” means an independent third party licensed professional engineer that is acceptable to both Parties in each's reasonable judgement.

“Major Equipment Commitment Date” means the date on which Seller shall have irrevocably committed to the purchase of all of the BESS battery modules and equipment, for the Facility, as evidenced by Seller furnishing to PSE a certificate from a duly authorized representative of Seller attesting to the entry into of a binding written contract therefor with each supplier that includes either (i) the payment by Seller of a non-refundable deposit in cash in an amount equal to or greater than [] ([]%) of the total purchase price therefor or (ii) a liquidated damages payment by Seller in an amount equal to or greater than [] ([]%) of the total purchase price therefor in the event of an early termination or cancelation of such binding written contract, secured by either (A) a letter of credit or (B) a parent guaranty from an Affiliate of Seller.

“Milestone” means each milestone and corresponding date set forth in Section 4 of Appendix A.

“Monthly Payment” has the meaning assigned in Section 5.

“Performance Security” has the meaning assigned in Appendix E.

“Permitted Station Service” means electricity that is used to serve the electrical requirements of the BESS when the BESS is operating or in stand-by mode. Permitted Station Service includes the step-up transformer losses, line losses, and other electrical losses between the Facility and the Point of Interconnection. Permitted Station Service does not include any electricity required for auxiliary or ancillary equipment at or otherwise supporting the Facility (e.g., heating, lighting, security system, air-conditioning, or business or office equipment needs) or any other loads at the Premises, except Permitted Station Service includes electricity for thermal regulation, ventilation, lighting, and safety to the extent that each is required for the operation and maintenance of the Facility only.

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

“Point of Interconnection” means the unique physical point at which the Facility is interconnected to the PSE Distribution Circuit, in accordance with the Interconnection Agreement.

“Premises” means a building, structure, or facility to which electricity is being furnished and the tract of land on which the same is located, provided that two or more buildings, structures or facilities that are located on one tract or contiguous tracts of land and are utilized by one electric consumer will together constitute one Premises; *provided, however, that* any such building, structure, or facility will not, together with any other building, structure, or facility, constitute one Premises if the permanent service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility; *provided, further, that* any outdoor security light, or any outdoor sign requirement less than 2200 watts, will not constitute a Premises. The Premises where the Site for the Facility is located is identified in Section 2 of Appendix A.

“Project Permits” has the meaning assigned in Section 3.2.

“Prudent Operating Practices” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric industry for battery energy storage facilities in the U.S. of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and reasonable standards of economy and expedition.

“PSE Distribution Circuit” means a PSE-owned circuit operating at greater than one (1) kV but less than thirty-four and one-half (34.5 kV), excluding facilities, equipment or other devices inside a substation or behind a primary meter.

“Rating Agencies” – means the rating entities of S&P, Moody’s, or Fitch.

“Renewable Energy Credits” or “RECs” means any and all credits, including any emissions reduction credits, such as CO₂ emission reduction credits, for renewable energy that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, or other renewable energy or environmental mandate or objective, including, without limitation, the Clean Energy Transformation Act and the Energy Independence Act, whether at the Execution Date or at any time during the Term.

“Required Commercial Operation Date” has the meaning assigned in Section 4 of Appendix A.

“Security Account” means an account designated by PSE for the benefit of PSE, under the exclusive control of PSE free and clear of all liens (including the lien of any lender) of any Person or entity other than PSE. Any PSE Security Account must be established and maintained at the expense of

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Seller and held by a depository bank acceptable to PSE pursuant to a control agreement in form and substance reasonably acceptable to PSE.

“Seller Guaranty” means a guaranty, the form of which is attached as Appendix F, from a guarantor who is acceptable to PSE and who is Creditworthy, in PSE’s sole judgment, to secure Seller’s obligations under the guaranty, which provides for payment to PSE upon demand.

“Site” means the physical location at the Premises where the Facility will be or is located. The Site is identified in Section 2 of Appendix A.

“Site Control” means control of the Site by Seller in one of the following forms: (a) Seller owns the Site (evidenced by a deed recorded in the county property records); or (b) Seller leases or has an irrevocable option to lease the Site (pursuant to a current binding written agreement between Seller and the owner or lessor of the Site); or (c) Seller holds a current binding easement or license at the Site that grants Seller express rights to construct, install, operate, maintain and repair the Facility at the Site throughout the Term.

“Storage Cure Plan” has the meaning set forth in Section 17.1.3.

“System Emergency” shall mean an “Emergency Condition” or similar term (as defined in an Open Access Transmission Tariff or other tariff of a transmission distribution provider.

“Term” has the meaning assigned in Section 3.1.

“Termination Liquidated Damages” has the meaning assigned in Section 17.2.2.

“Washington State and Local Sales and Use Taxes” shall mean Washington state and local retail sales and use taxes (including Washington State Retail Sales Taxes) imposed pursuant to RCW 82.08, RCW 82.12 or RCW 82.14, if any, and other substantially similar sales and use taxes imposed under Washington state or local law (including, by reason of a change in Applicable Law) which, for purposes of clarity, the Parties specifically agree shall not include any business and occupation taxes.

“WRAP Program” shall mean the Western Resource Adequacy Program administered by the Western Power Pool.

2 Description of Facility. The Facility is, or will be, owned by Seller. The Facility must conform to the description set forth in Section 2 of Appendix A. The Facility must be located on the Site, separately metered, and directly interconnected to a PSE Distribution Circuit.

3 Term; PSE Termination.

3.1 Subject to the termination provisions set forth in this BESSA, this BESSA becomes effective on the Execution Date and remains in full force and effect until the last Day of the Delivery Period (such period, the “Term”).

3.2 Notwithstanding any other provision of this BESSA to the contrary, PSE may terminate this BESSA for convenience if Seller does not obtain all certifications, permits, licenses,

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agreements, and approvals necessary to site, construct, interconnect, and operate and maintain the Facility (including, but not limited to, an affirmative final and non-appealable decision by the Governor of Washington through the Energy Facility Site Evaluation Council process) ("Project Permits") by the Construction Start Date, provided that if Seller reasonably demonstrates to PSE's satisfaction that Seller is diligently pursuing the Project Permits but is unable to obtain any Project Permit by the Construction Start Date, PSE will not have the right to terminate this BESSA under this Section 3.2 until ninety (90) days after the Construction Start Date.

- 4 Sale and Purchase of Battery Capacity and Other Attributes.** Commencing on the first Day after the Commercial Operation Date, subject to the terms and conditions of this BESSA, Seller agrees to sell, make available, and deliver, and PSE agrees to purchase and receive for its use one hundred percent (100%) of the Battery Capacity in accordance with the terms and conditions set forth in this BESSA and in Annex 1 (BESS Requirements and Operations), and (ii) all other Attributes associated with the Facility. Seller is not entitled to any compensation for Battery Capacity or any other Attribute prior to Seller's obtaining Commercial Operation Authorization from PSE, including Energy produced during Facility testing and start-up. After the Commercial Operation Date, PSE shall be responsible for the purchase of any Charging Energy, except as provided otherwise in Annex 1 (BESS Requirements and Operations).

[ALTERNATIVE FOR TESTING:] [Seller shall not be responsible for the purchase of any Charging Energy for testing and commissioning of the Facility in a quantity as reasonably required but not to exceed [] full Cycles. If Seller requires more than [] full Cycles for testing and commissioning of the Facility, then for any energy charged or discharged beyond such amount, Seller shall pay PSE the energy charge rate as set forth in Rate Schedule 25, unless PSE determines in its sole discretion (as the interconnecting regulated public utility) that another rate schedule as set forth in PSE's tariff would be applicable due to the quantity of Charging Energy required. Except as set forth in the preceding sentence, Seller will not be subject to any retail electric charges for Permitted Station Service or Battery Energy during the testing or commissioning of the Facility prior to the Commercial Operation Date. After the Commercial Operation Date, PSE shall be responsible for the purchase of any Charging Energy, except as provided otherwise in Annex 1 (BESS Requirements and Operations).]

- 5 Price.** Pursuant to the Price Schedule shown in Appendix B, PSE will pay Seller the applicable price per kW/month of Storage Contract Capacity (as defined in Annex 1 (BESS Requirements and Operations)) for each month during the Delivery Period (such applicable price, the "Contract Price" and such monthly amount as calculated in accordance with the foregoing, the "Monthly Payment") as full compensation for, and fully inclusive of, the Facility's Battery Capacity, Environmental Attributes, and all other Attributes. In addition to the amounts otherwise payable by PSE in accordance with this Section 5, PSE and Seller agree that the sale of Battery Capacity is exempt from Washington public utility tax and Washington State and Local Sales and Use Taxes and the sale of Attributes is not subject to Washington State and Local Sales and Use Taxes. In the event the sale of Battery Capacity and/or Attributes becomes subject to Washington State and Local Sales and Use Taxes, PSE shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all Washington State and Local Sales and Use Taxes arising out of or with respect to the purchase or sale of Battery Capacity and/or Attributes that are imposed by any taxing authority at or

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after the Point of Interconnection (regardless of whether such Washington State and Local Sales and Use Taxes are imposed on PSE or Seller), together with any interest or additions to tax payable with respect to such Washington State and Local Sales and Use Taxes. Seller shall pay (and shall indemnify and hold PSE harmless on an After-Tax Basis from and against) all other taxes (regardless of whether such other taxes are imposed on PSE or Seller), including taxes arising out of or with respect to the purchase or sale of Battery Capacity and/or Attributes that are imposed by any taxing authority prior to the Point of Interconnection, taxes based on or measured by net income, business and occupation taxes, public utility taxes, property taxes, replacement taxes and/or special assessments that may be levied upon the Facility or Site as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Facility (including under RCW 82.08.962 and 82.12.962), together with any interest, penalties or additions to tax payable with respect thereto.

6 Performance Security.

6.1 If Seller is not Creditworthy, Seller must maintain Performance Security and comply with the provisions of Appendix E. If Seller is Creditworthy, Seller shall not be required to maintain Performance Security, unless Seller loses its Creditworthy status.

6.2 Seller shall furnish to PSE audited financial statements of Seller or, if a Seller's Guaranty is proposed to be provided, of its applicable Affiliate for PSE's review to determine whether Seller or its Affiliate is Creditworthy. Seller shall furnish to PSE audited financial statements of Seller or, if a Seller's Guaranty has been provided by an Affiliate to satisfy the requirements of Appendix E, of such Affiliate, as applicable, no later than one hundred twenty (120) Days after the end of each fiscal year during the Term of this BESSA. The obligation to provide audited financial statements under this Section 6.2 may be satisfied by the filing of such financial statements on the Securities and Exchange Commission's EDGAR site as part of Seller's or such Affiliate's filing obligations under the Securities Exchange Act of 1934.

7 Interconnection and Operations

7.1 Interconnection Agreement.

7.1.1 Seller must execute the Interconnection Agreement prior to the Construction Start Date.

7.1.2

(a) If the Interconnection Costs for which Seller is responsible as identified in the Facilities Study (defined for the purposes of this Section 7.1.2 as that certain Facilities Study (forthcoming as of the Execution Date) prepared by PSE as the interconnecting distribution utility for the Facility under PSE's Washington Utilities and Transportation Commission-approved tariffs and rules) is five percent (5%) greater or less than [], the Contract Price will automatically be increased or decreased as applicable by the actual amount by which such Interconnection Costs are greater or less than [] divided by the number of months in the Delivery Term. If the Interconnection Costs for which Seller is

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responsible is one hundred percent or more greater than [], either Party may terminate this BESSA without further liability.

(b) The Interconnection Limit and Milestones in this BESSA will automatically be updated to reflect the Interconnection Limit and applicable Milestones as set forth in the Facilities Study, provided that any such updated applicable Milestone may be reasonably revised by agreement of the Parties and consent (if applicable) by PSE as the interconnecting distribution utility and provided further that any Milestones not set forth in the Facilities Study will be reasonably updated to reflect any changes made to the other Milestones in accordance with the foregoing with due consideration given to the relative positions of each Milestone to the others and the overall schedule.

7.2 Final Facility Documents. Seller must provide the Final Facility Documents to PSE as soon as practicable, but no later than ninety (90) Days prior to the Required Commercial Operation Date.

7.3 Seller Cooperation. To assist PSE with any applicable power scheduling regulations and protocols, Seller will:

7.3.1 every Business Day during the Delivery Term provide PSE with a ten (10) Day hourly look ahead, non-binding forecast showing the expected Battery Capacity of the Facility; and

7.3.2 provide PSE with real time access to Seller's Supervisory Control and Data Acquisition historian for Facility performance information reasonably requested by PSE, including, to the extent readily available, information such as data points for the BESS, including the capabilities identified in Appendix A and Annex 1 (BESS Requirements and Operations) and will cooperate in providing PSE with any other reasonably requested information on a real time basis.

7.4 Facility Operations and Maintenance; Access.

7.4.1 During the Term, the Facility shall be operated and maintained by Seller or its designee in accordance with Prudent Operating Practices, Applicable Law, this BESSA, and the Interconnection Agreement. The cost of such operation and maintenance is included in the Contract Price and PSE shall have no responsibility for any such costs under any circumstances whatsoever. Seller shall obtain all certifications, permits, licenses, insurance and approvals necessary to construct, interconnect, and operate and maintain the Facility and to perform its obligations hereunder. Seller shall use Prudent Operating Practices to maximize the output of the Facility. Seller will also maintain maintenance records, which PSE may review upon reasonable request. Although PSE may review the records and the Facility, PSE has no responsibility, actual or implied, for Facility operation or maintenance under this BESSA or otherwise.

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- 7.4.2 As soon as reasonably practicable, and in any event no later than ninety (90) Days prior to the expected Commercial Operation Date, Seller shall develop proposed written operating procedures for the Facility and submit such proposed procedures to PSE for PSE's review and approval (as approved by PSE, the "Operating Procedures"). PSE shall have forty-five (45) Days from the date it receives the proposed Operating Procedures to review and provide comments to Seller. Seller shall incorporate all of PSE's reasonable comments into the final Operating Procedures, which shall be subject to approval by PSE. The final Operating Procedures may be amended from time to time by using the foregoing procedures. The Parties agree that the Operating Procedures will cover the protocol under which the Parties will perform their respective obligations under this BESSA and will include procedures concerning the following: (i) the method of day-to-day communications and reporting; (ii) key personnel lists for Seller and PSE; (iii) reasonable coordination regarding the timing of scheduled maintenance and planned outages; (iv) reporting of scheduled maintenance, planned outages and forced outages of the Facility, (v) reporting of curtailment periods; and (vi) ongoing reporting of projected capacity reductions due to planned outages, forced outages and any other curtailments reasonably foreseeable by Seller.
- 7.4.3 Subject to the requirements of Annex 1 (BESS Capabilities and Operations), Seller shall notify PSE with as much advance notice as practicable of any proposed or necessary maintenance outages, including Planned Outages and the Parties shall work to plan such outage to mutually accommodate, as practicable, the reasonable requirements of Seller and service obligations of PSE.
- 7.4.4 PSE and its representatives will have the right of ingress to and egress from the Facility during normal business hours upon reasonable advance notice to Seller and for any purposes reasonably connected with this BESSA, including for the purpose of inspecting the Facility, the Site, and/or Seller's construction, operation and/or maintenance of the Facility; provided that any such visit to the Site shall not unduly interfere with the construction, operation and/or maintenance of the Facility and Seller or Seller's representative(s) will have the right to accompany PSE. Notwithstanding the foregoing, nothing in this Agreement will limit PSE's ability to ingress or and egress from the Facility at any time and unaccompanied in connection with the discharge of its rights, duties, and responsibilities as a regulated public utility.

7.5 Interconnection Limit. The Facility output must not exceed the Interconnection Limit at any time during the Term.

7.6 Market Design. The obligations of Seller under this BESSA to and at the Point of Interconnection and the obligations of PSE under this BESSA from and after the Point of Interconnection outlined reflect the electric market structure under which the Facility is expected to operate as of the Commercial Operation Date. If (i) there are material market structure changes during the Term that prevent Seller and/or PSE from meeting their respective obligations, or (ii) PSE joins a regional transmission organization or independent system operator structure during the Term, the Parties will use good faith efforts to amend

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this BESSA to enable Seller and/or PSE to meet their respective obligations within the new market structure and in a manner that maintains the existing allocation of obligations and benefits between Seller and PSE under this BESSA. If the Parties are unable to reach agreement as to how to amend the BESSA under this Section 7.6, then the Parties agree the BESSA will remain in effect, provided that nothing herein will be applied or interpreted to preclude PSE from joining a regional transmission organization or independent system operator structure

- 7.7 Decommissioning.** At the end of the Term or upon earlier termination of this BESSA, the installed components of the Facility will be removed, reused, disposed of, and recycled, where possible, by Seller. The Site will be restored by Seller to a state similar to its preconstruction condition. All removal of equipment will be done in accordance with any Applicable Law and manufacturer recommendations. All costs and governmental approvals for decommissioning will be the responsibility of Seller.

8 Metering

- 8.1 Installation and Purchase.** PSE will install, at Seller's expense, PSE-owned metering equipment, as determined by PSE to be appropriate for the use of Battery Capacity and the charging and discharging of Battery Energy at the BESS Metering Point; provided further that one revenue grade meter will be installed at the BESS Metering Point and in accordance with the Interconnection Agreement. All Energy produced, discharged, distributed to, and stored by the Facility will be measured through such metering equipment.

- 8.2 Meter Adjustment.** Neither Seller, nor any of Seller's Affiliates, nor the employees, contractors, subcontractors, agents or representatives of any of them, will make any adjustment to any metering equipment without the prior written consent of PSE.

- 8.3 Meter Testing.** If, upon test, the PSE-owned metering equipment is found to be inaccurate by more than two percent (2%) or if such meters are for any reason out of service or fail to register, then the Parties shall use their best efforts to estimate the correct amounts of Battery Energy during the periods affected by such inaccuracy, service outage or failure to register by the best available means. In the event that, as a result of such estimate, the amount of Battery Energy increases and/or decreases, the quantities of Battery Energy measured since the previous test of such metering equipment shall be adjusted to correspond to the corrected measurements and any corresponding changes (if any) to calculations of amounts owed hereunder will be reconciled as a credit or debit (as applicable) to the next Monthly Payment. Notwithstanding the foregoing, if, upon test, PSE-owned metering equipment is found to be inaccurate by not more than two percent (2%), then any previous recordings of such meters shall be deemed accurate. PSE shall promptly cause meters found to be inaccurate to be adjusted to correct such inaccuracy to the extent practicable.

- 8.4 Metering Costs.** Seller will reimburse PSE for all costs reasonably incurred by PSE in connection with metering, including (but not limited to), all costs of metering, telemetering, communications lines for remote billing data retrieval, and other equipment to be installed by PSE at the Facility. Such reimbursement will be made by Seller within thirty (30) Days after Seller's receipt of PSE's invoice for such costs. All metering, telemetering, and other

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equipment installed by PSE will be and remain PSE's property, notwithstanding such reimbursement.

9 Obtaining Commercial Operation Authorization

9.1 Commercial Operation. Seller must achieve Commercial Operation of the Facility by the Required Commercial Operation Date, provided that the Required Commercial Operation Date will be extended day for day for up to one hundred and eighty (180) days in the aggregate due to delay caused by: (a) a Force Majeure Event, (b) a delay in interconnection and synchronization of the Facility to the PSE grid, or (c) any material breach of this Agreement by PSE, except in each case of (a) through (c) to the extent attributable to Seller's action or inaction, including (without limitation) breach of this agreement, willful misconduct, negligence, or Seller's failure to take commercially reasonable actions in accordance with Prudent Operating Practices. Seller and the Licensed Professional Engineer must complete and submit the Commercial Operation Certificate attached hereto as Appendix C to PSE when the Facility has achieved Commercial Operation. Upon receipt of such notice of Commercial Operation, PSE will have the right, but not the obligation, to inspect the Facility prior to the Commercial Operation Date, and will grant or deny Seller authorization in writing to commence the sale of Solar Output and all other Attributes pursuant to Section 4 within seven (7) Business Days upon PSE finding that Seller has satisfied all Commercial Operation obligations and requirements under this BESSA and the Interconnection Agreement ("Commercial Operation Authorization"). If Seller has not actually achieved Commercial Operation, Seller must promptly resolve any issues or deficiencies with respect to Commercial Operation and resubmit the Commercial Operation Certificate.

9.2 Failure to Achieve Commercial Operation by the Required Commercial Operation Date. If Seller fails to achieve Commercial Operation of the Facility by the Required Commercial Operation Date, Seller must pay Delay Damages to PSE for each Day of delay after the Required Commercial Operation Date (including any partial Day) until the earlier of (a) Commercial Operation of the Facility, (b) the date that Seller notifies PSE that Commercial Operation will not be achieved, or (c) ninety (90) Days after the Required Commercial Operation Date. If Delay Damages are owed under this Section 9.1, no later than five (5) Business Days after the Required Commercial Operation Date, Seller must provide Eligible Collateral to PSE in the amount equal to the lesser of [] per kW (\$[]/kW) and [] (\$[]), which Eligible Collateral will be in addition to the Performance Security. PSE will be entitled to draw such Delay Damages from such Eligible Collateral and the Performance Security provided by Seller. PSE will return any undrawn amount of such Eligible Collateral (but not the Performance Security) within ten (10) Days following the earlier of (i) the Commercial Operation Date and (ii) the date this BESSA is terminated by PSE pursuant to Section 17.2.1.

9.3 Seller Duty to Update. Seller must promptly notify PSE in writing of any issue, event or other development that has impacted, or would reasonably be expected to impact, Seller or the development, construction, or completion of the Facility such that Seller is unlikely to (a) achieve Commercial Operation by the Required Commercial Operation Date, or

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(b) timely achieve any other Milestone. Seller's notification to PSE of any issue, event, other development or change does not alter Seller's obligations under this BESSA.

10 Performance Guarantees. Seller guarantees that the BESS will satisfy the performance guarantee set forth in Attachment 2 to Annex 1 (BESS Requirements and Operations) ("Performance Guarantee").

11 BESS Operations. In addition to the requirements of the Performance Guarantee, Seller will ensure that the BESS provides all Battery Capabilities and complies with the operational requirements, each in accordance with Appendix A and Annex 1 (BESS Requirements and Operations).

12 Attributes and Incentives

12.1 Risk of Loss and Title Transfer. Title to and risk of loss related to utilization of Battery Capacity shall pass and transfer from Seller to PSE at the Point of Interconnection. Seller warrants that Attributes delivered to PSE are free and clear of all liens, security interests, claims and encumbrances of any kind.

12.2 Entitlement. PSE shall be entitled to, for no additional consideration and without double-counting, all Attributes associated with the Facility and/or Delivered Energy, regardless of the type or form of such Attributes or when such Attributes may come into existence or be acquired by Seller.

12.3 Facility Qualification. Seller will use commercially reasonable efforts, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments reasonably necessary to cause the Facility and Battery Capacity (including Battery Energy) to qualify for all applicable Attributes available throughout the Delivery Period of this BESSA, at Seller's cost and expense. Seller shall make such filings and take such other actions as PSE may from time-to-time reasonably request in order to preserve and maintain the Attributes made available to PSE hereunder in accordance with the applicable standards and to otherwise enable PSE to use, sell and transfer such Attributes in accordance with market standards.

12.4 Attribute Registration. Seller shall, at Seller's sole cost and expense, promptly certify and register Attributes under one or more certification standards and with one more registries as may be requested by PSE from time to time and provide attestations in a form acceptable to PSE regarding the certification and registration of Attributes.

12.5 Delivery. Seller shall, at Seller's sole cost and expense, deliver and convey any Attributes required to be certified and registered under Section 12.4 within ten (10) Business Days after the end of the month in which the applicable Attributes are created. In addition to delivering and conveying any such Attributes through the applicable registry, Seller will execute and deliver to PSE on a quarterly basis the attestation form attached hereto as Appendix D ("Attribute Attestation Form") and/or such other documentation as may be required verifying the assignment of the Attributes to PSE pursuant to this BESSA. If Seller fails to deliver Attributes in accordance with this Section Error! Reference source not found., PSE may purchase replacement Attributes from any third party in such quantities up to Seller's

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shortfall and Seller shall reimburse PSE for one hundred percent (100%) of the costs thereof that are supported with reasonable documentation by PSE within fifteen (15) Business Days of notice from PSE of such purchase, provided that PSE may pursue other remedies available to it with respect to Seller's shortfall to the extent it does not purchase replacement Attributes.

- 12.6 Capacity Attribute Registration.** Seller shall, at Seller's sole cost and expense, take all necessary steps and actions prior to the Commercial Operation Date to allow all Facility capacity, to the extent eligible, to comply with the WRAP Program, and, subject to Section 12.3, to register with any other registry for Attributes as may be requested by PSE from time to time. Commencing on the Commercial Operation Date and continuing through the end of the Term, Seller shall, at Seller's sole cost and expense, comply with all applicable operating rules and maintain its registration with the WRAP Program.
- 12.7 Change in Law.** In the event that for any reason Applicable Law prevents Seller from assigning Attributes to PSE notwithstanding the requirements hereof (including any change in Applicable Law), if Seller realizes the monetary value of such Attributes, Seller shall, from time to time, and in any event within thirty (30) Days of actual receipt, pay to PSE the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the applicable Attributes. Seller shall use commercially reasonable efforts to maximize the value received by Seller with respect to any such Attributes.
- 12.8 Reporting and Public Statements.** Unless required by Applicable Law (in which case Seller shall notify PSE of such requirement a reasonable time prior to compliance therewith), Seller shall not report to any Person that the Attributes belong to any Person other than PSE, and PSE may report under any such program that the Attributes belong to PSE. Seller shall maintain and make available to PSE all statements and records reasonably required to properly document compliance with Seller's obligations to PSE with respect to the Attributes.
- 12.9 Additional Documents.** Seller shall provide such additional documents and instruments as are reasonably requested by PSE to effect or evidence transfer of the Attributes to PSE or its designees. Each Party shall promptly give to the other Party copies of all documents it submits to any registry or governmental or regulatory authority to effectuate or record any such transfers.
- 12.10 Incentives.** Seller shall be entitled to all Incentives relating in any way to the Facility. PSE acknowledges that Seller has the right to sell any Incentives to which it is entitled pursuant to this Section 12.10 to any Person other than PSE at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to PSE hereunder. PSE shall have no claim, right or interest in such Incentives or in any amount that Seller realizes from the sale of such Incentives. If a change in Applicable Law occurs after the Execution Date and as a result thereof the value of the expected benefit from any Incentives applicable to the Facility, Seller or any direct or indirect investor therein increases, the Parties agree that both Parties will share equally in the additional benefit therefrom. Within forty-five (45) Days of the effective date of the change in Applicable Law, Seller shall

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provide to PSE a good faith estimate of the additional benefit, net of costs, to the Facility, Seller or any direct or indirect investor therein (the “Incentive Change Benefit”). Seller and PSE shall work together in good faith to mutually agree on a methodology for determining the value of the Incentive Change Benefit and sharing such value on a 50%/50% basis. For the purposes of this Section 12.10 only, “change in Applicable Law” means (a) any change in or amendment to Applicable Law (including the Internal Revenue Code or another applicable federal income tax statute); (b) any change in, or issuance of, or promulgation of any temporary or final U.S. Treasury regulations promulgated thereunder that would result in any change to the interpretation of Applicable Law (including the Internal Revenue Code or existing U.S. Treasury regulations); (c) any guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the Internal Revenue Service Large Business and International division, or any published advice, advisory, or legal memorandum issued by a governmental authority, that applies, advances or articulates a new or different interpretation or analysis of any provision of Applicable Law, including the Internal Revenue Code and any other applicable federal tax statute or any temporary or final U.S. Treasury regulation promulgated thereunder; or (d) any change in the interpretation of any of the authorities described in clauses (a) through (c) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of Applicable Law.

12.11 Future Attributes. With respect to any new Attributes that may come into existence or be recognized after the Execution Date only, each Party will be responsible for fifty percent (50%) of the costs incurred by Seller to comply with Sections 12.3 through 12.6 (excepting commercially reasonable internal administrative costs, which Seller will bear) with respect to qualifying, registering, and/or delivering such new Attributes; provided, that no costs will be incurred with respect to any such new Attributes unless requested by PSE and PSE approves the costs; and provided further, in no case shall Seller be required to physically modify the Facility or alter the manner in which the Facility operates to provide any such new Attributes unless PSE agrees in writing to reimburse Seller for one hundred percent (100%) of such costs.

13 Billing; Payment

13.1 Billing and Payment. For each month during the Delivery Period, PSE will pay Seller the Monthly Payment for Storage Contract Capacity made available in such month; *provided, however,* that PSE may offset and deduct any amounts Seller owes to PSE against any amounts that PSE owes to Seller.

13.2 Billing Dispute. Seller and PSE will have twelve (12) months from the date the disputed monthly statement is issued to Seller to question or contest the correctness of any payment or credit. If no question or contest is raised in writing from either Party to the other during such time period, the correctness of all such charges and credits will be conclusively presumed.

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- 13.3 PSE Seller Account.** No later than sixty (60) Days prior to Commercial Operation, Seller must establish an additional PSE Seller Account for the Facility for identification, billing and payment purposes. Seller must be enrolled in PSE's paperless billing process. The Person named as the Seller on the PSE Seller Account for the Facility must be, and remain for the Term, the same Person as the Seller under this BESSA and the "Seller" as defined in the Interconnection Agreement.
- 13.4 Station Service.** PSE will furnish Permitted Station Service to Seller on a non-billable basis under a tariff designated by PSE. Seller may not use the electricity furnished by PSE for Permitted Station Service for any other purpose and will manage level of Permitted Station Service load required by the Facility in accordance with Prudent Operating Practices. Any other load at the Premises other than Permitted Station Service will be separately metered and subject to a separate retail electric agreement with PSE that is not subject to this Section 13.4.

14 Force Majeure

- 14.1 Force Majeure Event and Performance Suspension.** Subject to compliance with Section 14.2, the affected Party will be excused from performance of its obligations hereunder, other than payment obligations that accrued prior to the declaration of the Force Majeure Event, and will not be construed to be in default with respect of such obligation to the extent that, and for so long as, the affected Party's failure to perform such obligations is due to a Force Majeure Event. For the avoidance of doubt, during such Force Majeure Event, Seller is not excused from payment of monthly metering charges, or any service charges owed pursuant to the applicable electric service tariff. The suspension of performance due to a Force Majeure Event will be of no greater scope and of no longer duration than is required by such Force Majeure Event. No Force Majeure Event will extend this BESSA beyond the stated Term or excuse Seller from not achieving Commercial Operation of the Facility by the Required Commercial Operation Date beyond what is provided for in Section 9.1.
- 14.2 Mitigation for Force Majeure Event.** Following the occurrence of a Force Majeure Event, the affected Party must give the other Party written notice thereof as promptly as possible after the affected Party becomes aware of such Force Majeure Event, specifically describing the Force Majeure Event. The affected Party must remedy its inability to perform as soon as reasonably practicable. If Seller is the affected Party, when Seller is able to resume performance of its obligations under this BESSA, Seller must provide PSE with a written confirmation that the Force Majeure Event has been cured and any supporting documentation that may be reasonably requested by PSE.
- 14.3 Early Termination Resulting from a Force Majeure Event.** Without prejudice to any other termination rights set forth in this BESSA, if either Party remains unable to perform its obligations hereunder for more than six (6) months following the initial suspension of performance due to the Force Majeure Event, the other Party may terminate this BESSA effective upon ten (10) Days' prior written notice. Upon termination of this BESSA pursuant to this Section 14.3, the Parties will have no further liability or obligation to each other except as provided in Section 23.13.

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15 Amendment; BESSA Assignment; Seller Name Change

15.1 Amendments. This BESSA may be amended only by a written instrument duly executed by both Parties, each of which has received, if applicable, all approvals of governmental authorities of competent jurisdiction necessary for the effectiveness thereof. In recognition of PSE's administrative burden resulting from multiple amendments requested by Seller, Seller agrees that each amendment requested by Seller after the first such amendment will be subject to the payment by Seller to PSE of a fee of two thousand five hundred dollars (\$2,500), which must be paid by Seller to PSE prior to PSE's execution of the amendment.

15.2 BESSA Assignment. Seller may not assign this BESSA, in whole or in part, except (a) as authorized in Section 15.4, (b) after prior written notice to PSE and receipt of PSE's prior written consent, to an entity purchasing Seller or Seller's business at the Premises that will remain a retail electric customer of PSE at the Premises. Except for assignments authorized under Section 15.4, Seller and the proposed assignee (proposed new Seller) must comply with Sections 15.2.1 through 15.2.4 below as conditions precedent to the effectiveness of any assignment of this BESSA. If Seller or the proposed assignee fails to comply with any of Sections 15.2.1 through 15.2.3 below, the attempted assignment of this BESSA will be null and void (except for a collateral assignment pursuant to Section 15.4). Any assignment of this BESSA authorized under this Section 15.2 will constitute, from and after the effective date of such assignment, an acceptance and assumption by the assignee (new Seller) of all obligations of Seller under this BESSA and a release and discharge by PSE of the assignor from such obligations arising after the effective date of such assignment.

15.2.1 Seller must (a) request PSE's consent to such assignment by submitting to PSE a draft request for consent consistent with standard industry terms at least twenty (20) Business Days prior to the anticipated effective date of the requested assignment, and (b) receive PSE's consent to the requested assignment, subject to any revisions or conditions to such consent that PSE may require.

15.2.2 If Appendix E is applicable, it will be a condition precedent of any assignment of this BESSA authorized under this Section 15.2 that the assignee (new Seller) maintains Performance Security pursuant to Appendix E as of the effective date of the assignment.

15.2.3 If PSE executes the written consent, the assignee (new Seller) must execute and submit to PSE the notice of assignment (a form of which will be provided in conjunction with PSE's provision of written consent to the assignment), no later than five (5) Business Days after the effective date of the assignment.

15.2.4 Within five (5) Business Days following the effective date of an assignment of this BESSA authorized under this Section 15.2, the assignee (new Seller) must set up a new PSE Seller Account for the Facility and provide a W-9 for purposes of billing and payment. Upon establishment of the new PSE Seller Account, such assignee (new Seller) will be enrolled in PSE's paperless billing process.

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15.3 Seller Name Change. Seller must provide PSE with thirty (30) Days' prior written notice (the form of which will be available upon request from PSE within five (5) Business Days of receipt of written request) of any change in the name of Seller. Seller must promptly execute an amendment of this BESSA to address such name change.

15.3.1 Within five (5) Business Days following any name change, Seller must (a) provide an updated W-9 to PSE, (b) provide proof of a name change with the Secretary of State's office, and (c) update its PSE Seller Account with the name change and any other related changes in account information.

15.3.2 If Appendix E is applicable, Seller must update the Performance Security to reflect the name change, if and as necessary. Seller must provide proof of any such necessary updates within five (5) Business Days following the name change.

15.4 Financing Assignment. Notwithstanding the requirements of Section 15.1, Seller may assign this BESSA, without the prior consent of PSE to a financing entity for collateral purposes in connection with any financing or refinancing of the Facility; *provided, however, that* any such collateral assignment will not release or discharge Seller from any of its obligations or liabilities under this BESSA and will not place any limitation on or otherwise affect PSE's rights and remedies under this BESSA or expand the liabilities, risks or obligations imposed on PSE under this BESSA.

16 Representations, Warranties and Covenants

16.1 General. Each Party makes the following additional representations, warranties or covenants:

16.1.1 It has the legal power and authority to own its own properties, to carry on its own business as now being conducted and to enter into this BESSA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this BESSA.

16.1.2 It is qualified to do business in, and is in good standing with the officials of Washington and all other governmental or regulatory authorities with jurisdiction, and, if not a Washington (domestic) entity, it is also organized and in good standing under the laws of the jurisdiction of its organization.

16.1.3 It understands its rights and obligations under this BESSA, and this BESSA is signed on such Party's behalf by an authorized representative.

16.1.4 It can legally enter into and perform its obligations under this BESSA, and no third-party permit, consent, filing, or approval is required to make this BESSA valid.

16.1.5 It represents that the execution and delivery of this BESSA does not and will not conflict with or constitute a breach of or a default under any of the terms, conditions or provisions of any other agreement or instrument to which such Party is a party.

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16.1.6 No legal action is in progress, pending, or to the best of its knowledge, threatened that could, individually or in the aggregate, have a material adverse effect on its ability to perform its contractual obligations or on its business or financial condition.

16.2 Environmental Attributes and Energy. Seller represents, warrants and covenants throughout the Term that:

16.2.1 Seller agrees to transfer, or cause to be transferred, to PSE good and marketable title to all Environmental Attributes free and clear of any liens, taxes, claims, security interests and any other encumbrances.

16.2.2 Seller has not sold or transferred any of the Battery Capacity, Battery Energy, Environmental Attributes, or other Attributes from the Facility to any other Person.

16.2.3 No Environmental Attributes violate any applicable rule or requirement of any certification authority (whether with respect to voluntary or involuntary certification) pertaining to double counting.

16.3 Seller represents, warrants, and covenants throughout the Term that Seller is the sole [owner of the Facility/lessee of the Facility].

16.4 Seller covenants to promptly notify PSE following any determination made by Seller or its independent auditor that Seller constitutes a variable interest entity for which PSE is the primary beneficiary and as a result of this BESSA considered individually or together with any other distributed energy resource agreements between Seller and PSE.

16.5 Seller covenants that as of the Construction Start Date the Site will be adequate for the Facility and will be lawfully zoned for the Facility. Seller represents that it has Site Control as of the Execution Date and covenants that it will maintain Site Control throughout the Term. Seller represents that Site Control, as of the Execution Date, is free and clear, and covenants that Site Control will remain free and clear throughout the Term, of any lien, right, contract, or other encumbrance that would prevent, limit, or otherwise impede or impair the construction, installation, commissioning, operation, maintenance or repair of the Facility during the Term.

16.6 Seller represents that the information in Section 1 (Seller Information) and Section 2 (Facility Description) of Appendix A is true and correct.

17 Default; Remedies

17.1 Events of Default. Any one or more of the following events will constitute an “Event of Default” by a Party and will give the non-defaulting Party the right to exercise the remedies specified in Section 17.2 unless excused in writing by the non-defaulting Party in such non-defaulting Party’s sole discretion:

17.1.1 Seller fails to achieve Commercial Operation of the Facility by the Required Commercial Operation Date (as such date may be extended pursuant to Section

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9.1); *provided, however*, if Seller is paying Delay Damages pursuant to Section 9.1, such failure will not become an Event of Default until the earlier of (a) the date that Seller notifies PSE that Commercial Operation will not be achieved, (b) ninety (90) Days after the Required Commercial Operation Date.

17.1.2 The BESS output exceeds the Interconnection Limit.

17.1.3 If, in any consecutive six (6) month period, the Monthly Storage Availability (as defined in Annex 1) is not, on average, at least [] ([]%) (“Availability Event”) and Seller fails to (x) deliver to PSE within twenty (20) Business Days, or what is reasonably required depending on the type and extent of the cause, after written notice from PSE a plan or report developed by Seller that describes the cause of the failure to meet such [] ([]%) threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (or such longer time if necessary for the procurement of long-lead time equipment) (“Storage Cure Plan”), or (y) successfully complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein and such that the cause is cured. Notwithstanding the foregoing, if [] ([]) or more Availability Events have occurred within any rolling [] ([]) day period and provided that this Agreement has not been terminated due to Seller’s failure under sub-sections (x) or (y) above with respect to any previous Availability Event, PSE may, in its reasonable discretion, permit Seller to undertake a subsequent Storage Cure Plan with respect to an Availability Event; *provided, that*, Seller’s failure to comply with subsections (x) or (y) above with respect to any such subsequent Storage Cure Plan permitted by Seller will be considered an Event of Default hereunder.

17.1.4 If any Storage Capacity Test demonstrates actual BESS maximum capacity is less than the Storage Contract Capacity set forth in Appendix A except to the extent due to any Force Majeure Event (a “Capacity Event”) and Seller fails to (1) (x) deliver to PSE within ten (10) Business Days after written notice from PSE a plan or report developed by Seller that describes the cause of the Capacity Event, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such Capacity Event along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (or such longer time if necessary for the procurement of long-lead time equipment) (“Capacity Cure Plan”) or (y) complete such Capacity Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein, or such Capacity Cure Plan is not successful, or (2) a subsequent Capacity Event occurs after the first such event, provided that PSE, in its sole discretion may permit Seller to undertake a subsequent Capacity

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Cure Plan, in which case (1)(x) and (y) would apply to such subsequent Capacity Cure Plan.

- 17.1.5 The Interconnection Agreement is terminated as a result of either Party's breach of the agreement.
- 17.1.6 Seller makes any sale, transfer, or disposition of any Battery Capacity, Battery Energy, or other Attribute from the Facility to itself or a third party.
- 17.1.7 Seller or any of its Affiliates, or any of their employees, contractors, subcontractors, agents or representatives, willfully adjust or tamper with the meter without PSE's prior written consent.
- 17.1.8 Seller fails to comply with Section 15.2 in connection with an attempted assignment of this BESSA.
- 17.1.9 A Party fails to pay the non-defaulting Party any undisputed amount payable pursuant to this BESSA by the due date and such Party fails to cure such failure to pay within ten (10) Business Days after receipt of written demand from the non-defaulting Party.
- 17.1.10 Seller fails to furnish Eligible Collateral pursuant to Section 9.1.
- 17.1.11 If Appendix E is applicable, Seller fails to comply with or cause compliance with the Performance Security requirements of Appendix E, unless cured by the end of next Business Day following receipt of a written notice from PSE of such failure to comply or cause compliance with Appendix E.
- 17.1.12 A court having jurisdiction enters: (a) a decree or order for relief in respect of a Party in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law; or (b) a decree or order, which was sought by any Person other than such Party, adjudicating such Party's bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Party under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of such Party or of any substantial part of its affairs.
- 17.1.13 A Party (a) commences a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent; (b) consents to the entry of a decree or order for relief in respect of such Party in any involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it; (c) files any petition, answer or consent seeking reorganization or relief under any applicable federal or state law, which, if granted would have the effect of relieving such Party of any of its obligations;

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(d) consents to the filing of any petition for, or to the appointment of or the taking of possession by, a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official for such Party or for any substantial part of its property; € makes an assignment for the benefit of creditors; (f) admits in writing its inability to generally pay its debts as they become due; or (g) takes any action in furtherance of any of the foregoing.

17.1.14 Any representation, warranty, or covenant made by a Party in Section 16 proves to be incorrect in any material respect when made, unless such Party promptly commences and diligently pursues action to cause such representation, warranty, or covenant to become true in all material respects and does so within thirty (30) Days after notice thereof has been given to such Party by the non-defaulting Party (unless such cure is not capable of being effected within such thirty (30) Day period, in which case the defaulting Party will have an additional thirty (30) Day period in which to perform such cure) and such cure removes any material adverse effect on the non-defaulting Party of such representation, warranty, or covenant having been incorrect.

17.1.15 Seller fails to comply with Section 13.3.

17.1.16 A Party fails to perform or comply with any other material term or condition of this BESSA, other than those listed in Sections 17.1.1 through 17.1.15, which failure continues for thirty (30) Days after written notice from the non-defaulting Party.

17.2 Termination for Default; Termination Damages

17.2.1 Upon the occurrence and during the continuation of an Event of Default by a Party, the non-defaulting Party will be entitled to terminate this BESSA and set a termination date by giving written notice thereof to the defaulting Party.

17.2.2 If PSE terminates this BESSA under Section 17.2.1, PSE will be entitled to recover from Seller all amounts then owed by Seller to PSE under this BESSA (including any unpaid Delay Damages, if applicable) and recover from Seller liquidated damages for such termination ("Termination Liquidated Damages") in the applicable amount set forth in Section 6 of Appendix A. For the avoidance of doubt, if PSE terminates this BESSA pursuant to Section 17.2.1 for an Event of Default by Seller under Section 17.1.1, then Seller will owe PSE the Termination Liquidated Damages pursuant to this Section 17.2.2 in addition to the Delay Damages that accrue under Section 9.1 prior to such termination.

17.3 Limitation of Remedies, Liability, and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS BESSA SATISFY THE ESSENTIAL PURPOSE HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, AND IN SUCH EVENT SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY. NEITHER PARTY WILL BE

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LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; *PROVIDED, HOWEVER, THAT SUCH LIMITATION WILL NOT APPLY (1) IN THE CASE OF AMOUNTS OWED TO THIRD PARTIES FOR WHICH INDEMNIFICATION IS PROVIDED UNDER THIS BESSA, (2) TO LIMIT THE LIABILITY OF A PARTY FOR LIQUIDATED DAMAGES SPECIFIED HEREIN, OR (3) TO LIMIT THE LIABILITY OF A PARTY WHOSE ACTIONS GIVING RISE TO SUCH LIABILITY CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IT IS EXPRESSLY AGREED THAT THE LOST VALUE OF ANY INVESTMENT TAX CREDIT OR ANY OTHER SIMILAR TAX CREDIT OR BENEFIT WILL BE CONSIDERED CONSEQUENTIAL DAMAGES. TO THE EXTENT THE DAMAGES REQUIRED TO BE PAID UNDER THIS BESSA ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES DO NOT CONSTITUTE A PENALTY AND ARE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.*

18 Seller's Assistance. Seller covenants to provide reasonable cooperation, at its own costs, to PSE at PSE's request in supporting efforts by PSE to obtain any approval required from or oppose any action to direct the material modification of terms or conditions of this BESSA of any regulatory body having jurisdiction thereover.

19 Insurance.

19.1 Seller, at its own cost and expense, shall maintain or cause to maintain, and keep in full force and effect from Execution Date through the later of the date of expiration or termination of this BESSA, the following insurance coverage:

19.1.1 Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limits of liability bodily injury by accident of one million dollars (\$1,000,000) for each accident; bodily injury by disease one million dollars (\$1,000,000) policy limit; and bodily injury by disease one million dollars (\$1,000,000) each employee;

19.1.2 Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors' protective liability all with minimum limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) annual aggregate, and two million dollars (\$2,000,000) products and completed operations aggregate;

19.1.3 Commercial Automobile Insurance with a minimum limit of one million dollars (\$1,000,000) combined single limit per accident with respect to bodily injury, property damage or death;

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- 19.1.4 Umbrella Excess Liability Coverage with a minimum limit of ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) annual aggregate. The combined liability limits may be satisfied through a combination of primary, umbrella/excess, and self-insured retention. Any self-insured retention is subject to approval by PSE, which approval shall not be unreasonably withheld;
- 19.1.5 Builder's All-Risk Insurance with a minimum limit based on the total replacement cost of the Facility, provided that such Builder's All-Risk Insurance shall only be required during construction of the Facility;
- 19.1.6 All-Risk Property Insurance covering physical loss or damage to the Facility with minimum limits based on the total replacement cost of the Facility; and
- 19.1.7 Business Interruption Insurance which amount shall cover Seller's continuing or increased expenses resulting from full interruption for a period of six (6) calendar months and a time deductible of no more than sixty (60) Days.
- 19.2** All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date hereof through the later of the expiration or termination of this BESSA, except as provided otherwise in Section 19.1. If any insurance policy required to be obtained hereunder is on a "claims made" basis, Seller shall either maintain either "tail" coverage or continuous "claims made" liability coverage for a minimum of three (3) years following the expiration of this BESSA.
- 19.3** PSE, its officers, agents and employees shall be named as additional insured on all Commercial General Liability, Auto Liability, and Umbrella/Excess Liability insurance policies required by the specifications hereunder to be maintained by or on behalf of Seller.
- 19.4** All policies with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against PSE, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.
- 19.5** All insurance coverage required by this BESSA shall be issued by an insurer with an A.M. Best's rating of not less than "A-VII" or such other insurer as is reasonably acceptable to PSE.
- 19.6** Subject to the continued maintenance of the minimum insurance limits set forth in this Section 19, Seller, or Seller's Affiliate, retains the right to make reasonable decisions regarding its insurance and risk financing programs, including insurance terms and conditions, levels of deductibles/retentions and available limits of coverage, based on insurance market conditions, available capacity and/or other events that could impact the Seller's, or Seller's Affiliate's, overall cost of insuring risk.
- 19.7** Seller shall require its insurer(s) to endeavor to notify PSE of any material change in, or cancellation of, the insurance required by this Section 19 at least thirty (30) Days prior to the

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effective date of such change or cancellation except in the case of non-payment of premiums in which case the notice shall be ten (10) Days or as soon as reasonably known.

- 19.8** Within fifteen (15) Days after the Execution Date, Seller shall provide to PSE and thereafter maintain with PSE a current certificate of insurance verifying the existence of the insurance coverage required by this BESSA.

20 Labor.

- 20.1** Seller shall satisfy the requirements of Washington House Bill 1589 (“HB 1589”) as related to the Facility. For the avoidance of doubt, satisfying HB 1589 specifically includes the requirement that the Facility will be constructed by a prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements. Seller shall (i) satisfy the Prevailing Wage and Apprenticeship Requirements (as defined as the requirements under Code Sections 45(b)(7) and (8), Code Sections 45Y(g)(9) and (10), Code Sections 48(a)(10) and (11), and Code Sections 48E(d)(3) and (4) and any Prevailing Wage and Apprenticeship Guidance) applicable to the Facility and (ii) execute an engineering, procurement and construction (“EPC”) contract for the Facility that complies with Washington Administrative Code, Title 296, Chapter 140, WAC 296-140, which requires that the EPC contractor utilize a Project Labor Agreement, Community Workforce Agreement or Collective Bargaining Agreement (each of which as may be defined or amended in WAC 296-140), as applicable, in a reasonable and customary form, for major construction activities associated with the construction of the Facility.

- 20.2** Seller shall make a good faith effort to endeavor to hire as direct or indirect subcontractors local workers (such as M/WBE/VETs) during construction of the Facility and as permanent employees or as direct or indirect subcontractors for the operation of the Facility and performance of Seller’s obligations under the terms of this agreement; provided and only to the extent that Seller or its Affiliates, as applicable, determine that (i) contracting with any such persons to perform such work is cost and schedule effective with respect to the construction and/or operation of the Facility, (ii) such persons satisfy Seller’s or its Affiliate’s, as applicable, then current qualifications, site safety policies, background screening, and (iii) such persons have obtained all applicable certifications that Seller or its Affiliates require.

- 20.3** Notwithstanding the foregoing, Seller shall be responsible to manage relations among Seller, its Affiliates, its contractors and subcontractors and other local workers.

21 Equity Reporting Requirements.

- 21.1** Seller shall furnish no later than April 1 of each year and upon PSE’s reasonable request (but in any event not more than twice annually), a report in the form in Appendix H documenting how it has executed its obligations under this BESSA in accordance with the Seller’s CETA Equity Plan. “CETA Equity Plan” shall mean that portion of Seller’s proposal to PSE’s 2023 Distributed Solar and Storage RFP for the Facility comprising the “CETA Equity Plan” section of “Tab 2a Commercial Details” of the Exhibit B Bid Forms and related supplemental

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materials, including updates provided by Seller during the request-for-proposal evaluation process following the filing of PSE's final CEIP. PSE shall have the right to review and provide feedback (if any) on the report required under this Section 21.1. This report must include at a minimum the application of the labor standards in RCW 82.08.962 and 82.12.962 and compliance with WAC 480-107-075; local tax revenues generated by the Facility; land use payments associated with the Facility; host community payments for those municipalities or other local administrative divisions that host the Facility; activities undertaken to support development of project-related opportunities, including opportunities for women-, minority-, disabled-, and veteran-owned businesses; activities associated with facilitating a clean energy workforce, including job training, career awareness, and educational opportunities; charitable donations; and any other non-energy benefits discussed in the Seller's CETA Equity Plan. The report must also describe and document how Seller has implemented commitments it has made in its CETA Equity Plan and explain any material variation from those commitments. Such report shall also include the prior years' information.

- 21.2** The report required pursuant to Section 21.1 also must include, at a minimum, the reporting of metrics associated with the customer benefit indicator "increase in quality and quantity of clean energy jobs" in PSE's 2021 Clean Energy Implementation Plan ("CEIP"). The metrics provided must include, at a minimum, the number of jobs created by the project; the number of local workers; the number of part-time and full-time jobs; the range of wages paid to workers; the extent to which additional benefits are offered; the use of apprenticeship labor; the demographics of workers, and any other relevant metrics or information that relates to the quality or quantity of jobs associated with the project. Indicators and metrics may change based on the results of PSE's 2023 Biennial CEIP and subsequent CEIPs, at which time PSE will inform Seller, and Seller shall reasonably cooperate to revise indicators and metrics as necessary.
- 21.3** Throughout the development, construction, and operation of the Facility, Seller will continue to conduct stakeholder and community engagement to inform the public about activities being undertaken by Seller related to the Facility and gain community and stakeholder input on how these activities can benefit or how burdens can be reduced in these communities; such activities should be, but are not limited to: early contact with county officials and community leaders, town halls to discuss the project in an open forum, a website to provide relevant updates, a news release in the local paper detailing economic benefits and ads placed that include Seller contact information, and special attention should be paid to inform neighbors of the Facility. Any homes within 300 feet of the Facility footprint should be informed through either door knocks, mailings or other direct communications.
- 21.4** Seller will provide updates to PSE on stakeholder and community engagement activities undertaken to support the Facility, along with feedback provided by communities and other stakeholders, Seller's reasonable attempts to address this feedback, and plans for future engagement activities. Seller will provide these updates on a semi-annual basis until the commercial operation of the Facility has been achieved, and following commercial operation upon PSE's reasonable request, and not more than once annually by April 1.

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- 21.5** In its reporting and updates described in this Section 20.1, Seller will use its best efforts to present metrics, benefits and burdens that specifically apply to Highly Impacted Communities and Vulnerable Populations as they are defined in WAC 480-100-605 and according to the criteria in PSE's CEIP. PSE will provide feedback and guidance to Seller on the methodology Seller uses for tracking those metrics, benefits and burdens. For projects located outside of Washington State, Seller will use its best efforts to present metrics, benefits and burdens based on disadvantaged communities defined and identified in the Climate and Economic Justice Screening Tool (CEJST) created by the Council on Environmental Quality as directed by Executive Order 14008 on Tackling the Climate Crises at Home and Abroad.
- 22** **Records and Inspection.** Seller shall maintain, and PSE shall have access to upon request, all records and data pertaining to the performance and management of this Agreement, including in their original form, all (i) documents created by or provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, accounting procedures and practices, and (iv) records of transactions. Such records and data shall be retained, and shall be subject to examination by PSE, for a period of not less than four (4) years following final payment made by PSE hereunder as it relates to a particular payment obligation, four (4) years after the expiration or termination date of this BESSA, or final settlement of all disputes, claims, or litigation that authorizes the records to no longer be retained, or the retention period under Applicable Law, whichever is later. Seller shall make such records and data available to PSE at Seller's principal business office or any other of Seller's offices as mutually agreed upon by PSE and Seller, at all reasonable times and without charge.
- 23** **Miscellaneous**
- 23.1** **Public Statements; Press Releases.** Seller will not issue any public statement, press release, internet/website/social media posting, or other publication concerning (a) the Facility with respect to this BESSA, or (b) Seller's relationship with PSE without such communication first being reviewed and agreed upon by the Parties before release to the public. In addition, Seller is responsible for ensuring that its contractors, Affiliates, and each of their respective employees, contractors, and agents fully comply with this Section 23.1.
- 23.2** **Photographs.** Within ten (10) Business Days following PSE's request, Seller must provide PSE with photographs of the Facility or Site, which may be used by PSE for verification of Seller's compliance with this BESSA, for informational purposes, and for promoting awareness of PSE's renewable programs.
- 23.3** **Interpretation.** In this BESSA and in all attached or incorporated documents: (i) whenever the term "including" or "e.g." is used herein, in connection with a listing of items included within or an example of the prior reference, such listing will be interpreted to be illustrative only, and will not be interpreted as a limitation on or exclusive listing of the items included in the prior reference; and (ii) "or" means either or both (i.e., "A or B" means "A or B or both A and B"). Unless otherwise specified, a reference to a given agreement or instrument, and all the schedules, exhibits, and appendices thereto, will be a reference to that agreement or instrument as modified, amended, supplemented and restated, and in effect from time to time. Whenever the term "consent" or "approval" is used, such consent or approval will not

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be unreasonably withheld, conditioned or delayed by the consenting or approving Party, unless this BESSA provides such consent or approval is in the sole discretion of the consenting Party. Defined terms may be singular or plural, as the context requires. If the Party has provided email contact information, "written" or "in writing" includes email communication, absent express statement otherwise. Reference to: (a) a Party or Person includes any allowed successor or assign; (b) a regulatory authority includes an authority succeeding to the same function; and (c) an Applicable Law is to the law as modified or amended, and then effective. Captions are for convenience only and do not affect BESSA interpretation.

- 23.4 No Waiver.** Neither PSE's nor Seller's failure to enforce any provision or provisions of this BESSA will in any way be construed as a waiver of any such provision as to any future violation thereof, nor prevent such Party from enforcing each and every other provision of this BESSA at such time or at any time thereafter.
- 23.5 Governing Law.** The validity, interpretation, and performance of this BESSA, and each of its provisions, and all matters, including torts, arising under this BESSA, will be governed by the laws of the state of Washington, without reference to any conflicts of law provisions that would require the application of the laws of another state. The Parties agree that the state and federal courts, as applicable, of the state of Washington will have exclusive jurisdiction for the resolution of disputes under this BESSA and the Parties consent to such jurisdiction and venue and, to the fullest extent allowed by Applicable Law, waive any objection to this jurisdiction or venue. The invalidity or unenforceability of one or more provisions will not affect validity or enforceability of any other provision or of this BESSA as a whole.
- 23.6 Compliance with Law.** Seller agrees that from the Execution Date and throughout the Term, Seller must comply with all Applicable Law.
- 23.7 Entire Agreement.** This BESSA (including Appendices A through H and Annex 1) constitutes the entire understanding between the Parties and supersedes any previous agreements between the Parties regarding the purchase and sale of Battery Capacity and other Attributes from the Facility. The Parties have entered into this BESSA in reliance upon the representations and mutual undertakings contained herein and not in reliance upon any oral or written representations or information provided by one Party to the other Party not contained or incorporated herein. This BESSA will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this BESSA. Each appendix, or other document attached to or referenced in this BESSA is incorporated into, and is integral to, this BESSA as if included in the main body.
- 23.8 Counterparts.** This BESSA may be executed in two (2) counterparts and by electronic transmission of signatures in portable document format (PDF) or other electronic format, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- 23.9 Confidentiality.** Neither Party shall disclose the terms or conditions of this BESSA, or any confidential information of the other Party disclosed by such other Party to such Party,

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directly or indirectly, in connection with the exercise of its rights or the performance of its obligations hereunder, to a third party, other than as mutually agreed upon by the Parties. The Parties mutually agree that each Party may disclose the terms or conditions of this BESSA, to such Party's attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising such Party and for no other purpose, so long as such authorized parties agree in writing to become subject to the confidentiality provisions hereto and not to provide copies of the BESSA or disclose the terms thereof to any unauthorized person or entity. In addition, each Party is responsible for ensuring that its contractors, Affiliates, and each of their respective employees, contractors, and agents fully comply with this Section 23.9. Notwithstanding anything to the contrary herein, PSE shall be entitled to disclose to any governmental authority (including, without limitation, the Washington Utilities and Transportation Commission and the Federal Energy Regulatory Commission) as a matter of right: (a) without seeking any confidential treatment therefor, Seller's name, the type, nature and general description of the BESSA's terms, and amount and type of energy, capacity, and other products and services under contract pursuant to this BESSA, and (b) the full terms and conditions of this BESSA and any other confidential information of either Party hereunder to a governmental authority, provided that PSE requests confidential treatment therefor.

- 23.10 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder must be in writing and will be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by electronic transmission (including by e-mail) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (d) on the third (3rd) Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communication must be sent to the respective Parties at the applicable addresses set forth in Section 5 of Appendix A, unless Seller or PSE have designated a different officer or address by electronic mail, posting or hand delivery to the address set forth in Section 5 of Appendix A.
- 23.11 No Third-Party Beneficiary.** Nothing in this BESSA will be construed to create any duty, obligation, or liability of PSE to any Person or entity not a party to this BESSA. No Affiliate of PSE is liable for PSE's performance or nonperformance.
- 23.12 Further Assurances.** Seller agrees to use diligent efforts to promptly execute any other agreements (including amendments to this BESSA) as may be requested by PSE in connection with the purposes of this BESSA.
- 23.13 Survival of Rights.** All provisions of this BESSA that expressly or by implication are in force and effect following the expiration or termination of this BESSA will remain in effect and be enforceable following such expiration or termination, including all provisions of this BESSA that must survive in order to give force and effect to the rights and obligations of the Parties under this BESSA. Expiration or termination of this BESSA will not relieve either Party of its liabilities or obligations that accrue prior to or at termination, and such liabilities and obligations will survive termination of this BESSA.

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[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Seller and PSE have caused this BESSA to be executed by their duly authorized representatives as of the Execution Date.

PSE:

SELLER:

PUGET SOUND ENERGY, INC.

[_____]

Name: _____

Name: _____

Title: _____

Title: _____

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**APPENDIX A
FACILITY DESCRIPTION**

Section 1A Seller Information

Complete Seller Name

Business Form (i.e., corporation, LLC, etc.)

State of Incorporation/Formation

Section 1B: Contractor Information

Complete Seller Name

Business Form (i.e., corporation, LLC, etc.)

State of Incorporation/Formation

Section 2. Facility Description, Premises, and Site (BESSA Section 0)

Service Address for Premises and Description of the Site for the Facility at the Premises (including parcel or tract information)

Business Form (i.e., corporation, LLC, etc.)

State of Incorporation/Formation

Point of Interconnection:

Interconnection Limit:

[●] kW

BESS Size:

Aggregate nameplate capacity of [●] kW, limited to the Interconnection Limit at the BESS Metering Point.

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Equipment (model, chemistry, etc.):

BESS Metering Point:

BESS Capabilities (terms below defined in Section 3 of Annex 1):

Storage Contract Capacity:

State of Charge Limitation:

4-Hour Storage Capability:

Cycles (Maximum Annual):

Cycles (Maximum Daily):

Depth of Discharge (%):

Rate of Charge:

Round Trip Efficiency:

Permitted Station Service load:

Section 3 Term

Delivery Period (BESSA Section 3):

[•] Annual Periods, with the first Annual Period commencing on the first Day after the Commercial Operation Date.

Section 4 Milestones

MILESTONE	DATE
Major Equipment Commitment Date:	[•]
Permitting Complete:	[•]
System Impact Study Complete:	[•]

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Transmission and Interconnection Facilities Studies Complete:	[●]
Construction Start Date:	[●]
Site Control Complete:	[●]
Interconnection Agreement Executed:	[●]
Transmission and/or Distribution Service Agreement Executed:	[●]
Transmission, Distribution, and Interconnection Upgrades Complete:	[●]
Long Term Firm and/or Distribution Service Obtained:	[●]
Initial Synchronization Date:	[●]
Backfeed Date:	[●]
Target Commercial Operation Date:	[●]
Required Commercial Operation Date:	[●]

Section 5 Notice (BESSA Section 23.10):

To PSE:

Mailing Address:

Physical Location:

Puget Sound Energy, BEL11E
Attn: _____
P. O. Box 97034
Bellevue WA 98009-9734

Puget Sound Energy, BEL11E
Attn: _____
355 – 110TH AVE NE
Bellevue WA 98004

Email: _____

with a copy to:

**DRAFT PROTOTYPE AGREEMENT
SUBJECT TO PSE'S REVISION WITHOUT LIMITATION**

Mailing Address:

Puget Sound Energy, BEL11E
Attn: General Counsel
P. O. Box 97034
Bellevue WA 98009-9734

Physical Location:

Puget Sound Energy, BEL11E
Attn: General Counsel
355 – 110TH AVE NE
Bellevue WA 98004

To Seller:

[_____]]
Attn: [_____]]
[_____]]
[_____]]
[_____]]

Section 6 Termination Liquidated Damages Table (BESSA Section 17.2.2):

Amount per kW of the BESS Size: \$[]

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**APPENDIX B
PRICE SCHEDULE**

The Contract Price set forth below for each Annual Period will be paid per kW/month of Storage Contract Capacity made available by Buyer to Seller during such Annual Period and is fully inclusive of Battery Capacity, Environmental Attributes, and all other Attributes.

Annual Period	Contract Price
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
[...]	

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APPENDIX C

COMMERCIAL OPERATION CERTIFICATE

Puget Sound Energy, BEL11E

Attn:

P. O. Box 97034

Bellevue WA 98009-9734

Email: [_____]

Re: Commercial Operation Certificate for Distributed Energy Resource Battery Energy Storage Services Agreement (“BESSA”) between Puget Sound Energy, Inc. (“PSE”) and [_____].

The undersigned, [_____] (“Seller”) and _____, a licensed professional engineer in the State of Washington (“Licensed Professional Engineer”) make the following certifications to Puget Sound Energy, Inc. (“PSE”), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the BESSA.

Seller hereby certifies that:

1. The final BESS Size is [] kW AC, limited to [] kW AC at the BESS Metering Point.
2. The final Battery Capabilities are:
 - a. Storage Contract Capacity:
 - b. State of Charge Limitation:
 - c. 4-Hour Storage Capability:
 - d. Cycles (Maximum Annual):
 - e. Cycles (Maximum Daily):
 - f. Depth of Discharge (%):
 - g. Rate of Charge:
 - h. Round Trip Efficiency:
 - i. Permitted Station Service load:
3. Except for punch list items that would not materially affect the performance, reliability, for safe operation of the Facility, the same has been furnished, erected, and installed by the respective contractors and suppliers, has been completed in accordance with the material applicable specifications under the respective supply agreements, and is ready for the continuous furnishing

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and dispatch of the utilization of Battery Capacity in compliance with all Applicable Law and governmental, regulatory, and utility approvals.

4. Except for punch list items that would not materially affect the performance, reliability, or safe operation of the Facility, as required under the BESSA, all requirements necessary to achieve Commercial Operation thereof have been substantially completed.
5. Seller's interconnection facilities have been completed in accordance with Applicable Law and applicable specifications and utility approvals to enable power generated, discharged, and charged by the Facility to be received at or delivered to (as applicable) the Point of Interconnection.
6. Seller obtained all governmental, regulatory, and utility approvals necessary for the Facility to continuously furnish and dispatch the utilization of Battery Capacity to the Point of Interconnection through the BESS Metering Point and the same is in compliance with all such approvals and all other Applicable Law in all material respects.
7. All necessary arrangements in accordance with Prudent Operating Practices for the operation and maintenance of the Facility have been put in place and are in full force and effect.
8. Seller has a valid leasehold or real property interest in the Site for a term of at least [] years from the Commercial Operation Date.

Licensed Professional Engineer certifies that:

1. We have read the BESSA, the supply agreements, the engineering, procurement and construction contract, and we understand the requirements for Commercial Operation under the BESSA, the specifications and performance testing requirements under the supply agreements, and the requirements for commercial operation and/or substantial completion under the engineering, procurement and construction and contract.
2. We have reviewed the material and data made available to us by the Seller and the contractors and suppliers for the Facility.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Facility and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certifications of Seller above, and find the representations provided to be correct in all material respects.
5. We have reviewed all governmental, regulatory, and utility approvals identified by the Seller as being required for the construction and operation of the Facility and are of the opinion that the same is in compliance in all material respects with the environmental and technical requirements contained therein.
6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of [_____], Commercial Operation of the Facility has occurred as defined in the BESSA.

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Executed this [] day of [____], 201[]

SELLER

[_____]

an [] limited liability company

By:

Name:

Title:

LICENSED PROFESSIONAL ENGINEER

[Name of Licensed Professional Engineer]

a _____

By: _____

Name:

Title:

ACCEPTED BY PUGET SOUND ENERGY, INC.

By:

Name:

Title:

Date

**DRAFT PROTOTYPE AGREEMENT
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APPENDIX D

ATTRIBUTES ATTESTATION FORM

A. Reference is made to that certain Distributed Energy Resource Battery Energy Storage Services Agreement (the "BESSA") by and between [●], a [●] ("Seller"), and Puget Sound Energy, Inc., a Washington corporation ("PSE"), dated [_____, ____]. Unless otherwise defined herein, all defined terms shall have the meanings assigned to them in the BESSA.

B. I, [Name], [Title], as the authorized representative of Seller hereby declare under penalty of perjury, that:

1. Seller has sold, transferred and delivered to PSE the Attributes scheduled on the table below that are: (i) associated with the Battery Capacity and other Attributes of that certain battery energy storage system facility with the aggregate nameplate capacity of approximately [●] MW located at [_____] in [●] County (the "Facility") and/or (ii) are otherwise associated with the Facility; and
2. The Attributes scheduled on the table below:
 - i. were generated by and/or associated with the Facility;
 - ii. are solely and exclusively owned by PSE;
 - iii. were sold only once by Seller exclusively to PSE;
 - iv. have not been used by Seller or any third party, including to meet any other program requirements in this state, another state or jurisdiction including any federal, state, or local renewable energy requirement, renewable energy procurement, renewable portfolio standard, or renewable energy mandate;
 - v. were not sold separately to any end-use Seller or other wholesale provider other than PSE; and
 - vi. were not used on-site to power any electrical generation equipment or for other on-site uses.

Facility Name	Facility ID Number	Fuel Type	1 st Date of Facility Operation (mm/yy)	Attribute Type and Description	Attribute Quantity	Period of Generation (Q#/year)

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- C. This attestation may be disclosed by Seller and PSE to others, including any certification authority and the Washington Utilities and Transportation Commission and the Federal Energy Regulatory Commission, to substantiate and verify the accuracy of the Parties' compliance, advertising and public claims.

- D. As an authorized representative of Seller, I state that the above statements are true and correct to the best of my knowledge. This attestation may serve as a bill of sale to confirm, in accordance with the BESSA, the transfer from Seller to PSE all of Seller's right, title and interest in and to the Attributes as set forth above.

As an authorized agent of [●], I attest that the above statements are true and correct.

Name: _____
Title: _____
Date: _____
Place of Execution: _____

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APPENDIX E

PERFORMANCE SECURITY

Pursuant to Section 6 of the BESSA, if Seller is not Creditworthy, then no later than 60 Days prior to the Construction Start Date and continuing throughout the Term, Seller must deliver to PSE and maintain performance security in the form of Eligible Collateral in accordance with this Appendix E (“Performance Security”). The amount of Performance Security that Seller is required to deliver and maintain is set forth in the Performance Security Table below.

- Supplemental and Replacement Performance Security.** If any replacement of Performance Security is required to maintain compliance with this Appendix E, Seller must deliver such replacement Performance Security to PSE no later than ninety (90) Days prior to the date when the existing Eligible Collateral will expire. If Seller fails to comply with the preceding sentence, PSE will be entitled, without limitation to its other remedies under the BESSA or at law, to draw the full amount of the existing Performance Security prior to the expiration date thereof. If Seller seeks to replace Eligible Collateral used for Performance Security with a different form of Eligible Collateral allowed under this BESSA and such replacement is not part of a replacement of Performance Security required to maintain compliance with this Appendix E, then Seller must pay PSE a fee of two thousand five hundred dollars (\$2,500) as a condition to such replacement of Eligible Collateral.
- Draws and Replenishment of Performance Security.** In addition to the draws permitted by subsection (1) above, PSE may draw upon the Performance Security to recover any damages arising from a breach of this BESSA by Seller or other amounts due and owing to PSE pursuant to the BESSA, including Termination Liquidated Damages owed under Section 17.2.2 of the BESSA and Delay Damages owed under Section 9.2 of the BESSA. In the event of a draw on the Performance Security, then, unless PSE has exercised its right to terminate the BESSA pursuant to Section 17.2, Seller must replenish the Performance Security to the full amount required by this Appendix E within three (3) Business Days after notice of such draw.
- Creditworthy Status.** If a Creditworthy Seller, or its Creditworthy Affiliate if a Seller’s Guaranty is furnished as Performance Security, loses its Creditworthy status during the Term, Seller must deliver Performance Security, or in the case of a Seller’s Guaranty, replacement Performance Security, to PSE in the amount specified in this Appendix E within five (5) Business Days. If PSE subsequently determines that Seller has regained its Creditworthy status, upon request from Seller, PSE will return the Performance Security within five (5) Business Days of such request.

Performance Security Table

Performance Security will be provided based on the BESS Size in Appendix A (kW):

Amount (\$/kW)	[\$]
-----------------------	--------------

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APPENDIX F

FORM OF SELLER'S GUARANTY

THIS GUARANTY, dated as of _____, 202__, is issued by [●], a [●], ("Guarantor") in favor of Puget Sound Energy, Inc., a Washington corporation ("Guaranteed Party"). [_____] a [_____] [_____] ("Obligor") is an indirect subsidiary of Guarantor.

RECITALS

- A. Obligor and Guaranteed Party have entered into a Distributed Energy Resource Battery Energy Storage Services Agreement dated as of ___, 20__ (the "BESSA").
- B. This Guaranty is delivered to Guaranteed Party by Guarantor pursuant to the BESSA.

AGREEMENT

1. Guaranty of Obligations Under the BESSA

(a) Guaranty of Obligations. For value received, Guarantor hereby absolutely, unconditionally and irrevocably, subject to the express terms hereof, guarantees the full payment when due of all payment obligations and performance of any and all obligations, whether now in existence or hereafter arising, by Obligor to Guaranteed Party pursuant to the BESSA (the "Obligations"). This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Obligations may be or become discharged or uncollectible in any bankruptcy, insolvency or other similar proceeding, or otherwise unenforceable.

(b) Maximum Guaranteed Amount. Notwithstanding anything to the contrary herein, Guarantor's aggregate obligation to Guaranteed Party hereunder is limited to [_____] U.S. Dollars (\$_____) (the "Maximum Guaranteed Amount") except that the foregoing limitation shall not apply to the extent of any liability resulting from the fraud of the Obligor (it being understood for purposes of calculating the Maximum Guaranteed Amount of Guarantor hereunder that any payment by Guarantor either directly or indirectly to the Guaranteed Party, pursuant to a demand made upon Guarantor by Guaranteed Party or otherwise made by Guarantor pursuant to its obligations under this Guaranty including any indemnification obligations, shall reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis) and shall not either individually or in the aggregate be greater or different in character or extent than the obligations of Obligor to Guaranteed Party under the terms of the BESSA. IN NO EVENT SHALL GUARANTOR BE SUBJECT TO ANY CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR OTHER SIMILAR DAMAGES UNLESS OBLIGOR IS OBLIGATED THEREFORE PURSUANT TO THE BESSA.

2. Payment; Currency. All sums payable by Guarantor hereunder shall be made in freely transferable and immediately available funds and shall be made in the currency in which the Obligations were due. If Obligor fails to pay any Obligation when due, the Guarantor will pay that Obligation directly

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to Guaranteed Party within twenty (20) Days after written notice to Guarantor by Guaranteed Party. The written notice shall provide a reasonable description of the amount of the Obligation and explanation of why such amount is due.

3. Waiver of Defenses. Except as set forth above, Guarantor hereby waives notice of acceptance of this Guaranty and of the Obligations and any action taken with regard thereto, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of the Obligations, suit, or the taking of and failing to take other action by Guaranteed Party against Obligor, Guarantor or others and waives any defense of a surety. Without limitation, Guaranteed Party may at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (a) make any change to the terms of the Obligations; (b) take or fail to take any action of any kind in respect of any security for the Obligations; (c) exercise or refrain from exercising any rights against Obligor or others in respect of the Obligations or (d) compromise or subordinate the Obligations, including any security therefor. Notwithstanding the foregoing, Guarantor shall be entitled to assert rights, setoffs, counterclaims and other defenses which Obligor may have to performance of any of the Obligations and also shall be entitled to assert rights, setoffs, counterclaims and other defenses that the Guarantor may have against the Guaranteed party, other than defenses based upon lack of authority of Obligor to enter into and/or perform its obligations under the BESSA or any insolvency, bankruptcy, reorganization, arrangement, composition, liquidation, dissolution or similar proceeding with respect to Obligor.

4. Term. This Guaranty shall continue in full force and effect until the satisfaction in full by Obligor of all of the Obligations under the BESSA. Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. Guaranteed party shall return this original executed document to Guarantor within twenty (20) Days of termination of this Guaranty.

5. Subrogation. Until all Obligations are indefeasibly performed in full, but subject to Section 6 hereof, Guarantor hereby waives all rights of subrogation, reimbursement, contribution and indemnity from Obligor with respect to this Guaranty and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Obligations.

6. Expenses. Whether or not legal action is instituted, Guarantor agrees to reimburse Guaranteed Party on written demand for all reasonable attorneys' fees and all other reasonable costs and expenses incurred by Guaranteed Party in enforcing its rights under this Guaranty, which reimbursement shall not be included within or count towards the Maximum Guaranteed Amount hereunder. Notwithstanding the foregoing, the Guarantor shall have no obligation to pay any such costs or expenses if, in any action or proceeding brought by Guaranteed Party giving rise to a demand for payment of such costs or expenses, it is finally adjudicated that the Guarantor is not liable to make payment under Section 2 hereof.

7. Assignment. Guarantor may not assign its rights or delegate its obligations under this Guaranty in whole or part without written consent of Guaranteed Party; *provided, however, that* Guarantor may assign its rights and delegate its obligations under this Guaranty without the consent of Guaranteed Party if (a) such assignment and delegation is pursuant to the assignment and delegation of all of

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Guarantor's rights and obligations hereunder, in whatever form Guarantor determines may be appropriate, to a partnership, limited liability company, corporation, trust or other organization in whatever form that succeeds to all or substantially all of Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, provided, such entity has an Investment Grade Rating by either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc. ("S&P") or (b) such assignment and delegation is made to an entity within the [] group of companies that has an Investment Grade Rating by either Moody's or S&P. For purposes of this Section 7, "Investment Grade Rating" means a minimum credit rating for senior unsecured debt or corporate credit rating of BBB- by S&P or Baa3 by Moody's. Upon any such delegation and assumption of obligations and, if required, the written consent of Guaranteed Party (which consent shall not be unreasonably withheld, conditioned or delayed), Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

8. Non-Waiver. The failure of Guaranteed Party to enforce any provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce same. All remedies of Guaranteed Party under this Guaranty shall be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by Guarantor and Guaranteed Party.

9. Entire Agreement. This Guaranty and the BESSA are the entire and only agreements between Guarantor and Guaranteed Party with respect to the guaranty of the Obligations of Obligor by Guarantor. All agreements or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

10. Notice. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by Guarantor or by Guaranteed Party shall be in writing and shall be deemed received (a) if given personally, when received, (b) if mailed by certified mail (postage prepaid and return receipt requested), five Days after deposit in the U.S. mails, (c) if given by facsimile, when transmitted with confirmed transmission, or (d) if given via overnight express courier service, when received or personally delivered, in each case with charges prepaid and addressed as follows (or such other address as either Guarantor or Guaranteed Party shall specify in a notice delivered to the other in accordance with this Section 10):

If to Guarantor:

[•]
Attn: [•]
[•]
[•]
[•]

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If to Guaranteed Party:

[•]
Attn: [•]
[•]
[•]
[•]

11. Counterparts. This Guaranty may be executed in counterparts, each of which when executed and delivered shall constitute one and the same instrument.

12. Governing Law; Jurisdiction. This Guaranty shall be governed by and construed in accordance with the laws of the state of New York without giving effect to principles of conflicts of law. Guarantor and Guaranteed Party agree to the non-exclusive jurisdiction of any federal district court located in King County, Washington, over any disputes arising or relating to this Guaranty.

13. Further Assurances. Guarantor shall cause to be promptly and duly taken, executed and acknowledged and delivered, such further documents and instruments as Guaranteed Party may from time to time reasonably request in order to carry out the intent and purposes of this Guaranty.

14. Limitation on Liability. Except as specifically provided in this Guaranty, Guaranteed Party shall have no claim, remedy or right to proceed against Guarantor or against any past, present or future stockholder, partner, member, director or officer thereof for the payment of any of the Obligations, as the case may be, or any claim arising out of any agreement, certificate, representation, covenant or warranty made by Obligor in the BESSA.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guaranty as of the date first set forth above.

GUARANTOR:

[_____]

Name: _____

Title: _____

Acknowledged and agreed:

GUARANTEED PARTY:

Puget Sound Energy, Inc.

Name: _____

Title: _____

**DRAFT PROTOTYPE AGREEMENT
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**APPENDIX G
FORM OF LETTER OF CREDIT**

[LETTERHEAD]

[Date]

Irrevocable Standby Letter of Credit No. [●]

Beneficiary: Puget Sound Energy, Inc.
10885 NE 4th Street
Bellevue, WA 98004-5591
Attn: [Name]
[Title]
Phone: [Phone]
Email: [Email]

Applicant: [●] on behalf of [_____] LLC

[●]
[●]
[●]
[●]

Attn: Credit Department

Dear Madam or Sir:

We hereby establish for the account of [●] (the "Account Party"), our irrevocable standby letter of credit in your favor for an amount of USD \$[●] ([Amt in words] Dollars United States currency) (the "Available Amount"). Account Party has advised us that this letter of credit is issued in connection with the Distributed Energy Resource Battery Energy Storage Services Agreement, dated as of [●], 202[] between Account Party and Beneficiary (as amended and as may be further amended, supplemented or otherwise modified). This letter of credit shall (i) become effective immediately for the term of one (1) year and shall expire on [●] (the "Expiration Date"), and (ii) is subject to the following:

1. Funds under this letter of credit shall be made available to Beneficiary against its draft drawn on us in the form of Annex 1 hereto, accompanied by (a) a certificate in the form of Annex 2 hereto, appropriately completed and signed by an authorized officer of Beneficiary, dated the date of presentation and (b) the original of the letter of credit and all amendments (or photocopy of the original for partial drawings) and presented at our office located at [●], attention [●] (or at any other office which may be

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designated by us by written notice delivered to you). A presentation under this letter of credit may be made only on a day, and during hours, in which such office is open for business (a "Business Day"). If we receive your presentation at such office on any Business Day, all in conformity with the terms and conditions of this letter of credit, we will unconditionally honor the same by making payment in accordance with your payment instructions on or before the third succeeding Business Day after such presentation. Partial and multiple drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided, that* the Available Amount shall be reduced by the amount of each such drawing.

2. This letter of credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Annex 3 hereto signed by an authorized officer of Beneficiary, accompanied by this letter of credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the preceding Business Day. This letter of credit shall be surrendered to us by you upon the earlier of presentation or expiration.

3. It is a condition of the letter of credit that it shall be deemed to be automatically extended without amendment for additional one-year periods until [●] (the "Final Expiration Date"), unless at least sixty (60) Days prior to the Expiration Date we send you notice by registered mail, return receipt requested or courier service or hand delivery at the above address that we hereby elect not to consider this letter of credit extended for such additional period.

4. This letter of credit shall be governed by, and construed in accordance with, the terms of the International Standby Practices, ISP 98, International Chamber of Commerce Publication No. 590 (the "ISP"), to the extent that such terms are not inconsistent with this letter of credit. As to matters not governed by the ISP, this letter of credit shall be governed by, and construed in accordance with, the laws of the State of New York, including, without limitation, the Uniform Commercial Code as in effect in the State of New York.

5. This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1, 2, and 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph 5.

6. Communications with respect to this letter of credit shall be in writing and shall be addressed to us at the address referred to in paragraph 1 above, and shall specifically refer to this letter of credit no. [●].

Very truly yours,

[LOC Issuer]

Authorized signature

**DRAFT PROTOTYPE AGREEMENT
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ANNEX 1

TO LETTER OF CREDIT NO. [●]

Draft under Letter of Credit No. [●]

[Month, Day, Year]

On [third Business Day next succeeding date of presentation]

Pay to [●] [●] U.S. \$[●] [not to exceed the Available Amount]
[Address 1]
[Address 2]

[insert any wire instructions]

For value received and charge to account of Letter of Credit No. [●].

Authorized signature

Title

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ANNEX 2

TO LETTER OF CREDIT NO. [●]

Drawing under Letter of Credit No. [●]

The undersigned, a duly authorized officer of Puget Sound Energy, Inc., a Washington corporation, located in Bellevue, Washington ("Beneficiary"), hereby certifies on behalf of Beneficiary with reference to irrevocable standby Letter of Credit No. [●] (the "Letter of Credit") issued for the account of [●], that:

- 1) [pursuant to that certain Distributed Energy Resource Battery Energy Storage Services Agreement between Beneficiary and [account party] dated as of [●] (the "BESSA"), the Beneficiary is entitled to payment of an amount equal to [●] (\$[●]) from this Letter of Credit;]

--or--

[(i) Beneficiary has received notice from the Issuing Bank pursuant to Section 3 of the Letter of Credit, and (ii) the Letter of Credit will expire in fewer than thirty (30) Days from the date hereof. As such, as of the date hereof Beneficiary is entitled to draw under the Letter of Credit as specified in the accompanying sight draft.]

- 2) by presenting this certificate and the accompanying sight draft, Beneficiary is requesting that payment in the amount of \$[●], as specified on said draft, be made under the Letter of Credit by wire transfer or deposit of funds into the account specified on said draft;
- 3) the amount specified on the sight draft accompanying this certificate does not exceed the Available Amount to which Beneficiary is entitled to draft under said [agreement] as of the date hereof.

In witness whereof, Beneficiary has caused this certificate to be duly executed and delivered by its duly authorized officer as of the date and year written below.

Authorized signature

Title: _____

Date: _____

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ANNEX 3

TO LETTER OF CREDIT NO. [●]

Notice of surrender of Letter of Credit No. [●]

Date: _____

[●]

Attn: Letter of Credit Department

[●]

[●]

Re: Letter of Credit No. [●] issued for the account of [account party]

Ladies and Gentlemen:

We refer to your above-mentioned irrevocable standby Letter of Credit (the "Letter of Credit"). The undersigned hereby surrenders the Letter of Credit to you for cancellation as of the date hereof. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

Authorized signature

Title

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APPENDIX H

FORM OF CETA EQUITY REPORT

Category	Metric	2024	2025	2026
Non-energy benefits	Number of jobs created for residents of highly impacted and vulnerable populations			
Non-energy benefits	Number of local workers living in the community where the project is being built			
Non-energy benefits	Number of workers living in Washington state			
Non-energy benefits	Number of part-time and full-time jobs by project			
Non-energy benefits	Range of wages paid to workers and if they meet prevailing wage requirements			
Non-energy benefits	Demographics of workers			
Non-energy benefits	Dollar amount sub-contracted to small business and minority, women and veteran owned business enterprises (SMWVBE)			
Non-energy benefits	Property taxes paid annually			
Non-energy benefits	Additional benefits (See Section 21)			

**DRAFT PROTOTYPE AGREEMENT
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ANNEX 1

BESS REQUIREMENTS AND OPERATIONS

1. Requirements.

- a. In accordance with Section 4(ii) of the BESSA, Seller will provide to PSE at all times during the Term one hundred percent (100%) of the Battery Capacity, including all of the BESS Capabilities specified in Section 2.B of Appendix A. Such Battery Capacity will be provided by Seller for PSE's exclusive use, subject to the terms and conditions of this Annex 1.
- b. Seller will maintain the full BESS Capabilities at all times during the Term, including the Storage Contract Capacity specified in Appendix A to this Agreement. None of the BESS Capabilities will be subject to change as a result of degradation of the BESS, which includes the decline of total and/or available energy capacity caused by wear and tear, irreversible chemical reactions resulting from the normal use of the battery, and environmental condition.
- c. The Performance Guarantee set forth in Attachment 2 to this Annex will apply to the BESS during the Term.
- d. Seller will ensure that the BESS meets at all times during the Term the technical standards set forth in Attachment 3 to this Annex.

2. Operations.

- a. Energy Management System. The Energy Management System ("EMS") for the BESS will be configured to exchange MODBUS TCP data with the PSE SCADA device and to transfer data to the database server for the calculation, recording, and archiving of data points.
- b. Communications. Communications, including direct electronic dispatch capability to charge and discharge the BESS at a specific kWh rate, between the PSE DER aggregation system and the EMS will be fully tested and functional prior to the Commercial Operation Date, including verification of the data transmission pathway between the PSE's DER aggregation system and Seller's EMS interface and the ability to record SCADA data. Communication protocols and any additional communications requirements are set forth in the Interconnection Agreement and Attachment 3 to this Annex. Communications between the DER aggregation system and the EMS will be maintained throughout the Term.
- c. Testing. The BESS will be tested in accordance with Attachment 1 to this Annex.
- d. BESS Energy Management; Planned Outages.
 - i. Seller shall take any and all action necessary to allow for the delivery of Charging Energy to the BESS in order to provide Battery Capacity, including the Battery Capabilities, in accordance with the terms of this Annex and the BESSA, including

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maintenance, repair, or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the BESS. Notwithstanding the foregoing, Seller will provide to PSE the ability to monitor, control, and dispatch the BESS via communications established and maintained in accordance with Sections 2.a and 2.b.

- ii. PSE will have the right to charge the BESS seven (7) days per week and twenty-four (24) hours per day (including holidays), via direct electronic dispatch, and subject to the requirements and limitations set forth in this Agreement, including the Battery Capabilities.
- iii. Seller shall not cause the BESS to be charged during the Term other than pursuant to the direct electronic dispatches issued by PSE, or in connection with a Storage Capacity Test. If during the Term Seller (a) charges the BESS to a Stored Energy Level greater than the Stored Energy Level provided for by PSE's dispatch instructions or (b) impermissibly charges the BESS absent dispatch instructions from PSE, then (x) Seller shall be responsible for all Energy costs associated with such charging of the BESS, (y) PSE shall not be required to pay for the charging of such Energy (*i.e.*, Charging Energy), and (z) PSE shall be entitled to discharge such Energy and entitled to all of the benefits (including Battery Capacity) associated with such discharge.
- iv. PSE will have the right to discharge the BESS seven (7) days per week and twenty-four (24) hours per day (including holidays), via direct electronic dispatch, and subject to the requirements and limitations set forth in this Agreement, including the Battery Capabilities.
- v. Seller shall not cause the discharge of the BESS during the Term other than pursuant to PSE's dispatch instructions, or in connection with a Storage Capacity Test. If during the Term Seller (a) discharges the BESS to a Stored Energy Level less than the Stored Energy Level provided for in PSE's dispatch instructions, or (b) impermissibly charges the BESS absent dispatch instructions from PSE, then (x) Seller shall be responsible for all costs associated with such discharging of the BESS, (y) PSE shall receive or be credited with all payments and other value associated with the discharging of such Energy (*i.e.*, Discharging Energy), and (z) PSE shall be entitled to charge the BESS in an equivalent amount of the discharge at Seller's cost and entitled to all of the benefits (including Battery Capacity) associated with such charge.
- vi. For the avoidance of doubt and without limiting the foregoing, PSE may use the BESS for the following use cases: energy arbitrage, voltage support, local feeder peak shaving, system peak reduction, and any other use provided that such use can be supported by the Battery Capabilities.
- vii. Notwithstanding Sections 2(ii) and 2(iv) of this Annex 1, Seller may remove equipment from service availability for a planned inspection, maintenance, and/or general overhaul of one more pieces of equipment or equipment groups that is

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scheduled in advanced (“Planned Outage”), provided that any Planned Outage may not occur in June, July, August, December, January, or February except to the extent necessary in accordance with Prudent Operating Practices and Seller will schedule all Planned Outages accordingly. No later than thirty (30) days prior to each Annual Period, Seller will provide to PSE an annual schedule of Planned Outages, such schedule to be reasonably coordinated with PSE. Notwithstanding Sections 2(iii) and 2(v) of this Annex 1, Seller may charge or discharge the BESS as required for a Planned Outage, provided that Seller will be responsible for all of the net costs of such charging or discharging. Any excusal from performance due to a Planned Outage is subject to the limitations set forth in the definition of Excused Maintenance Energy.

3. Definitions.

“4-Hour Storage Capability” means the maximum dependable operating capacity of the BESS to discharge energy for four (4) hours of continuous discharge, as measured in kWh (AC).

“Charging Energy” means electric energy from PSE (as interconnecting utility providing electric service) received at the BESS Metering Point, less Electrical Losses to the BESS as determined by PSE, used to charge the BESS.

“Cycles” means the number of equivalent charge/discharge cycles of the BESS, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the BESS divided by (b) four (4) times the weighted average of the 4-Hour Storage Capability.

“Depth of Charge” means the capacity in MW that is discharged from a fully charged battery, divided by battery nominal capacity in MW.

“Discharging Energy” means all Energy discharged by the BESS, less Electrical Losses to the BESS Metering Point as determined by PSE.

“Excused Curtailed Energy” means the amount of any amount of Energy not charged or discharged by the BESS as a result of PSE temporarily disconnecting the Facility, or curtailing the delivery of energy into or from the Facility, under the Interconnection Agreement, provided that, and only to the extent that, such disconnection or curtailment is not caused by Seller or the Facility (including any failure of the Seller or the Facility to fully comply with the Interconnection Agreement). Excused Curtailed Energy will be calculated pursuant to a methodology to be determined reasonably prior to the Commercial Operation Date by mutual agreement of the Parties, provided that such methodology must be consistent with Prudent Operating Practices.

“Excused Maintenance Energy” means any amount of Energy not charged or discharged by the BESS to the BESS Metering Point as a result of Seller conducting maintenance on the Facility (including a Planned Outage), provided that such energy not delivered is not Excused Curtailed Energy or Force Majeure Energy. Excused Maintenance Energy will be calculated pursuant to a methodology to be determined reasonably prior to the Commercial Operation Date by mutual agreement of the Parties, provided that such methodology must be consistent with Prudent

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Operating Practices. Notwithstanding the foregoing sentence, Excused Maintenance Energy (i) may not exceed [] hours during any calendar year (pro-rated for any partial calendar year during the Term) and (ii) will not include any Energy not delivered as a result of maintenance required due to an unplanned Facility outage or that is due to the negligence or fault of Seller.

“Excused Output” means, for any relevant period, and without duplication among them, Force Majeure Energy, Excused Maintenance Energy, and Excused Curtailed Energy. For the sake of clarity, Seller shall not be entitled to claim credit for Excused Output to the extent the events or circumstances resulting in what would otherwise be considered Excused Output hereunder are the primary result of the negligence or fault of Seller or are otherwise primarily caused by Seller (including any Excused Maintenance Energy resulting from maintenance required due to an unplanned Facility outage or that is due to the negligence or fault of Seller).

“Force Majeure Discharging Energy” means the amount of energy not discharged from the BESS that Seller is excused from delivering to the BESS Metering Point, or that PSE is excused from receiving at the BESS Metering Point, pursuant to Section 14 of the BESSA. Force Majeure Discharging Energy will be calculated pursuant to a methodology to be determined reasonably prior to the Commercial Operation Date by mutual agreement of the Parties, provided that such methodology must be consistent with Prudent Operating Practices.

“Rate of Charge” means the rate that the BESS can be charged with Charging Energy as specified in Section 2.B of Appendix A.

“Round Trip Efficiency” means the ratio, expressed as a percentage, of Energy charged (in MWh) to Energy discharged from the BESS (in MWh and including Permitted Station Service), which will be no less than [%] and measured over [time period].

“State of Charge Limitation” means the average State of Charge measured on a rolling 12-month basis, which must not be greater than [%].

“Storage Contract Capacity” means the maximum capability of the BESS to discharge Energy specified in Section 2.B of Appendix A, as expressed in kW.

“Stored Energy Level” means, at a particular time, the amount of Energy in the BESS, expressed in kWh.

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Attachment 1 to ANNEX 1

STORAGE CAPACITY TESTING

(a) Reasonably prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with this Attachment 1. Thereafter, at least once per Annual Period, Seller shall schedule and complete a Storage Capacity Test, provided that PSE shall have the right to run a retest of the Storage Capacity Test. Seller will be responsible for all costs for such testing, including Charging Energy and Discharging Energy, and any Cycle(s) associated with such Storage Capacity Test will not count toward the Cycles (Maximum Annual) or Cycles (Maximum Daily) available to PSE, provided that PSE will be responsible for the costs of any retest requested by PSE, including Charging Energy and Discharging Energy. PSE shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(b) Following each Storage Capacity Test, Seller shall submit a testing report to PSE. If the actual Battery Capabilities determined pursuant to a Storage Capacity Test is less than the Battery Capabilities set forth in Section 2.B of Appendix A ("Battery Capabilities Requirements"), then Seller will take all actions necessary so that the BESS meets the Battery Capabilities Requirements.

(c) Each "Storage Capacity Test" will consist of the testing of each of the Battery Capabilities Requirements using protocols and procedures that comply with Prudent Operating Practices, to be proposed by Seller reasonably prior to initial testing for PSE's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Attachment 2 to ANNEX 1

PERFORMANCE GUARANTEE

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1. During each month of each Annual Period, Seller shall maintain a Monthly Storage Availability during all [] of each month together of no less than [] ([]%) (the “Guaranteed Storage Availability”), which Monthly Storage Availability shall be calculated in accordance with a methodology to be provided by Seller reasonably prior to the Commercial Operation Date and approved by PSE. Such methodology, which must be consistent with Prudent Operating Practices, will determine the number of [minutes] during each month that the BESS fully or partially failed to respond to dispatch by PSE and the total quantity of Unavailable Energy_m during all such [minutes].
2. If the Monthly Storage Availability during the all of the [] together of any month is less than the Guaranteed Storage Availability, then without prejudice to any other remedy available to PSE, Seller shall cure such failure by paying to PSE Battery Availability Liquidated Damages. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.
3. The "Battery Availability Liquidated Damages" in any month (m) in which the Monthly Storage Availability is less than the Guaranteed Storage Availability shall be calculated as follows:

$$\text{Availability Liquidated Damages}_{m} = [\quad \%] * [\text{Energy Price}] * \text{Unavailable Energy}_{m}$$

Where:

$$\text{Availability Liquidated Damages}_{m} = \text{Availability Liquidated Damages in month (m)} \\ \text{(in \$)}$$

$$[\text{Energy Price}] = \text{simple average of the [index] for [on-peak/all} \\ \text{hours] of month (m) (in \$/kWh)}$$

$$\text{Unavailable Energy}_{m} = \text{The total aggregate amount of Charging Energy} \\ \text{and Discharging Energy in month (m) that PSE} \\ \text{could have scheduled and received or provided} \\ \text{(as applicable) and scheduled but did not receive} \\ \text{or provide (as applicable) from the BESS, but was} \\ \text{unable to or did not because the BESS, in whole} \\ \text{or in part, out of service, or otherwise not} \\ \text{available or performing in accordance with the} \\ \text{capabilities and operational requirements} \\ \text{specified in this Agreement. Unavailable} \\ \text{Energy}_{m} \text{ will not include Excused Output.}$$

4. The liquidated damages provided for in this Performance Guarantee are only with respect to failure of Seller to provide the Guaranteed Storage Availability and, except as provided in Sections 17.1.3, shall be PSE’s sole remedy for Seller’s failure to provide the required Monthly Storage Availability. PSE will have all rights and remedies at contract, law, and equity with respect to any other failure of Seller to provide any Battery Capability.

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Attachment 3 to ANNEX 1

BESS TECHNICAL REQUIREMENTS

Seismic

- The structural and nonstructural components of all enclosures, free standing structures, and structural equipment supports shall be designed and constructed to withstand the effects of earthquake motions and seismic loading in accordance with the requirements of the State of Washington Building Code and ASCE 7-16 with supplements No. 1 & 2, and adhering to the site specific geotechnical report with the following parameters:
 - Risk Category IV
 - Seismic Design Category D
 - Site Soil Class D, unless otherwise determined by the Geotechnical Engineer
 - Importance Factor is 1.5
- All material, methods and equipment shall be designed to the 'High Seismic Qualification Level' in accordance with IEEE 693 Standard.
- Seller shall provide typical anchorage drawings and indicate if anchorage is included in scope.

Physical Characteristics

- The BESS shall meet all applicable Occupational Safety and Health Administration (OSHA), National Electric Code (NEC), National Electrical Safety Code (NESC) IEEE, ANSI, and National Fire Protection Association (NFPA) requirements for electrical and fire safety.
- The BESS shall be designed to minimize footprint and volume. The BESS may also be designed to include subsurface components or modules, provided relevant operating and environmental factors normally addressed for submersible equipment are considered to assure full life-cycle performance requirements are met.
- The BESS components located outdoors shall be contained within weatherproof, tamper resistant, metal enclosures suitable for mounting outdoors on concrete foundations with a minimum NEMA 3R rating.
- The enclosures shall be rust-resistant.
- Any enclosures shall be dust tight to at least the NEMA 3R rating, except as designed to allow forced air exchange with the atmosphere. Screen vents with metal screens to prevent ingress of insects and rodents. Plug conduits with duct seal for same as well as water ingress.
- The BESS shall be designed to operate with minimal maintenance for the specified life of the Facility. A nameplate shall be provided including:
 - Manufacturer Name

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- Connection diagram
 - BESS ratings; Power, energy, voltage, BIL
 - Specimen data; serial number, date of manufacture
 - The nameplate shall meet the requirements of IEEE C57.12.00
- All necessary safety signs and warnings as described in ANSI Z535-2002 (entire series from Z535.1 through Z535.6) shall be included on the building, shelter or each enclosure. All necessary signs and warnings for identification of hazardous materials as described in NFPA 704 shall be included on the building, shelter or each enclosure. All necessary signs and warnings as required by CFC 608, as applicable, shall be included.

Fire Protection

- Seller shall provide fire protection system for the complete BESS system in accordance with NFPA 855 “Standard for the Installation of Stationary Energy Storage Systems” and the latest approved revision of the applicable local fire protection codes. All designs shall include a Hazard Mitigation Analysis, (HMA). All HMA’s shall consist of equipment-specific Failure Mode and Effects Analysis (FMEA) and site-specific Fire Risk Assessment (FRA). All designs shall have the approval of the AHJ. State and local laws, codes, and/or regulations specific to BESS shall apply.
- Seller shall comply with NFPA coordination, design, installation, commissioning, testing, training and startup requirements. This shall include all other requirements as outlined in this specification. Fire Protection system design shall include, but not be limited to, the following:
 - Seller shall possess a completed Large Scale Fire Testing of the proposed BESS in accordance with UL 9540A as required by the NFPA 855 Code. Seller shall provide the approved test results along with the required separation distances per the testing completed.
 - Seller shall provide the completed Hazard Mitigation Analysis for the proposed BESS as required by Section 4.14 of the NFPA 855 Code.
- The battery container design shall be in accordance with NFPA requirements for location, separation, materials of construction, ventilation, smoke or flammable conditions detection, fire suppression, communications/alarms, training, commissioning, permitting, and documentation.
- Seller shall perform an explosion study based on data from UL9540A testing to develop the Explosion Control mitigation design. Seller shall provide all design data used in the design.
- Seller will provide the potential combustion products and quantities for the batteries selected to be used with the BESS system.
- Seller shall provide a lithium ion battery fault detector utilizing an off-gas sensing system that will detect off-gassing at the enclosure level (or cell level if provided by the manufacturer or supplier). This system shall be integrated into the Seller’s control system and/or site controller.

Remote Operations

- The EMS shall provide a single interface with which the PSE can communicate. All commands, feedbacks, information, statuses, and alarms.

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- The EMS shall be able to respond to manual commands that are issued remotely by an external supervisory controller. Commands sent to the supervisory controller may come from other applications within a larger Distributed Energy Resource hierarchy.
- The BESS shall remain functional in the absence or loss of communication from the remote controller. The BESS shall continue its current mode of operation and follow commands for the last available setpoints for a user definable time period (5 minute default). On expiration of the time, in the event the BESS is capable of doing so, the BESS shall maintain the current state of charge and Seller will, within its reasonable control, maintain the current state of charge until such time as the communications are restored.
- During an interruption to communications, the remote controller will make repeated attempts to re- establish communications at a set time interval (default of 5 minutes). When communications have been re-established, the BESS and remote controller shall make any necessary updates to resume performance.

Applicable Codes & Standards

- Seller will ensure that the BESS complies with all applicable codes and standards, including:
- **Applicable Codes & Standards**

ANSI/IEEE C2	National Electric Safety Code
IEEE 519	IEEE Recommended Practices and Requirements for harmonic Control in Electrical Power Systems
IEEE 1547-2018	IEEE Standard for Interconnecting Distributed Resources with Electric Power Systems
IEEE 1547.1	Standard Conformance Test Procedure for Equipment Interconnecting Distributed Resources with Electric Power Systems
IEEE 1547.2	Interconnecting Distributed Resources with Electric Power Systems
IEEE 1547.3	Guide for Monitoring, Information Exchange, and Control of Distributed Resources Interconnected with Electric Power Systems
ANSI Z535	Product Safety Signs and Labels
ANSI C57/IEEE	Transformer Standards, whenever applicable
ANSI C37/IEEE	Surge withstand capabilities, whenever applicable
UL 1642/IEC 62133	Applicable sections related to battery cell safety, where applicable
UL 1741	Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources. Also, Supplemental A is to be included.
NFPA 704	Standard System for the Identification of the Hazards of Materials for Emergency Response

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UL 1778	Underwriters Laboratory's Standard for Uninterruptible Power Systems (UPS) for up to 600V A.C.
UL 1973	Standards for Batteries for Use in Light Electric Rail Applications and Stationary Applications
UL 9540/9540A	Standard for Energy Storage Systems and Equipment
NISTIR 7628	Guidelines for Smart Grid Cyber Security
NEC	National Electric Code
NESC	National Electric Safety Code
CAA	Clean Air Act and Amendments
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
EPA	Environmental Protection Agency regulations
FAA	Federal Aviation Administration regulations
FERC	Federal Energy Regulatory Commission regulations
FPA	Federal Power Act
	Noise Control Act of 1972
RCRA	Resource Conservation and Recovery Act
SDWA	Safe Drinking Water Act
SWDA	Solid Waste Disposal Act
TSCA	Toxic Substances Control Act
ADA	Americans with Disabilities Act
MBTA	Migratory Bird Treaty Act
CWA	Clean Water Act
ANSI	American National Standards Institute
IEEE	Institute of Electrical and Electronics Engineers
NEMA	National Electrical Manufacturers Association
ASTM	American Society for Testing and Materials
ASME	American Society of Mechanical Engineers
IEEE 1881	Standard Glossary of Stationary Battery Terminology
IEEE 519	Recommended Practice and Requirements for Harmonic Control in Electric Power Systems
IEEE 142	Recommended Practice for Grounding of Industrial and Commercial Power Systems
IEEE 242	Recommended Practice for Protection and Coordination of Industrial and Commercial Power Systems

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IEEE 2030.3	Standard Test Procedures for Electric Energy Storage Equipment and Systems for Electric Power Systems Applications
EPRI 3002009313	Energy Storage Integration Council Energy Storage Test Manual 2016
IEEE 1881	Standard Glossary of Stationary Battery Terminology
IFC 2018	International Fire Code 2018
MESA	Open Standards for Energy Storage
NFPA 13	Fire Sprinkler Systems 2019
NFPA 14	Standard for the Installation of Standpipe and Hose 2019