



STATIONARY BATTERY SERVICES AGREEMENT

This STATIONARY BATTERY SERVICES AGREEMENT (the “Agreement”), dated as of [REDACTED] (the “Effective Date”), is entered into by and between Tesla Motors, Inc., a Delaware corporation (“Tesla”), and the Marin Community College District, a California public entity (“Customer”). Tesla and Customer are sometimes individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Customer owns or leases certain real property located at 835 College Avenue, Kentfield, CA 94904 (the “Property”);

WHEREAS, Tesla is the developer of the stationary energy storage system described in Exhibit A (the “Equipment”); and

WHEREAS, the Parties desire that Tesla install a total of 5 unit(s) of the Equipment at the Property and provide to Customer the Equipment-related services described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

“Affiliate” means an entity that a Party directly or indirectly controls, is controlled by, or is under common control with such Party.

“Agreement” has the meaning set forth in the preamble.

“Approvals” means all applicable approvals, permits, licenses and certificates, including corresponding inspections and authorizations, required by any applicable utility, grid service provider or governmental authority.

“Commencement Date” means the earliest date that the SGIP Program Administrator indicates Tesla has qualified to receive the SGIP Incentives.

“Confidential Information” means confidential and/or proprietary information of a Party disclosed to the other Party under this Agreement or otherwise made available to the other Party in the course of performance under this Agreement. For clarity, technical information relating to the Equipment and the Equipment’s performance shall be deemed Tesla’s Confidential Information.

“Confirmed Incentive Reservation Date” means the date Tesla receives written confirmation from the SGIP Program Administrator that the SGIP Incentives are approved and reserved.

“Defaulting Party” has the meaning set forth in Section 10.1.

“Deliverables” means the Equipment and the Infrastructure.

“Dispute” has the meaning set forth in Section 12.1.

“Effective Date” has the meaning set forth in the Preamble.

“Energy Efficiency Audit” means the energy efficiency audit of the Property conducted no more than five (5) years prior to the Effective Date by an authorized third party as specified in the requirements stated in the SGIP Handbook.

“Environmental Laws” means all applicable federal, state and local laws and regulations governing the protection of human health, safety, the environment and natural resources, including the Hazardous Materials Transportation Act (49 U.S.C. 1801, *et seq.*) and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

“Equipment” has the meaning set forth in the recitals.

“Equipment Site” means the location of the Equipment at the Property, as further described in Exhibit B.

“Equipment Warranty” means the operational warranty set forth in Exhibit C.

“Force Majeure Event” means any act, event or condition beyond a Party’s reasonable control, including natural disasters, fire, explosion, embargoes, war, terrorism or other similar events.

“Hazardous Materials” means (a) those substances included within the definitions of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes,” and “toxic pollutants,” as such terms are defined under the Environmental Laws; (b) asbestos and materials containing asbestos; and (c) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation.

“Infrastructure” means the power supply, concrete pads, telecommunications lines and conduits and wiring provided by Tesla in the course of installing and/or maintaining the Equipment.

“Initial Term” has the meaning set forth in Section 2.1.

“JAMS” has the meaning set forth in Section 12.3.

“Lender” has the meaning set forth in Section 13.10.

“Losses” means all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees.

“Project Cost” means the overall project cost set forth in Exhibit D, as may be amended by the Parties from time to time.

“Project Timeline” means the proposed timeline/schedule for completion of the Equipment installation as set forth in Exhibit E, as amended pursuant to Section 5.2(b).

“Proprietary Rights” means patents, trademarks, copyrights, trade secrets and any other intellectual or proprietary rights.

“Renewal Term” has the meaning set forth in Section 2.2.

“Scope of Work” means the scope of work to be performed by Tesla hereunder as described in Exhibit F.

“Service Fees” has the meaning set forth in Section 6.3(a).

“Services” means the following services provided by Tesla hereunder: (i) installation and operation of the Equipment; (ii) maintenance of the Equipment; (iii) monitoring of Customer’s electricity usage at the Property; (iv) any other actions required to provide any of the foregoing, in each case as more fully described in the Scope of Work.

“SGIP” means the State of California Self-Generation Incentive Program as further described at <<http://www.cpuc.ca.gov/PUC/energy/DistGen/sgip/>>.

“SGIP Handbook” means the edition of the State of California Self-Generation Incentive Program Handbook in effect as of the Effective Date.

“SGIP Incentives” means all financial incentives paid out under the SGIP in connection with the installation and operation of the Equipment at the Property.

“SGIP Program Administrator” means Pacific Gas & Electric.

“SGIP Upgrades” means all energy efficiency measures identified with a 2-year or less payback in the Energy Efficiency Audit.

“Term” has the meaning set forth in Section 2.2.

“Termination Charge” means the applicable termination charge set forth in Exhibit H.

ARTICLE II **TERM**

Section 2.1 Initial Term. This Agreement shall commence on the Effective Date and conclude on the fifth (5th) anniversary of the Commencement Date (the “Initial Term”).

Section 2.2 Renewals. The Initial Term may be extended for up to three (3) five (5) year periods (each such five (5) year period, a “Renewal Term” and together with the Initial Term, the “Term”) upon mutual agreement of the Parties. Each Renewal Term shall run concurrently upon expiration of the Initial Term or previous Renewal Term, as applicable.

ARTICLE III **EQUIPMENT**

Section 3.1 Ownership; Equipment Warranty.

(a) The Parties understand and agree that the Equipment shall at all times during the Term remain the sole and exclusive property of Tesla for all purposes, including tax purposes, regardless of the manner in which the Equipment is installed at the Property.

(b) As the owner of the Equipment, Tesla shall be the sole and exclusive beneficiary of the Equipment Warranty. Accordingly, Customer shall have no claims for breach of the Equipment Warranty under this Agreement.

(c) Customer agrees not to grant any liens on or security interests in the Equipment.

Section 3.2 Proprietary Rights; Limited License.

(a) All Proprietary Rights in and to the Equipment shall at all times remain the sole and exclusive property of Tesla.

(b) During the Term, Tesla hereby grants to Customer a limited, non-exclusive, royalty-free license under Tesla's Proprietary Rights solely as necessary to make use of the Equipment at the Property and to receive the Services.

Section 3.3 Customer Obligations Regarding the Equipment.

(a) Customer shall promptly notify Tesla of any visual or audible malfunction of the Equipment or potential threat to the Equipment of which Customer becomes aware.

(b) Customer shall not alter or change the interconnection of the Equipment to the Property's main metered panel without Tesla's prior written consent.

(c) Customer shall not, and shall not permit any person to, modify, repair, move or otherwise tamper with the Equipment in any manner without Tesla's prior written consent; provided, however, that Customer may take reasonable action necessary in response to emergency or safety issues at the Property.

Section 3.4 Damage to Deliverables. If Customer, its contractors or agents damage any of the Deliverables, Customer shall be liable to Tesla for all required repairs, including all reasonable costs in diagnosing the Deliverables. Any amounts payable by Customer pursuant to this Section 3.4 shall be due within thirty (30) days of Customer's receipt of any corresponding invoice from Tesla.

ARTICLE IV
PROPERTY

Section 4.1 Access Rights. Customer hereby grants to Tesla the right to: (a) install the Equipment at the Equipment Site; (b) access the Property's main metered panel for purposes of interconnecting the Equipment to the Property; and (c) access the Equipment Site for purposes of maintaining and/or removing the Equipment, in each case, solely during the hours mutually agreed by the Parties.

Section 4.2 Hazardous Materials.

(a) Customer understands and acknowledges that the Equipment's battery cells are classified as Hazardous Materials under the Environmental Laws, including Title 49 of the United States Code of Federal Regulations. Notwithstanding the foregoing, Customer hereby reaffirms the rights granted to Tesla under Section 4.1; provided, that Tesla performs the Services in compliance with Environmental Laws at all times during the Term.

(b) In the event Hazardous Materials are identified at the Equipment Site and such Hazardous Materials were not introduced by Tesla, Tesla shall have no obligation to provide or continue

providing any Services until such Hazardous Materials have been eliminated, contained or otherwise remediated in accordance with Environmental Laws. For clarity, Tesla shall not be liable for any costs associated with any of the foregoing.

Section 4.3 Property Conditions; Changes.

(a) At all times during the Term, Customer shall maintain the Property free of any obstructions or hazards that may endanger the Equipment or impede Tesla's ability to safely perform the Services.

(b) Customer shall promptly notify Tesla of: (i) any plans to change the operations at the Property that would materially impact the Equipment; (ii) any change in the Property's applicable utility tariffs or electricity prices; and (iii) any other changes at the Property that could reasonably be expected to materially affect the ability to use the Equipment to generate electricity cost savings. Customer shall use commercially reasonable efforts to provide not less than thirty (30) days' prior written notice to any such changes.

Section 4.4 SGIP Upgrades. To the extent not implemented prior to the Effective Date, Customer hereby agrees to implement, at its sole cost and expense, all SGIP Upgrades by no later than Tesla's completion of the Equipment installation. Customer's failure to comply with the foregoing shall be deemed a material breach of this Agreement.

ARTICLE V
SERVICES

Section 5.1 Conditions Precedent. Notwithstanding anything in this Agreement to the contrary, Tesla's obligation to commence the provision of any Services hereunder, including procurement of any Approvals, shall be contingent upon (a) Customer making available to Tesla a copy of the Energy Efficiency Audit and (b) Tesla's receipt of the Confirmed Incentive Reservation Date.

Section 5.2 Installation.

(a) Tesla shall install the Deliverables at the Equipment Site in accordance with the Scope of Work and construction drawings approved by Customer. In furtherance of the foregoing, Customer shall make available to Tesla a mutually satisfactory lay-down and staging area for the Deliverables and all Property information reasonably necessary for Tesla to safely, efficiently and effectively install the Deliverables (*e.g.*, Property-specific electrical plan drawings and schedule of operations).

(b) At least thirty (30) days prior to installation of the Deliverables, Tesla shall provide Customer with any proposed updates to the Project Timeline for Customer's review and approval. Tesla shall use commercially reasonable efforts to complete installation of the Deliverables in accordance with the then-current Project Timeline.

(c) Tesla may, at its sole cost and expense, install an Internet connection or phone line at a location on the Property approved by Customer and in a manner approved by Customer solely for purposes of allowing Tesla to remotely monitor the Equipment's performance. All costs for installing and maintaining such Internet connection or phone line shall be borne exclusively by Tesla.

(d) Tesla shall be liable for all costs and expenses associated with the installation of the Deliverables, including the costs of obtaining Approvals. Customer will cooperate with Tesla in

completing and filing any applications and other documents in a timely manner necessary to permit Tesla to receive the Approvals.

Section 5.3 Maintenance.

(a) At its sole cost and expense, Tesla shall maintain the Equipment in good working condition, which may include deactivating or suspending performance of the Equipment or installing or removing certain equipment, components or other hardware to or from any part of the Deliverables.

(b) In the event the Equipment malfunctions, Tesla shall respond within two (2) business days following notification thereof by Tesla's remote monitoring systems or by Customer. Tesla shall use commercially reasonable efforts to return the Equipment to good working condition as soon as reasonably possible.

(c) For clarity and notwithstanding anything in this Agreement to the contrary, Tesla shall have no obligation to upgrade or expand the energy storage capacity of the Equipment unless mutually agreed by the Parties in writing.

Section 5.4 Interruptions.

(a) Tesla shall not disrupt any grid services to the Property without Customer's prior consent. In the event that any such disruption is required to perform any Services, Tesla will notify Customer in writing at least five (5) days in advance of any such Services and, in the event Customer consents to any such disruption, Tesla will comply with all instructions and schedules in respect of such disruption provided by Customer.

(b) Notwithstanding anything in this Agreement to the contrary, Tesla shall not be required to obtain Customer's prior consent for any temporary deactivation or suspension of the Equipment's operation in the course of providing any maintenance Services; provided, however, that Tesla provides Customer with as much notice as reasonably possible under the circumstances prior to any such deactivation or suspension.

Section 5.5 Subcontracting. Tesla may subcontract the provision of any Services hereunder, including removal of the Equipment, to any Affiliate or third party; provided, that Tesla shall at all times remain responsible for the performance of the Services and for its subcontractors' compliance with the terms of this Agreement.

ARTICLE VI **COMPENSATION**

Section 6.1 SGIP Incentives.

(a) In connection with the installation and operation of the Equipment at the Property, the Parties expect that the SGIP Program Administrator will make the SGIP Incentives available to Tesla pursuant to the SGIP. To the extent Customer acquires any interest in the SGIP Incentives, Customer hereby assigns any and all such interest to Tesla and agrees that Tesla shall be entitled to retain the full amount of the SGIP Incentives paid by the SGIP Program Administrator.

(b) Tesla shall prepare at its sole expense and submit to the SGIP Program Administrator any and all documents necessary to receive the SGIP Incentives. Customer agrees to reasonably cooperate with Tesla in the preparation and execution of such documentation.

Section 6.2 Additional Benefits. Any other incentives, grants, reduced rate financing or other assistance or benefits available for the Equipment or its use from any federal, state or local governmental authority, utility or other entities shall inure to the sole benefit of Tesla. Customer agrees to reasonably cooperate with Tesla in the preparation and execution of any documentation necessary for Tesla to obtain any such benefits.

Section 6.3 Service Fees.

(a) In consideration of the Services provided hereunder, Customer shall pay to Tesla the fees set forth in Exhibit G (the “Service Fees”) for each approved use of the Equipment set forth in Exhibit G.

(b) Customer shall provide or make available to Tesla or Tesla’s designee, in the manner, format and frequency reasonably requested by Tesla, all information reasonably necessary for purposes of calculating the Service Fees (it being understood that such information shall be deemed Customer’s Confidential Information).

(c) The Service Fees shall be calculated either on a monthly basis or in sync with Customer’s utility billing cycle, in each case, as set forth in Exhibit G.

(d) Tesla shall provide to Customer, in accordance with the billing cycle set forth in subsection (c) above, an invoice setting forth the current Service Fees and supporting data. All invoices shall be paid by Customer within thirty (30) days of the invoice date. In the event Customer disputes in good faith any invoiced amounts, Customer shall pay the undisputed portion of such invoice by the due date notwithstanding such Dispute. Following the resolution of any Dispute pursuant to Section 11.3(d), Customer shall make outstanding payments, or Tesla shall refund overpayments, if any, within thirty (30) days of such resolution.

Section 6.4 Additional Revenue. In the event either Party identifies a potential revenue generating use for the Equipment not already set forth in Exhibit G, the Parties shall discuss in good faith the terms for such use, including allocation of additional revenue. For clarity, neither Party may use the Equipment to generate such additional revenue without the other Party’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

Section 6.5 Taxes. Each Party will be responsible, as required under applicable law, for identifying and paying all taxes and other governmental fees and charges (and any penalties, interest and other additions thereto) that are imposed on that Party on account of the transactions and payments made under this Agreement. Tesla may charge and Customer shall pay applicable federal, national, state or local sales or use taxes or value added taxes that Tesla is legally obligated to charge, if any. Customer may provide Tesla with an exemption certificate acceptable to the relevant taxing authority, in which case, Tesla shall not collect the taxes covered by such certificate. Each Party agrees to reasonably cooperate with the other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible.

ARTICLE VII **REPRESENTATIONS AND WARRANTIES**

Section 7.1 Mutual. Each Party represents, warrants and covenants to the other Party that: (a) it is a legal entity, duly organized, validly existing, and in good standing; and (b) the execution, delivery and performance of this Agreement (i) is within its powers, (ii) has been duly authorized by all requisite

action, and (iii) will not violate any agreement, lease, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

Section 7.2 By Tesla. Tesla further represents, warrants and covenants to Customer that: (a) the transactions proposed by Tesla under this Agreement (insofar as such transactions relate to the SGIP) are in compliance with the requirements set forth in the SGIP Handbook; and (b) the Services will be performed with reasonable skill, care and diligence and in accordance with applicable laws, including Environmental Laws.

Section 7.3 By Customer. Customer further represents, warrants and covenants to Tesla that: (a) it is the sole and exclusive owner of the Property or has otherwise obtained all rights and authorizations necessary to permit Tesla to perform the Services at the Property during the Term (including after the Term with respect to removal of the Equipment) and shall, upon Tesla's request, provide copies of any documents evidencing such rights and authorizations; and (b) to Customer's knowledge, the Equipment Site is free of any Hazardous Materials as of the Effective Date, and Customer will not introduce any Hazardous Materials to the Equipment Site at any time during the Term.

ARTICLE VIII **INDEMNIFICATION**

Section 8.1 By Tesla. Tesla shall defend, indemnify and hold harmless Customer, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any third-party claim alleging:

- (a) bodily injury (including death) or damage to real or tangible personal property caused by (i) negligent acts of Tesla, or (ii) exposure to any Hazardous Materials introduced to the Property by Tesla;
- (b) Tesla's breach of its obligations under Section 7.2;
- (c) Tesla's breach of its confidentiality obligations hereunder; and
- (d) that the Equipment, as installed and maintained by or on behalf of Tesla, infringes, misappropriates or otherwise violates any third party's Proprietary Rights.

Section 8.2 By Customer. Customer shall defend, indemnify and hold harmless Tesla, its Affiliates and its and their officers, directors, employees, agents, successors and assigns from and against all Losses resulting from any third-party claim alleging:

- (a) bodily injury (including death) or damage to real or tangible personal property caused by Customer's breach of its obligations under Section 3.3 or Section 7.3(b);
- (b) Customer's breach of its obligations under Section 3.1(c) or Section 7.3(a); and
- (c) Customer's breach of its confidentiality obligations hereunder.

Section 8.3 Indemnification Procedures. The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any claim covered under the indemnification obligations of the Parties hereunder and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such claim and shall employ counsel of its choice to handle and defend the same, at the indemnifying Party's

sole cost and expense. The indemnified Party's failure to perform any obligations under this Section 8.3 shall not relieve the indemnifying Party of its obligations under this Article VIII except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense.

ARTICLE IX **LIMITATION OF LIABILITY**

Section 9.1 Disclaimer of Certain Damages. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

Section 9.2 Damages Cap. EXCEPT AS OTHERWISE PROVIDED IN SECTION 9.3, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED TWENTY PERCENT (20%) OF THE PROJECT COST.

Section 9.3 Exclusions. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 AND SECTION 9.2 SHALL NOT APPLY TO DAMAGES ARISING FROM, RELATED TO OR BASED ON: (A) INDEMNIFICATION CLAIMS UNDER ARTICLE VIII; (B) GROSS NEGLIGENCE OR WILLFUL OR INTENTIONAL MISCONDUCT; (C) FRAUDULENT OR CRIMINAL ACTS; (D) BODILY INJURY (INCLUDING DEATH); (E) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER OR VIOLATION OF THE OTHER PARTY'S PROPRIETARY RIGHTS; OR (F) CUSTOMER'S FAILURE TO PAY ANY SERVICE FEES OR TERMINATION CHARGE IN ACCORDANCE WITH THIS AGREEMENT.

ARTICLE X **TERMINATION; EFFECT OF TERMINATION AND EXPIRATION**

Section 10.1 Termination for Cause. Either Party may terminate this Agreement, or suspend its performance hereunder, if the other Party (the "Defaulting Party"):

(a) commits a material breach of this Agreement and such breach is not cured within thirty (30) days following notice thereof; provided, however, that (i) any breach of Section 3.3(c) shall not be subject to any opportunity to cure, (ii) breaches affecting a Party's Confidential Information or Proprietary Rights, to the extent curable, must be cured within a fifteen (15) day period, and (iii) any breach by Tesla as a result of a Lender's exercise of its rights under Section 13.10 shall be subject to the cure period set forth in Section 13.10; or

(b) (i) becomes insolvent or the subject of any proceedings under any bankruptcy, insolvency or liquidation laws, which proceedings are not resolved favorably to the Defaulting Party or dismissed within sixty (60) days, (ii) makes a general assignment for the benefit of creditors, (iii) ceases conducting business in the normal course or (iv) has a material portion of its assets attached.

Section 10.2 Termination for Convenience. Neither Party has the right to terminate this Agreement for convenience during the Initial Term. During any Renewal Term, either Party may terminate this Agreement for convenience upon sixty (60) days' notice to the other Party.

Section 10.3 Additional Termination Rights.

(a) Either Party may terminate this Agreement upon written notice to the other Party in the event that the Confirmed Incentive Reservation Date is not received within six (6) months following the Effective Date.

(b) At any time during the Initial Term, Tesla may terminate this Agreement upon at least thirty (30) days' notice to Customer in the event that Tesla fails or ceases to receive all or any portion of the SGIP Incentives for reasons not attributable to either Party.

Section 10.4 Automatic Termination. This Agreement shall automatically terminate in the event that:

(a) Customer no longer has the authority to grant to Tesla the access rights set forth in Section 4.1; or (b) Customer ceases operations at the Property which results in the cessation of electrical consumption at the Property.

Section 10.5 Effects of Termination or Expiration.

(a) If (i) this Agreement expires; (ii) either Party terminates this Agreement pursuant to Section 10.2 or Section 10.3; or (iii) Customer terminates this Agreement for cause pursuant to Section 10.1, then, in each case, Tesla shall remove and transport the Deliverables (other than the Infrastructure) from the Property and restore the Equipment Site to its original condition (normal wear and tear excepted) in accordance with a mutually agreed upon schedule (but in no event more than ninety (90) days following such expiration or termination). Tesla shall be solely liable for all costs and expenses in connection with the foregoing.

(b) If (i) this Agreement is terminated pursuant to Section 10.4 or (ii) Tesla terminates this Agreement for cause pursuant to Section 10.1, then, in each case, Tesla shall remove and transport the Deliverables (other than the Infrastructure) from the Property and restore the Equipment Site to its original condition (normal wear and tear excepted) in accordance with a mutually agreed upon schedule (but in no event more than ninety (90) days following such termination). Customer shall be solely liable for all costs and expenses in connection with the foregoing, including a Termination Charge, if any.

(c) Within forty-five (45) days following the expiration or termination of this Agreement, Customer shall pay to Tesla all outstanding Service Fees accrued prior to such expiration or termination.

Section 10.6 Survival. The provisions of this Agreement which, by their nature and content, are intended, expressly or impliedly, to continue to have effect notwithstanding the termination or expiration of this Agreement shall survive and continue to bind the Parties, including Articles I, VII, VIII, IX, XII and XIII and Sections 3.1, 3.2(a), 3.4, 10.5, and 10.6.

ARTICLE XI
INSURANCE

Section 11.1 Insurance Requirements of Tesla. At all times during the Term, Tesla shall maintain, at its sole cost and expense, the following insurance coverage and shall, upon Customer's request, furnish to Customer a certificate evidencing such coverage:

(a) commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property

damage including coverage for contractual liability, independent contractors, personal injury, and property damage.

(b) statutory workers' compensation insurance to the full limit of liability required by applicable law; and

(c) employer's liability insurance with a minimum limit of One Million Dollars (\$1,000,000) per occurrence.

Section 11.2 Insurance Requirements of Customer. At all times during the Term, Customer shall maintain, at its sole cost and expense, commercial general liability insurance, including contractual liability, with a per-occurrence limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage. Customer shall, upon Tesla's request, furnish to Tesla a certificate evidencing such coverage.

Section 11.3 Additional Requirements.

(a) Tesla's commercial general liability insurance certificate shall include Customer as an additional insured.

(b) Each of Tesla's insurance policies noted in Section 11.1 above shall include a waiver of subrogation in favor of Customer and shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the policy and certificate, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

(c) Each Party shall provide to the other Party at least 30 days' written notice prior to any material changes to, or proposed cancellation or nonrenewal of, the insurance policies required to be carried by the respective Party.

(d) Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-, VIII".

ARTICLE XII

DISPUTE RESOLUTION

Section 12.1 Dispute Resolution Procedure. Any dispute, controversy or claim arising out of or in connection with this Agreement (each, a "Dispute") shall be resolved in the following manner:

Section 12.2 Escalation of Disputes.

(a) All Disputes shall be initially referred to the appropriate manager/supervisory level personnel for resolution. If such personnel are unable to resolve a Dispute within ten (10) days after referral or such longer period as the Parties may agree, then either Party may escalate such Dispute to the senior management of the Parties.

(b) If senior management is unable to resolve a Dispute within five (5) business days after referral or such longer period as the Parties may agree, then either Party may submit such Dispute to arbitration in accordance with Section 12.3.

Section 12.3 Arbitration. All Disputes not resolved as provided above shall be settled exclusively by final and binding arbitration conducted in accordance with the then-current Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services (“JAMS”). The existence, content and result of the arbitration shall be held in confidence by the Parties, their representatives, any other participants and the arbitrator. The arbitration will be conducted by a single arbitrator selected by agreement of the Parties or, failing such agreement, appointed in accordance with the JAMS rules. The arbitration will be conducted in the English language in San Francisco, California. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator may, in his or her discretion, award reasonable costs and fees to the prevailing Party. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

Section 12.4 Injunctive Relief. Each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief (or other interim or conservatory measures), and by doing so will not be deemed to have breached its agreement to arbitrate or to have impaired the powers reserved to the arbitrator.

ARTICLE XIII **MISCELLANEOUS**

Section 13.1 Interpretation. Section and Exhibit references are to Sections and Exhibits of this Agreement. The section headings in this Agreement are for reference purposes only and may not be construed to modify or restrict any of the terms of this Agreement. Unless the context requires otherwise, (a) “including” (and any of its derivative forms) means including but not limited to, (b) “may” means has the right, but not the obligation to do something and “may not” means does not have the right to do something, and (c) “will” and “shall” are expressions of command, not merely expressions of future intent or expectation.

Section 13.2 Entire Agreement. This Agreement, and Exhibits attached hereto, constitutes the entire agreement between Tesla and Customer with respect to the subject matter hereof, superseding any prior agreement or representation, whether oral, electronic or written.

Section 13.3 Amendment; Modification; Waiver. This Agreement may not be modified or amended, except in a writing signed by duly authorized representatives of both Parties. No waiver of any breach or provision of this Agreement will be binding unless it is in a writing signed by a duly authorized representative of the waiving Party. No failure by either Party to exercise, or delay in exercising, any right, remedy, power or privilege under this Agreement shall operate or be construed as a waiver thereof.

Section 13.4 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of the Agreement will continue in full force and effect.

Section 13.5 Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without regard to any conflicts of laws principles.

Section 13.6 Confidentiality.

(a) Each Party shall keep confidential and shall not use, make available or disclose any Confidential Information of the other Party. Notwithstanding the foregoing, Confidential Information may be disclosed on an as needed basis to Affiliates, personnel, subcontractors and/or agents of the receiving Party as required for the purpose of fulfilling the receiving Party’s obligations under this

Agreement, including as required to provide or receive the Services. Each Party shall ensure that any Confidential Information it discloses in accordance with this Section 13.6(a) is treated as confidential by the person or entity to whom it is disclosed and shall require such person or entity to enter into a confidentiality agreement which imposes confidentiality obligations no less protective of the Confidential Information than those imposed upon under this Agreement.

(b) The provisions of this Section 13.6 shall not apply to any information which: (i) is or becomes commonly known within the public domain other than by breach of this Agreement or any other agreement that the disclosing Party has with any party; (ii) is obtained from a third party who is lawfully authorized to disclose such information free from any obligation of confidentiality; (iii) is independently developed without reference to any Confidential Information; or (iv) is known to the receiving Party without any obligation of confidentiality prior to its receipt from the disclosing Party.

(c) Nothing in this Section 13.6 shall prevent either Party from disclosing Confidential Information where it is required to be disclosed by applicable law or regulation of the United States or State of California, or judicial, administrative, governmental or regulatory orders; provided, however, that each Party shall, if legally permitted, give the other Party prior notice, as soon as possible, of such required disclosure so as to enable the other Party to seek relief from such disclosure requirement or to take measures to protect the confidentiality of the disclosure.

(d) The receiving Party shall immediately inform the disclosing Party in the event that it becomes aware of the possession, use or knowledge of any Confidential Information of the disclosing Party by any person or entity not authorized to possess, use or have knowledge of such Confidential Information and shall, at the request of the disclosing Party, provide such reasonable assistance as is required by the disclosing Party to mitigate any damage caused thereby.

(e) Failure by a Party to comply with this Section 13.6 shall be deemed a material breach of this Agreement.

Section 13.7 Publicity. Each Party agrees that it shall not, without the prior written consent of the other Party, disclose or publish the fact that Tesla has furnished or contracted to furnish to Customer any of the Services, except as required by law. Each Party further agrees not to, without the prior written consent of the other Party, use the name or any trademarks of the other Party in any marketing literature, web sites, articles, press releases or any other document or communication published in electronic or paper form. Following initial prior written permission, if either Party objects to any particular use of its trademarks or names by the other Party, the other Party shall immediately modify or cease the use as requested by the objecting Party.

Section 13.8 Independent Contractors. The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture or any other similar relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other Party's behalf.

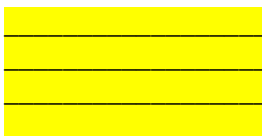
Section 13.9 Assignment; Successors and Assigns. Neither Party may assign this Agreement, by contract, operation of law or otherwise, to any person or entity other than its Affiliates; provided, however, that any assignment by Customer may not result in a relocation of the Equipment without Tesla's prior written consent. Any attempted assignment in violation of the foregoing shall be null and void. All provisions of this Agreement by and for the benefit of the Parties shall bind and inure to the benefit of their respective permitted successors and assigns.

Section 13.10 Lender Rights; Third Party Beneficiary. Customer acknowledges that Tesla has, as of the Effective Date, or may, anytime thereafter, grant to a third-party lender (“Lender”) a lien on or security interest in the Equipment. Accordingly, upon receipt of a written notice from Lender certifying an event of default under the applicable credit and security agreement between Tesla and Lender, Customer hereby grants to Lender the right to access the Property for purposes of removing the Equipment. The foregoing access rights shall be contingent upon Lender providing Customer with reasonable assurances that the Equipment Site shall be restored to its original condition (normal wear and tear excepted). It is expressly agreed between the Parties that (a) Lender is and shall be a third-party beneficiary under this Section 13.10, and (b) the exercise by Lender of its foregoing rights shall give Customer the right to terminate this Agreement for cause to the extent Tesla fails to replace the Equipment within ninety (90) days following such removal by Lender.

Section 13.11 Force Majeure. If either Party is prevented from performing one or more of its non-monetary obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall use commercially reasonable efforts to avoid or overcome the Force Majeure Event with the least possible delay. The obligations of the affected Party shall be suspended during the continuance of the Force Majeure Event. If a Force Majeure Event is anticipated to prevent a Party from performing its obligations under this Agreement for a period of three (3) months or more, the Parties shall meet to determine the appropriate course of action, including termination of this Agreement.

Section 13.12 Notices. Any notices required under this Agreement (other than notices in the ordinary course of each Party’s performance under this Agreement) must be in writing addressed to each Party as set forth below and will be effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

If to Tesla: Tesla Motors, Inc.
3500 Deer Creek Road
Palo Alto, CA 94304
Attn: General Counsel

If to Customer: 

Section 13.13 Further Assurances. Each Party shall execute and deliver instruments and assurances and do all things reasonably necessary and proper to secure all necessary Approvals, including the issuance of the Confirmed Incentive Reservation Date and Commencement Date, in a timely manner and to otherwise carry out the terms of this Agreement.

Section 13.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which will be considered one and the same instrument.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, each of the undersigned Parties has caused its duly authorized representative to execute this Stationary Battery Services Agreement as of the date first above written.

Tesla Motors, Inc.

Marin Community College District

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

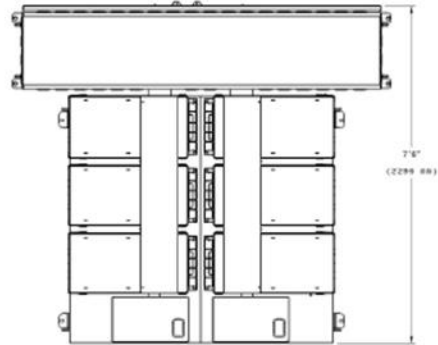
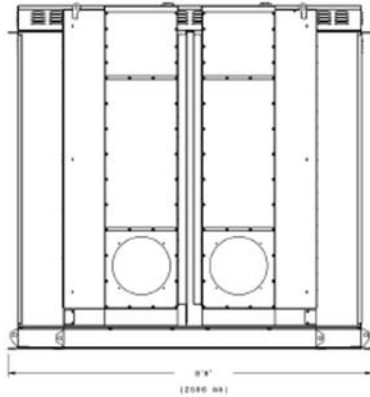
EXHIBIT A

EQUIPMENT

TESLA MOTORS - 400kWh Stationary Storage

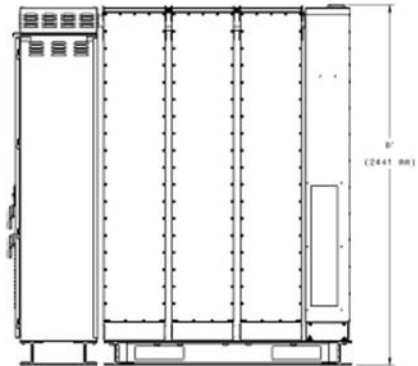
June 2014

SPECIFICATIONS



Mechanical and Mounting

Packaging	Steel Pallet
Weight	7,750 kg / 17,000 lbs
Dimensions	L: 7' 6" (2290mm) W: 8' 0" (2580mm) H: 8' (2441mm)



Regulatory

Lithium-Ion Cells	UL 1642
Power Electronics	UL 1741
System (planned)	UL 1973

Electrical

Voltage	208 or 480 VAC
Continuous Charge/Discharge Power	200kW (2hr) or 100kW (4hr)
Rated Storage Capacity*	400kWh
System Efficiency @ C/2	89%/80% 1 way/Roundtrip
System Efficiency @ C/4	93%/86% 1 way/Roundtrip

*Net energy delivered in AC Voltage

Communications

Modbus
DNP3

TESLA MOTORS, INC 3500 Deer Creek Rd. Palo Alto CA 94304 © COPYRIGHT 2014

EXHIBIT B

EQUIPMENT SITE

The proposed equipment site for this installation is denoted in red on the diagrams below.

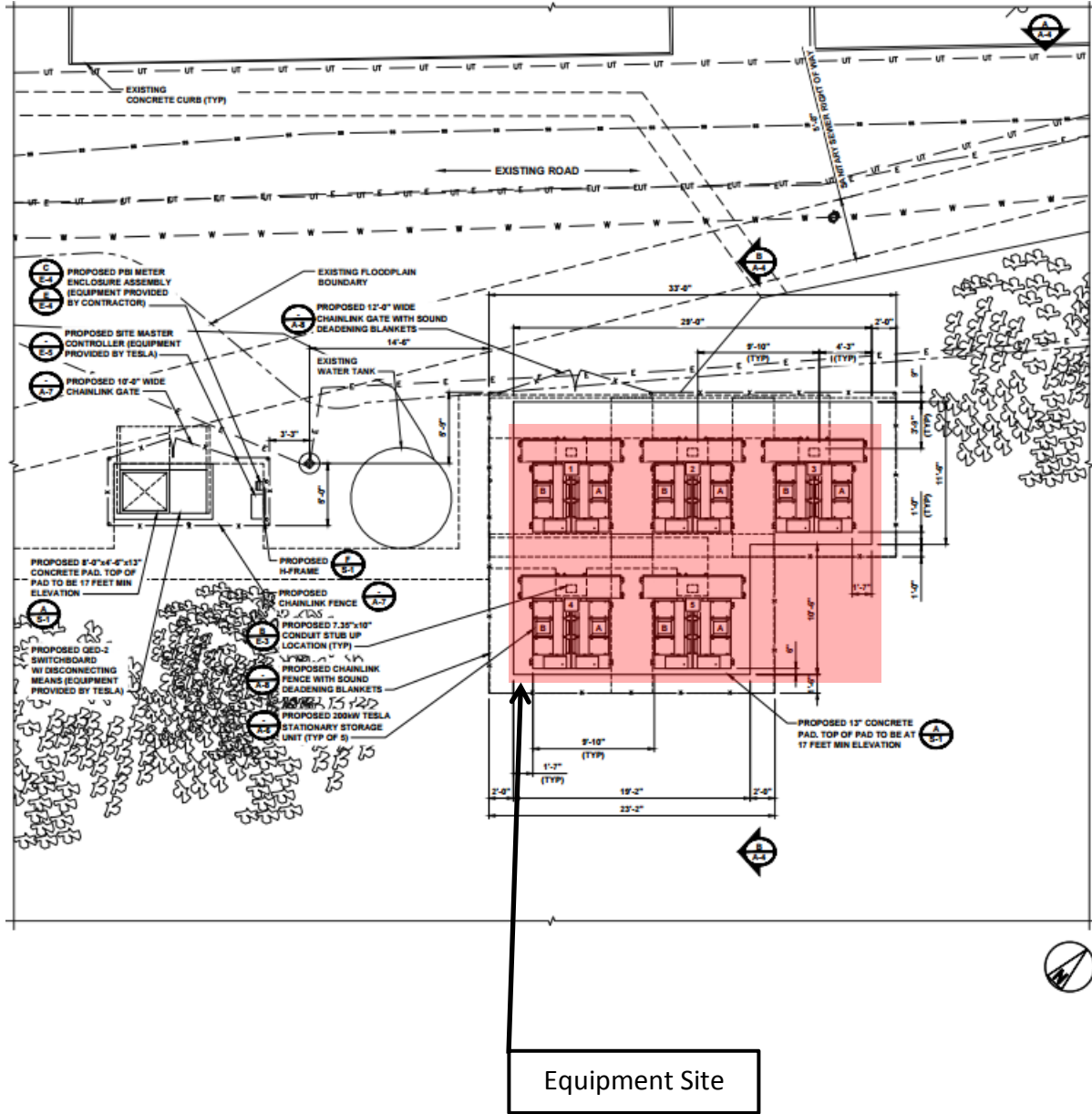


EXHIBIT C

EQUIPMENT WARRANTY

The Equipment includes a ten (10) year operational warranty commencing on the Commencement Date (the "Equipment Warranty"). The Equipment Warranty guarantees to the owner of the Equipment that (i) the Equipment will deliver rated power output for the duration of the Equipment Warranty, and (ii) the battery management system (BMS), communications and control hardware, firmware and software will enable dispatchable charge and discharge cycles for the duration of the Equipment Warranty. Tesla's sole obligation under the Equipment Warranty is to repair or replace the Equipment, at Tesla's election. The Equipment Warranty shall include problem diagnosis, on-site repair and preventative maintenance. For clarity, the Equipment Warranty shall not be construed to limit Tesla's indemnification obligations under the Agreement.

The Equipment Warranty does not cover any damage, costs or malfunction directly or indirectly caused by, due to or resulting from normal wear or deterioration, abuse, misuse, negligence, accident, lack of or improper maintenance, operation or installation, including, but not limited to, any of the following:

- a Force Majeure Event, including electric grid power surges;
- electrical overloading of the Equipment, or external electrical shorts;
- repairs, modifications or alterations to the Equipment or its performance done by any person or entity (other than Tesla or Tesla's contractors) without prior authorization from Tesla;
- physically damaging the Equipment or intentionally attempting, either by physical means, programming or other methods, to extend or reduce the life of the Equipment's batteries (other than as specified in the owner documentation);
- exposing the Equipment to direct flame;
- immersing any portion of the Equipment in water or fluids;
- opening the Equipment's battery enclosures unless otherwise directed by Tesla;
- general appearance, noise and vibration or maintenance services that do not impact Equipment performance as otherwise guaranteed by the Equipment Warranty;
- damage that occurs after the expiration or termination of the Equipment Warranty period or that is reported after the expiration or termination of the Equipment Warranty period; and
- all repair or replacement costs, including but limited to teardown, disassembly, assembly and shipping of any part of the Equipment, ***if warranty coverage cannot be applied.***

EXHIBIT D
PROJECT COST

SGIP Eligible Project Costs	Total
Self Generation Equipment	\$ 2,073,746.69
Planning and Feasibility Study	\$ 13,097.35
Engineering and Design	\$ 34,926.26
Permitting	\$ 7,094.40
Construction and Installation	\$ 255,398.28
Interconnection	\$ 1,135.10
Metering, Monitoring, Data Acquisition	\$ 14,188.79
Warranty	\$ 654,867.38
Maintenance Contract	\$ 109,144.56
Cost of capital	\$ 76,401.19
Total	\$ 3,240,000.00

EXHIBIT E

PROJECT TIMELINE

The following is an estimated timeline corresponding to the components listed in the Scope of Work outlined in Exhibit F.

Planning and Permitting – 8 weeks: Specific dates to be established upon execution of the agreement and approval by the Customer.

Site Work – 4 weeks: Specific dates to be established upon execution of the agreement and approval by the Customer.

Equipment and Installation – 4 weeks: Specific dates to be established upon execution of the agreement and approval by the Customer.

Commissioning – 1 week: Specific dates to be established upon execution of the agreement and approval by the Customer.

Ongoing Data Services – 5 years: Specific dates to be established upon execution of the agreement and approval by the Customer.

EXHIBIT F

SCOPE OF WORK

Tesla will install a total of five (5) units of the Equipment at the Equipment Site. This Equipment will be electrically connected to a main distribution panel downstream of the utility meter. All equipment and controls required to perform demand reduction are provided. This Scope of Work includes all activities required to plan, permit and prepare the Equipment Site and install and commission the Equipment. Follow-up data services are also provided during the Term, as well as Equipment performance monitoring and algorithm upgrades.

Planning and Permitting

- Prepare electrical single line diagram.
- Work with Customer to determine Equipment location. Equipment must be installed outside, at least 5 feet away from any other structures and with no overhanging structures or tree limbs above the Equipment Site. If possible, the Equipment should be installed close to the point of interconnection with the building wiring.
- Perform civil/structural analysis and design concrete mounting pad.
- Procure permit, interact with authorities having jurisdiction (AHJ), coordinate inspections, close permits. This includes applying for and procuring an interconnection agreement with Pacific Gas & Electric.

Site Work

- All trenching and conduit routing to interconnect the Equipment.
- Construction of concrete pad.
- Backfilling and reinstatement of any areas disturbed by trenching.

Equipment and Installation

- Provide and install the Equipment, which includes:
 - Battery
 - Inverter and power electronics
 - AC disconnect
 - AC wiring and conduit between connection point and inverter
 - Breaker to wire into main panel
 - If main panel does not have room for additional circuit, add secondary panel in parallel with main panel
 - Electrical meters (site meter and battery meter) and control system
 - Equipment for data collection and communication

- Any other equipment or materials required to create a functional and code compliant installation

Commissioning

- Utility interconnection and initial bring-up of the Equipment after installation.
- The Equipment operates autonomously in a mode to reduce utility demand charges. The performance of the Equipment will be monitored by Tesla, and upgraded algorithms for improved performance/savings will be provided throughout the Term.

Ongoing data services

- Record performance data on at least 15 min intervals, communicate data to Tesla's servers, and store/backup data.
- Provide a monthly invoice detailing the operation of the Equipment including:
 - Estimated bill savings
 - Monthly kWh battery throughput
 - Chart of the monthly operation of the batteries on 15 min intervals showing:
 - State of charge and discharge of the batteries
 - Property electrical load with and without the Equipment

EXHIBIT G

APPROVED USES OF THE EQUIPMENT AND SERVICE FEES

Approved Uses of the Equipment

- **Demand Charge Reductions:** Customer pays monthly energy usage charges to the utility which include demand charges assessed for the maximum power (kW) recorded during each of the following windows: (i) peak, (ii) partial-peak and (iii) entire month during each billing period. The maximum power is measured at the Customer utility meter for any 15-minute interval during the billing period. Tesla shall operate the Equipment to coincide with the Customer's intervals of maximum power consumption in order to reduce the demand charge component of the utility bill.
- **Load Shifting:** Customer pays monthly energy usage charges to the utility which include costs assessed based on the cumulative energy consumed (in kWh) during each of the following windows: (i) peak, (ii) partial-peak and (iii) off-peak during each billing period. Tesla shall operate the Equipment such that Customer can benefit from the arbitrage value between lower energy costs and higher energy costs present during different pricing windows. This action shifts Customer's energy use from higher energy pricing periods to lower energy pricing periods, thereby reducing energy charges on the utility bill.
- **Demand Response:** If Customer is already participating in a demand response program, the Parties shall collaborate to ensure that Customer may continue with their existing demand response nomination. Tesla shall work with Customer to assess the feasibility of additional demand response revenues by operation of the Equipment. If Customer agrees to pursue additional demand response revenue, the Parties shall reserve a mutually agreed portion of the Equipment's capacity for demand response revenue purposes (i.e., dispatching the Equipment to meet additional demand response capacity nominations and/or to meet existing nominations without shedding site load).
- **Grid Services:** In response to signals from the utility or independent system operator (ISO), the Equipment may charge or discharge energy to provide grid stabilizing services, including but not limited to ancillary services, frequency regulation and reactive power support (such services, the "Grid Services"). Both Parties may mutually agree to participate in the provision of Grid Services.

Service Fees for Each of the Approved Uses of the Equipment

- **Demand Charge Reductions and Load Shifting:** Customer shall provide to Tesla a record of 12-month historical 15-minute Property load (kW) data. A Tesla algorithm will use the historic load data to predict future load at the Property, taking into consideration real-time site loads measured at the site meter. The Equipment will dispatch energy at customized and adapting times to coincide with Property load peaks, with a goal of reducing the demand charge component of Customer's utility bill as derived by the corresponding utility tariff. The battery meter will measure energy (kWh) into and out of the Equipment. Energy measured at the site and battery meters dispatched for a given duration of time will derive the load reduction enabled by the Equipment. Data from both meters will be sent to a Tesla server and be made available to Customer in real-time via a password-protected user interface. The user interface

will display total site load measured at the site meter, load present at the utility meter and the load reduction enabled by the Equipment. On a monthly basis, Tesla will share anonymized meter data with a third party energy data company to calculate Customer's utility bill with and without the Equipment using the corresponding utility tariff for the Property. The difference between these two calculated bills represents the value from demand charge reductions and load shifting attributable to the Equipment.

- The Service Fees for demand charge reductions and load shifting shall equal 50 % of the foregoing value. Customer shall be invoiced on a monthly basis.
- Demand Response: If the Customer currently participates in and receives capacity payments from Customer's demand response service provider those payments shall remain solely payable to the Customer. If applicable and mutually agreed upon, Tesla will work to determine if incremental demand response nominations may be possible. To the extent possible, Customer may elect to increase nominations into their demand response program using reserved capacity in the Equipment. The incremental nominations and/or the ability to meet existing nominations without shedding site load made possible through Tesla's operation of the Equipment represent the value from demand response attributable to the Equipment.
 - The Service Fees for demand response shall equal 50 % of the foregoing value. Customer shall be invoiced on a monthly basis.
- Grid Services: The Party participating in Grid Services shall receive monetary payments from the utility or ISO and shall provide to the other Party a statement outlining the receipt of such payments. Such payments from the utility or ISO represent the value from Grid Services attributable to the Equipment.
 - To the extent Tesla participates in Grid Services, Tesla shall provide to Customer 50 % of the foregoing value on a monthly basis.
 - To the extent Customer participates in Grid Services, the Service Fees for Grid Services shall equal 50 % of the foregoing value. Customer shall be invoiced on a monthly basis.

EXHIBIT H

TERMINATION CHARGE

To the extent a Termination Charge is payable by Customer to Tesla, the applicable amount of such Termination Charge shall be based as follows:

Termination Month During the Initial Term	Termination Charge (Equal to Estimated Construction and Installation Costs Set Forth in the Project Cost Prorated Over the Initial Term)
1	\$255,398.28
2	\$251,141.64
3	\$246,885.00
4	\$242,628.36
5	\$238,371.72
6	\$234,115.09
7	\$229,858.45
8	\$225,601.81
9	\$221,345.17
10	\$217,088.54
11	\$212,831.90
12	\$208,575.26
13	\$204,318.62
14	\$200,061.98
15	\$195,805.35
16	\$191,548.71
17	\$187,292.07
18	\$183,035.43
19	\$178,778.79
20	\$174,522.16
21	\$170,265.52
22	\$166,008.88
23	\$161,752.24
24	\$157,495.60
25	\$153,238.97
26	\$148,982.33
27	\$144,725.69
28	\$140,469.05
29	\$136,212.41
30	\$131,955.78
31	\$127,699.14

32	\$123,442.50
33	\$119,185.86
34	\$114,929.22
35	\$110,672.59
36	\$106,415.95
37	\$102,159.31
38	\$97,902.67
39	\$93,646.03
40	\$89,389.40
41	\$85,132.76
42	\$80,876.12
43	\$76,619.48
44	\$72,362.85
45	\$68,106.21
46	\$63,849.57
47	\$59,592.93
48	\$55,336.29
49	\$51,079.66
50	\$46,823.02
51	\$42,566.38
52	\$38,309.74
53	\$34,053.10
54	\$29,796.47
55	\$25,539.83
56	\$21,283.19
57	\$17,026.55
58	\$12,769.91
59	\$8,513.28
60	\$4,256.64