

Megapack Order and Installation Agreement

Thanks for ordering Tesla's Megapack. This Agreement describes the terms on which you ("Buyer") will purchase and Tesla will install the Megapack system in your order (the "System") consistent with the Order Configuration Sheet attached as Attachment A. Your order, this Agreement (including attachments to this Agreement) and the other documentation associated with the order that has been or will be provided to Buyer or added to this Agreement as part of the Diligence Period are, together, the "Order Documents".

1. Diligence Period. Tesla will work with Buyer for 90 days after the date of your order (the "Diligence Period") to provide a preliminary System design, schedule for performance of the work required to install your System ("Work Schedule"), and performance tests and guarantees for your System. Tesla will evaluate Buyer's credit with Buyer's cooperation to determine the need for Buyer credit support and/or adjustment to payment milestones. If Tesla determines based on its diligence that changes to any of the Order Documents are required, Tesla will be entitled to a Change Order as described in Section 8 which may include a Price adjustment and other changes. If Buyer rejects the Change Order, Tesla can terminate this Agreement without liability and the deposit will not be returned.
2. Tesla Responsibilities.
 - (a) Work Standards. All Tesla personnel will exercise the reasonable skill and care of an experienced battery energy storage system installation contractor in performing the installation-related scope of work described in Attachment B (the "Scope of Work" and such work, the "Work"). Tesla will perform the Work in accordance with this Agreement, applicable law and permit requirements, the Tesla manuals associated with your order ("Tesla Manuals"), the other manufacturer manuals related to the System, and applicable interconnection and transmission provider requirements.
 - (b) Labor. Tesla will be solely responsible for providing all labor and personnel required to perform the Work. If a project labor agreement ("PLA") is required for the performance of some of the Work, the PLA will be attached as Attachment E.
 - (c) Subcontractors. Tesla may perform the Work itself or through one or more subcontractors. Tesla will be responsible for all Work performed by, and all acts or omissions of, its subcontractors. Tesla will ensure that all subcontractors are licensed as required by applicable law. Signing this Agreement does not impose on Buyer any contractual obligation to any Tesla subcontractor.
 - (d) Buyer-Provided Information. Tesla may reasonably rely on information provided by Buyer to Tesla before or after the date of the order with respect to the Work ("Buyer-Provided Information"). Tesla will not have any liability for defects, errors or omissions in any Buyer-Provided Information.
3. Buyer Responsibilities.
 - (a) Inspections and Approvals. Buyer may inspect all Work at the Site you provided as the Installation Address in your order (the "Site"), at Buyer's expense as long as Buyer complies with Tesla's reasonable safety and security protocols. Buyer will not unreasonably withhold, condition or delay any consent, approval, or other, similar right under this Agreement. Other than Buyer approvals required as part of Sections 4(c) and 4(d), all Buyer reviews, approvals, or verifications under this Agreement are not binding on Tesla, are provided for Tesla's information only, and Tesla may otherwise proceed with the Work in accordance with this Agreement irrespective of Buyer's exercise of such rights.
 - (b) Buyer Credit Support. If required by the Order Documents, Buyer shall deliver credit support to Tesla ("Credit Support") and maintain it in effect until Tesla has been paid in full for the Work.
4. Notice to Proceed; Completion; Delay Damages.
 - (a) Notice to Proceed. After the Diligence Period, Buyer will notify Tesla to commence and complete all Work in accordance with this Agreement (the "NTP"). Before Buyer issues the NTP, Tesla will

not commence Work on the Site other than Site diligence permitted in writing by Buyer. If Buyer fails to issue the NTP within 30 days of the NTP Date specified in Attachment A, that failure will constitute a Buyer-Caused Delay. If Buyer fails to issue the NTP within 60 days of the NTP Date specified in Attachment A, Buyer will be in Default under this Agreement.

- (b) If the order is for Megapacks with a System Energy Rating greater than 100 MWh, Buyer may visit Tesla's facility where the System is being manufactured at an agreed time and review in a manner reasonably acceptable to Tesla the facility's quality control processes. In order to access Tesla's manufacturing facility, Buyer's personnel must execute customary nondisclosure agreements and follow all safety rules.

(c) Substantial Completion.

- (1) When Tesla believes that the System meets the conditions set forth in the Substantial Completion Certificate set forth in Attachment F ("Substantial Completion"), Tesla will deliver a Substantial Completion Certificate to Buyer. Within 5 business days after Buyer's receipt of the Substantial Completion Certificate, Buyer shall either (A) accept the certificate and execute and deliver it to Tesla, or (B) notify Tesla that Buyer rejects Tesla's certificate and provide a detailed explanation of the reasons.
- (2) If Buyer rejects a Substantial Completion Certificate, Tesla will correct the defects or deficiencies and the process in this Section 4(c)(1) shall be repeated until Buyer accepts the certificate. Buyer's failure to execute or reject the Substantial Completion Certificate within the 5-day period described above means that Buyer has accepted the Substantial Completion Certificate. Buyer shall not operate the System prior to the achievement of Substantial Completion.
- (3) No later than 5 business days prior to the then-scheduled Guaranteed Substantial Completion Date, Tesla will provide Buyer with a list of the minor outstanding items that do not impact on the safe operation of the System as of Substantial Completion. Within 2 business days after Tesla provides that list to Buyer, Buyer's Representative and the Tesla Representative (each as identified in Attachment A) shall meet and seek to agree upon the final list and the cost required to complete each item (the "Punchlist").

(d) Final Completion.

- (1) "Final Completion" means that (A) Substantial Completion has occurred; (B) all Punchlist items have been completed (or Tesla has notified Buyer that Buyer may retain from the Final Completion payment an amount equal to the cost specified in the Punchlist to complete incomplete items); (C) all of Tesla's materials and wastes related to the System have been removed from the Site; and (D) if applicable, Tesla has paid Buyer any Performance LDs required under Attachment A and Attachment B.
- (2) When Tesla believes that the conditions for Final Completion have been met, Tesla will so notify Buyer. If Buyer disagrees with Tesla, Buyer may notify Tesla of that disagreement within 5 business days after receiving Tesla's notice and that notice must reasonably identify the basis for disagreement (including any Work requiring correction). Tesla will then promptly correct those portions of the Work requiring correction. Buyer's failure to notify Tesla of Buyer's disagreement within the 5 business day period described above means that Buyer accepts that Final Completion has been achieved.

(e) Liquidated Damages.

- (1) If Substantial Completion has not occurred by the Guaranteed Substantial Completion Date (as such date may be extended due to a Force Majeure Event, a Buyer-Caused Delay, or agreed changes under Section 8), Tesla will pay to Buyer the "Delay Damages" stated in Attachment A, calculated for each day from the Guaranteed Substantial Completion Date until the Substantial Completion Date. If the amount of Delay Damages incurred by Tesla exceeds the "Delay Damages Cap" stated in Attachment A, Tesla will not accrue or be required to pay further Delay Damages, and Buyer may terminate this Agreement under Section 11(a)(6) as long as Buyer notifies Tesla of Buyer's termination within 30 days after the Delay Damages Cap is exceeded.
- (2) The Delay Damages, Guaranteed Energy Shortfall Damages and Guaranteed Power Shortfall Damages are liquidated damages that are a reasonable, genuine pre-estimate of the losses that would be suffered by Buyer, and not a penalty. Tesla's payment of these damages is Tesla's sole liability and Buyer's sole remedy for the matter prompting such payment.

5. Payments.

(a) Payment Schedule.

- (1) Payments. Each party will pay undisputed amounts within each invoice submitted by the other party, within 30 days after receipt of the invoice. Payments must be made in the currency in which the Price is denominated, by wire transfer or other electronic means approved by the party to whom the payment is made.
- (2) Invoice Disputes. Each party may notify the other party of any invoice dispute within 30 days after its receipt of the disputed invoice. If such notice is not provided, the invoice will be deemed approved.
- (3) Late Payments. Amounts paid late will accrue interest at the "prime rate" (as published in the Wall Street Journal) from time to time plus 1.5% until the date immediately preceding the date on which payment of the overdue sum is made to the other party.

(b) Taxes.

- (1) The Price is exclusive of, and Buyer is solely responsible for, all sales, use and excise taxes, and any other similar taxes, duties and charges imposed by any governmental authority on any amounts payable by Buyer.
- (2) Where required or allowed by law, unless Buyer furnishes to Tesla lawful evidence of exemption, Tesla will invoice Buyer for the amount of any taxes for which Buyer is responsible and remit such amount to the applicable taxing authority.
- (3) For clarity, neither party is responsible for any taxes based upon the other party's income, revenues, gross receipts, employees, real or personal property or other assets.

- (c) Payments Not Acceptance of Equipment or Services. No payment made by Buyer shall be deemed or construed as acceptance of any Work or as a waiver of any claim that Buyer may have, including with respect to warranty claims.

- (d) Liens. Tesla will provide a lien waiver in a customary form within 30 days after Tesla's receipt of payment for Work performed. In addition, Tesla will remove or discharge within 30 days after notice from Buyer any lien, claim of lien, stop notice, security interest or other, similar encumbrance (collectively, "Lien") filed by any of Tesla's subcontractors or suppliers on the Site where Tesla has been paid in full for the affected Work.

6. Title; Risk of Loss.

- (a) Title. Title to all Equipment will pass to Buyer free and clear of all liens, claims, security interests or other encumbrances (other than the encumbrances described in Section 6(b)) on the earlier of Delivery of the System, or payment by Buyer of the full Price. "Equipment" means all goods that Tesla will install in the System. "Delivery" means delivery of the System or any part thereof to the Site by or on behalf of Tesla in accordance with the order.
- (b) Security Interest. By placing the order, Buyer (1) grants Tesla a first priority security interest in all of Buyer's rights, title to and interest in all Equipment, as well as any insurance proceeds covering such goods, until Tesla receives full payment of the Price, and (2) authorizes Tesla to file financing statements related to that security interest. In addition, Tesla may exercise its rights under applicable mechanics' and suppliers' lien laws until Tesla receives full payment of the Price.
- (c) Risk of Loss. From the date of NTP until Substantial Completion, Tesla bears all risk of theft, loss or damage to the Work and all goods delivered to the Site other than for any damage or loss caused by Buyer or a person for whom Buyer is responsible. Since Buyer is obtaining a "Builder's All-Risk Policy" covering the Work in accordance with Attachment D, Buyer will seek to obtain coverage for claims covered (or potentially covered) by such policy promptly after such claims occur and will bear all deductibles for such claims, except to the extent a loss is caused by Tesla's negligence or willful misconduct. To the extent Buyer receives monies pursuant to such coverage, Buyer will pay those monies to Tesla promptly and Tesla shall use the proceeds to promptly remedy loss to the Work.

7. Force Majeure; Suspension.

- (a) Force Majeure Event. A "Force Majeure Event" is any act or circumstance beyond the reasonable control and not attributable to the fault or negligence of the party seeking relief and includes the inability or delay in obtaining supplies of adequate materials or labor to the extent caused by a Force Majeure Event. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure Event.
- (b) Excuse from Performance. Each party shall be excused from performance and shall not be in breach with respect to any obligation under this Agreement (except for obligation to pay money due), to the extent that such party's failure or delay in performance is due to a Force Majeure Event, as long as (1) such party notifies the other within 10 business days after the becoming aware of the Force Majeure Event and its impact on the notifying party's performance; (2) performance is suspended only to the extent and for so long as reasonably required by the Force Majeure Event; and (3) the notifying party uses reasonable efforts to mitigate the effects of such occurrence. The notifying party must promptly resume performance of the affected obligations when suspension is no longer reasonably required by the Force Majeure Event.
- (c) Extended Force Majeure. If a party is substantially prevented for more than 180 days in total from fulfilling its material obligations as a result of a claimed Force Majeure Event, the other party may terminate this Agreement by 30 days' prior notice delivered within 5 days after the expiration of such 180 day period. In connection with such termination, Buyer shall pay Tesla an amount equal to the sum of (1) all unpaid milestone payments for payment milestones achieved, plus (2) to the

extent not covered by (1), Tesla's actual and reasonably documented direct cost of performing Work (whether internal or external) up to the date of such termination for which Tesla has not previously been paid, plus 15% for overhead and profit, plus (3) Tesla's reasonable demobilization and wind-down costs.

- (d) Suspension due to Hazardous Materials. If Tesla encounters any hazardous or toxic wastes, materials or substances, and any other pollutants or contaminants ("Hazardous Materials") or identifies any other unsafe environmental condition at the Site, Tesla will so notify Buyer as soon as possible, and for releases or conditions other than those for which Tesla is responsible under the Scope of Work, may stop performing Work in the affected area without being in breach of its obligations under this Agreement until Tesla determines that Buyer has properly abated such Hazardous Materials. Any suspension of the Work by Tesla due to Buyer's remediation of such Hazardous Materials on the Site constitutes a Buyer-Caused Delay.
- (e) Suspension of Work by Buyer. Buyer may notify Tesla to suspend the Work in whole or in part for such period of time as Buyer may determine, as long as the suspension occurs within 180 days after the date of the order and does not exceed 30 days in the aggregate within such period of time. If the suspension is not due to Tesla's breach of this Agreement, the suspension constitutes a Buyer-Caused Delay.
- (f) Remedial Action Plan. If Tesla fails to achieve a critical path milestone in the Work Schedule by 30 or more days, Buyer may require Tesla to submit within 5 business days of Buyer's request a reasonable written recovery plan to complete all necessary remaining Work to achieve the remaining milestones in the Work Schedule. Tesla shall diligently try to complete the Work in accordance with such recovery plan and shall not be entitled to a change order under Section 8 (as further described in Section 8, a "Change Order") for implementing the recovery plan.

8. Changes.

(a) Unanticipated Changes.

- (1) Tesla is entitled to a reasonable adjustment to the Price and Work Schedule, as applicable, if an Unanticipated Change increases Tesla's costs, or adversely affects Tesla's ability to meet the Work Schedule. However, for Unanticipated Changes involving Force Majeure Events, Tesla shall be entitled only to a reasonable adjustment to the Work Schedule, and not to the Price. "Unanticipated Change" means a Buyer Caused Delay, a Change in Law, a Differing Site Condition, a Force Majeure Event (each as defined below).
- (2) Tesla will notify Buyer within 5 business days after becoming aware of impacts on the Work from an Unanticipated Change and will propose reasonable adjustments using the form of Change Order attached as Attachment G. Tesla's proposal shall be deemed accepted by Buyer if Buyer has not disputed it in writing within 10 days after its receipt of same.

"Buyer-Caused Delay" means (A) an act or omission of Buyer that adversely affects Tesla's performance of the Work, (B) an inaccuracy, error or change in Buyer-Provided Information, (C) or any other event identified as a Buyer-Caused Delay in this Agreement.

"Change in Law" means any change in applicable law occurring after the Effective Date (but excluding changes enacted prior to the Effective Date but taking effect after the Effective Date).

"Differing Site Condition" means: (A) any condition at the Site that would not have been discovered by a reasonable investigation of the Site conducted prior to the end of the Diligence Period, or

(B) a change in surface or subsurface conditions at the Site following the end of the Diligence Period other than changes for which Tesla is responsible under this Agreement.

- (b) Compensation for Change Orders. For all Change Orders compensating Tesla for its increased costs, Buyer shall pay Tesla the amount agreed by the Parties, or if no such amount is agreed Tesla's actual and reasonably documented direct cost of performing the applicable Work (whether internal or external), plus 15% for overhead and profit. Tesla will provide reasonable supporting information for all costs incurred and for which Tesla seeks recovery under a Change Order.

9. Warranties.

- (a) Tesla's Work Warranty. Subject to Section 9(c), Tesla warrants during the 2 years following the Substantial Completion Date (the "Warranty Period") that the Work (including the System) will be free from defects in design, engineering, materials, construction, installation and workmanship (the "Work Warranty").
- (b) Remedies. If Buyer notifies Tesla of a breach of the Work Warranty before the expiration of the Warranty Period, Tesla will remedy the breach at its sole cost and expense (and as Buyer's sole and exclusive remedy) promptly after receiving Buyer's notice, in a manner and at such times that reasonably minimizes interruption of the operation of the System. As part of its remedy, Tesla may elect to do any of the following: (1) repair parts (including removing parts and reinstalling them after repair); and/or (2) use remanufactured or refurbished parts to the extent such parts have remaining lives equivalent to the remaining life of the part replaced. Buyer will reasonably cooperate with Tesla in connection with Tesla's remedial work. Any remedial work performed by Tesla is re-warranted for 1 year.
- (c) Warranty Exclusions. The Work Warranty does not extend to normal wear and tear, or damage or failure caused by (1) modifications not performed by or through Tesla as part of the Work, (2) the willful or negligent acts or omissions of anyone other than Tesla or any Tesla subcontractor acting on Tesla's behalf, (3) defects or deficiencies attributable to Force Majeure Events, or (4) failure by Buyer to maintain or operate the System in accordance with material requirements of the Tesla Manuals and good battery energy storage industry practice. Without limiting the foregoing, Tesla does not make any warranty regarding the incorporation of the System into any larger project.
- (d) Manufacturer's Warranties. At the end of the Warranty Period, Tesla hereby assigns to Buyer all warranties provided by suppliers of equipment and materials included in the System to the extent those warranties can be assigned in that manner ("Manufacturer Warranties").
- (e) Serial Defects. If at Substantial Completion the System's System Energy Rating is equal to or greater than 100 MWh and during the Warranty Period, Buyer notifies Tesla of a suspected Serial Defect (defined below), Tesla will as soon as reasonably practicable perform or cause to be performed a root cause analysis with respect to such suspected Serial Defect. If the root cause analysis establishes that the failure was the result of a Defect (defined below) from the same root cause, and that Defect is reasonably likely to involve 15% or more of the total number of inverter power stages, battery modules, or thermal management systems installed at the Site, that Defect shall be deemed to be a "Serial Defect". Components that are the subject of a Serial Defect shall be repaired, redesigned, or replaced in accordance with the Manufacturer's Limited Warranty as claims are made under the Manufacturer's Limited Warranty with respect to such components on a case by case basis. "Defect" for purposes of this Section 9(e) has the meaning set forth in the Manufacturer's Limited Warranty.
- (f) NO IMPLIED WARRANTIES. EXCEPT AS PROVIDED FOR IN THIS AGREEMENT, TESLA MAKES NO WARRANTIES OR GUARANTEES WITH RESPECT TO THE WORK OR THE SYSTEM, AND DISCLAIMS

ANY WARRANTY OR GUARANTEE IMPLIED BY APPLICABLE LAWS, INCLUDING IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE.

10. Remote Monitoring; Intellectual Property Rights and Licenses.

(a) Remote Monitoring.

- (1) Prior to Substantial Completion, Tesla may make firmware and software updates to the System in Tesla's sole discretion. After Substantial Completion, Tesla may make available firmware and software upgrades from time to time and will provide Buyer with release notes upon request. Buyer will reasonably cooperate with Tesla in implementing same within a reasonable time (not to exceed 30 days) following Tesla's notice of an available update.
- (2) By placing the order, Buyer grants to Tesla and its agents, employees and subcontractors the ability to remotely monitor performance of the System and to make available and provide remote firmware and software upgrades under Section 10(a)(1).
- (3) There are two classes of data produced and consumed by the System: "Operational Data" that Buyer may need to operate the System; and "Health Monitoring Data" that includes low-level sensor data that Tesla uses to identify failed components or components that may soon fail and to dispatch field service as needed.
- (4) Operational Data are the data described in Section 3.3 and 3.4 of the Controls and Communication Manual and are Confidential Information of Buyer for purposes of the non-disclosure agreement attached as Attachment H (the "NDA"). These data are available to Buyer from the Tesla Site Controller. Health Monitoring Data are owned by Tesla, are Confidential Information of Tesla, and shall not be required to be made available by Tesla to Buyer.
- (5) Tesla will not use Operational Data or Health Monitoring Data to track or reverse-engineer Buyer's energy market bidding strategies.
- (6) Tesla will not include or deliver any clock, timer, counter, computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other codes or instructions that may be used maliciously to access, modify, replicate, distort, delete, damage, or disable the System or Work Product (defined below), or any other computer system, software, or hardware of Buyer.

(b) Intellectual Property Rights and Licenses.

- (1) Tesla is the sole and exclusive owner of all intellectual or proprietary rights associated with the System, the performance of the Work, the Licensed Materials (defined below) and any derivations of those items ("Intellectual Property Rights").
- (2) By accepting the order, Tesla grants to Buyer an irrevocable, limited, royalty-free, perpetual, world-wide, non-exclusive, non-sublicensable (other than to persons acting on Buyer's behalf and in accordance with Buyer's license rights in this Agreement), non-transferable (other than as permitted by Section 15) license to use the Intellectual Property Rights embodied in (A) any Tesla software embedded in the System (i.e., firmware), (B) final versions of the deliverables furnished by Tesla in connection with the Work other than the System ("Work Product"), and (C) the Tesla Manuals ("Licensed Materials"), solely in connection with the ownership, use, maintenance, and operation of

the System. No other license or other right to Tesla's Intellectual Property Rights is granted or implied. The Work Product is not suitable for reuse on extensions of the System or any other project. Any such reuse without Tesla's prior written approval are at Buyer's sole risk. Buyer is not permitted to modify any Licensed Materials.

- (c) Buyer License. By placing the order, Buyer grants to Tesla an irrevocable, limited, royalty-free, perpetual, world-wide, non-exclusive, non-sublicensable (other than to persons acting on Tesla's behalf and in accordance with Tesla's license rights in this Agreement), non-transferable (other than as permitted by Section 15) license to:
- (1) use all Buyer-Provided Information in connection with Tesla's exercise of rights and performance of obligations under this Agreement, any maintenance services agreement between the Parties involving the System, and the Manufacturer's Limited Warranty; and
 - (2) all Operational Data, for the purposes set forth in Section 10(b), to improve Tesla's products and services generally, and to disclose to third parties provided that Buyer and any owner of the Site is not identifiable.

11. Default and Remedies; Termination.

- (a) Defaults. Each of the following is a "Default" upon expiration of the applicable cure period (and immediately upon occurrence, where no cure period is provided):
- (1) a party fails to make any undisputed payment required under this Agreement within 10 business days after notice from the other party that such payment is overdue;
 - (2) a party (and in the case of Buyer, the provider of Buyer Credit Support): (A) makes a general assignment for the benefit of its creditors; (B) has a receiver appointed on account of the insolvency of such person; or (C) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against such person by a third party, such proceeding is not dismissed within 60 days after such filing;
 - (3) a party assigns, novates or otherwise transfers its rights or obligations under this Agreement in breach of Section 15;
 - (4) in the case of Tesla as the Defaulting party, if the Delay Damages Cap is exceeded under Section 4(e)(1); or
 - (5) any representation or warranty of a party in this Agreement proves to have been false or misleading in any material respect when made, or a party fails to comply with any material provision of this Agreement, and such party has not fully remedied, or commenced and diligently pursued the remedy of, the matter within 30 days after notice from the other party.
- (b) Tesla Remedies Upon Buyer Default.
- (1) Upon a Default by Buyer, Tesla may stop performing Work until such time as Buyer's breach is cured and/or terminate this Agreement upon prior notice to Buyer. If Tesla terminates this Agreement for Buyer's Default, Buyer shall pay Tesla (A) the remainder of the Price (net of all payments for the Work received by Tesla for Work performed by Tesla up to the date of such termination); plus (B) all reasonably documented direct costs

incurred by Tesla (whether internal or external) in connection with the termination of this Agreement (including costs of protecting the Work and leaving the Site in a clean and safe condition as reasonably directed by Buyer) plus 15% for overhead and profit.

- (2) If Tesla receives full payment from Buyer for the amounts owing under Section 11(b)(1), Tesla will deliver the Equipment to the Site in accordance with the Work Schedule (as adjusted for Buyer-Caused Delay) and commission the Equipment in accordance with Tesla's then-standard practices.
- (c) Buyer Remedies Upon Tesla Default. Upon a Tesla Default, Buyer may terminate this Agreement upon prior notice to Tesla. Upon any termination by Buyer for a Tesla Default, Tesla will pay Buyer (1) all amounts due to Buyer from Tesla under this Agreement at the date of termination; plus (2) all actual and verifiable (and reasonably documented) direct losses, damages and costs incurred by Buyer in connection with the termination of this Agreement minus (A) the unpaid balance of the Price payable to Tesla for Work performed as at the date of termination, and (B) any other amounts payable by Buyer to Tesla as at such date.
- (d) Mitigation Upon Breach. Each party shall use reasonable efforts to mitigate any damage, expense or liability incurred as a result of the other party's breach of this Agreement, but Tesla shall not be obligated to mitigate with respect to amounts owed by Buyer for Work already performed or for amounts involving the Equipment.
- (e) Buyer Termination for Convenience.
 - (1) Buyer may terminate this Agreement in its sole and absolute discretion for any reason (or for no reason) after the Effective Date by notice to Tesla. If Buyer terminates in this manner, Buyer will pay Tesla (A) the Termination Fee set forth in Attachment A, Section 5.0 (less milestone payments already paid to Tesla), plus (B) the value of all Work performed by Tesla up to the date of termination and for which Tesla has not previously been paid (including, for the avoidance of doubt, payment for all amounts which are payable but unpaid in respect of Milestone Payments owing as of termination), plus (C) all reasonable costs incurred by Tesla in connection with the termination, including demobilization costs and costs of protecting the Work and leaving the Site in a clean and safe condition.
 - (2) If Buyer terminates the Agreement under Section 12(e)(1) (A) prior to NTP, Buyer will not have any right to the Equipment, or (B) after NTP, upon payment of the Termination Fee and the other amounts described in Section 12(e)(1), Tesla will deliver and commission the Equipment as described in Section 11(b)(2).
- (f) Tesla does not have any liability under this Agreement for matters covered by the Manufacturer's Limited Warranty. Except where this Agreement states that a remedy is the sole or exclusive remedy (or words of similar import), the rights and remedies in this Agreement are in addition to the rights and remedies that would otherwise be available to a party at law or in equity.

12. Limitations of Liability.

- (a) Waiver of Consequential Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR

OTHERWISE) UPON WHICH THE CLAIM IS BASED. THE PARTIES AGREE THAT LIQUIDATED DAMAGES CONSTITUTE DIRECT DAMAGES FOR PURPOSES OF THIS AGREEMENT.

- (b) Aggregate Limit of Liability. NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL EXCEED THE PRICE.
- (c) Exclusions. The limitations of liability in this Section 12 do not apply to (1) Buyer's obligations to make payments for the Work under this Agreement; (2) claims under the Manufacturer's Limited Warranty; (3) losses attributable to either party's breach of its confidentiality obligations; (4) any violation of a party's intellectual property rights; (5) claims that are the subject of indemnification under this Agreement; or (6) losses attributable to a party's willful misconduct, unlawful conduct or gross negligence.

13. Indemnification.

- (a) Mutual Indemnity. Each party will defend, indemnify and hold harmless the other party's Indemnified Parties from any losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable legal fees ("Losses") arising from any claim, action, suit, proceeding, investigation made or brought by any third party ("Claims") in respect of Losses to the extent caused by (1) injury or death of persons, or damage to or loss of property, and (2) any breach of this Agreement or applicable law by the Indemnifying Party or those for whom such Party is legally responsible, and in the case of Tesla as the indemnifying party only, Liens filed against the Site or any Equipment where Tesla has been paid in full for the affected Work.

"Indemnified Parties" means for each party, (A) the party and any person providing financing to the party with respect to the System, (B) any affiliate of the persons set forth in clause (A); and (C) any director, officer, partner, member, manager, agent or employee of a person described in clause (A) or (B).

"Indemnifying Party" means the Buyer or Tesla, as the context requires.

- (b) Intellectual Property Indemnities.
 - (1) Tesla will indemnify, defend and hold harmless Buyer's Indemnified Parties from any Losses arising out of any Claim alleging that the System infringes the intellectual property rights of a third party, other than a Claim for which Buyer is responsible under Section 13(b)(3).
 - (2) If Buyer is enjoined from the use, operation or enjoyment of the System or any part thereof as a result of any Claim alleging that the System or Work infringes the intellectual property rights of a third party, Tesla shall at no cost to Buyer, at Tesla's option: (A) have such injunction removed, (B) substitute non-infringing goods or processes, or (C) modify the infringing goods or processes so they become non-infringing.
 - (3) Buyer shall indemnify and hold harmless Tesla's Indemnified Parties from and against any and all Claims alleging infringement involving (A) a particular design, process or product of a particular manufacturer or manufacturers required or specified by Buyer or where the copyright violations are contained in drawings, specifications or other documents prepared or provided by Buyer or others for whom Buyer is responsible; (B) any Buyer modification (directly or indirectly), use or reuse of the Work Product or Licensed Materials other than as permitted under Section 10(b)(2), (C) use of the System in combination with any other products, materials or equipment not expressly authorized

in writing by Tesla in circumstances where the infringement would have been avoided by the use of the System not so combined; or (D) any modifications or changes made to the System other than by Tesla in circumstances where the infringement would have been avoided without the modifications or changes.

(c) Environmental Indemnity.

- (1) Tesla will defend, indemnify, and hold harmless Buyer's Indemnified Parties from Claims to the extent arising from any release any hazardous materials (A) at the Site, if the presence and location were previously made known to Tesla by Buyer and that were negligently released on the Site by Tesla or a Subcontractor; or (B) brought onto the Site by Tesla or a Subcontractor and released by Tesla or its Subcontractor.
- (2) Buyer will defend, indemnify, and hold harmless Tesla's Indemnified Parties from Claims to the extent arising from any releases of hazardous materials other than those for which Tesla must indemnify under Section 13(c)(1).

(d) Indemnification Procedures. A party seeking indemnity will give the Indemnifying Party prompt notice of the applicable Claim. The Indemnifying Party will control the defense of the Claim, and the Indemnified Party may participate at its own expense with its own counsel. If the Claim cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party will make available information and assistance reasonably requested by the Indemnifying Party. The indemnifying Party may not, without the prior written consent of the Indemnified Party, consent to the entry of any judgment or enter into any settlement: (1) that provides for injunctive or other non-monetary relief affecting an Indemnified Party, and (2) unless the judgment or settlement provides for an unconditional and full release of the applicable Indemnified Parties. If the Indemnifying Party, fails to take reasonable steps to defend the Indemnified Party against a Claim within a reasonable time after being notified of the Claim, the Indemnified Party may defend the Claim without waiving its rights under this Agreement.

(e) Comparative Negligence. An Indemnifying Party will not be obligated to indemnify an Indemnified Party to the extent that the Loss arises from the negligence, willful misconduct, or breach of this Agreement by the Indemnified Party.

14. Insurance. Each Party shall pay for and maintain in full force and effect the insurance coverage required of it in Attachment D, as applicable.

15. Assignment.

(a) General. Subject to Section 15(b)(2), neither party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party. Any purported assignment, novation or transfer without such consent is void.

(b) Permitted Assignments.

- (1) Each party may with notice to the other party but without the other party's consent assign this Agreement to (A) a successor in interest following a merger, acquisition or corporate reorganization, and (B) an assignee with at least a BBB- "long term rating" issued by Standard & Poor's Ratings Group, or a Baa3 "deposit rating" issued by Moody's Investor Services, Inc. If the Assignor is Buyer, the assignee must not be a direct or indirect competitor of Tesla with respect to the manufacture or provision of battery energy storage equipment or maintenance services to un-affiliated third parties with respect to

such equipment. No assignment under this Section 15(b)(1) will release the assignor from its obligations and liabilities under this Agreement.

- (2) Each party may without the other party's consent collaterally assign this Agreement as security to, or as part of any factoring arrangement with, any financing party but no assignment of this Agreement under this Section 15(b)(2) will release the assignor from its obligations and liabilities under this Agreement. A permitted assignee under this Section 15(b)(2) will be bound by the obligations of this Agreement upon a foreclosure and upon the other party's request will deliver a written assumption of assignor's rights and obligations under this Agreement to the other party.

16. Representations and Warranties.

- (a) General Representations and Warranties. Each party represents and warrants to the other party on the date of the order that (1) it is a legal entity, duly organized, validly existing and in good standing under the laws of jurisdiction of incorporation; (2) this Agreement constitutes a legal, valid and binding obligation of such party enforceable in accordance with its terms; and (3) the execution, delivery and performance of this Agreement (A) is within its powers; (B) has been duly authorized by all requisite action; and (C) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.
- (b) Buyer's Representations and Warranties. Buyer represents and warrants on an ongoing basis that (1) it has title to or a leasehold or other valid property interest in the Site such that Buyer has the full right, power and authority to permit Tesla's exercise of rights under this Agreement and performance of the Work; (2) it and any person providing Buyer Credit Support is not experiencing an Insolvency Event and is capable of paying all of its debts as they become due; (3) all information, financial or otherwise, that it has provided to Tesla is true and accurate and, in the case of financial information, fairly represents Buyer's and any person providing Buyer Credit Support's financial position as at the date it was provided; and (4) any Buyer Credit Support is in full force and effect.

17. Financing Assistance. Each party shall reasonably cooperate with the other party in connection with such other party's efforts to obtain and maintain any financing, but any legal opinions required by a party obtaining financing shall be provided at such party's sole cost and expense.

18. Notices; Confidentiality; Publicity.

- (a) Notices. All notices allowed or required under this Agreement shall be in writing and shall be deemed given (1) if sent by courier, on the date when left at the address of the recipient if such date is a business day or on the next business day if such date is not a business day, and (2) if sent by email, upon receipt by the sender of an email confirming receipt (or otherwise evidencing receipt) of the notice by the recipient (in which case the email will be deemed received on the date it was actually received by the recipient if such date is a business day, or on the next business day if such date is not a business day). An automatic "read receipt" shall not constitute confirmation of receipt for purposes of this Section 18(a). Notices shall be sent to the applicable notice address in Attachment A, or such other address as either party may notify the other party in writing from time to time. Nothing in this Section 18(a) shall restrict routine communications between representatives of Buyer and Tesla.
- (b) NDA. The NDA attached as Attachment H sets out the parties' confidentiality obligations with respect to the order. The terms and conditions of the NDA will continue in force throughout the term of this Agreement and for 3 years following its expiration or early termination. The terms of this Agreement will be each party's Confidential Information for purposes of the NDA.

- (c) Publicity. Neither party shall advertise or issue any public announcement regarding the execution of this Agreement or its contents, or use the other party's mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the prior written consent of the other party. The foregoing shall not prohibit a party from making any public disclosure or filing that it determines in good faith is required by law or the rules of the stock exchange on which its shares, or the shares of its parent company, are listed.

19. Miscellaneous.

- (a) Entire Agreement; Severability. The Order Documents constitute the entire agreement between the parties regarding their subject matter and supersedes all prior agreements, representations and understandings between the parties regarding its subject matter.
- (b) Amendment; Modification; Waiver. No amendment or modification of the Order Documents is effective unless it is in a writing and signed by each party. No waiver by either party of any provision of the Order Documents is effective unless explicitly set forth in writing and signed by such party.
- (c) Governing Law. This Agreement and all claims arising from this Agreement are governed by California law, without regard to the conflicts of law principles that would result in the application of any law other than the law of such State. Each party will comply with all laws applicable to its activities in connection with this Agreement.
- (d) Dispute Resolution.
 - (1) Any dispute arising from or relating to this Agreement shall be referred to the parties' senior level management for resolution. Each party will continue to perform its obligations in accordance with this Agreement during a dispute. If the parties' senior level management fail to resolve the dispute within 20 days, then either party may take the dispute to binding arbitration in accordance with the Streamlined Arbitration Rules of the Judicial Arbitration and Mediation Services ("JAMS"). The existence and content of the arbitration will be Confidential Information of each party. The arbitration will be conducted by a single arbitrator selected by the parties or, failing such agreement, appointed in accordance with JAMS. The arbitration shall be conducted in San Francisco, California. The parties shall not have the right to appeal any the arbitration award. Each party will bear its own expenses in the arbitration and will share equally the costs of the arbitration, except that the arbitrator may award reasonable costs and fees to the prevailing party.
 - (2) Specific Performance. If a party is suffering irreparable harm due the other party's material breach of this Agreement for which monetary damages are inadequate, such party may petition a court of competent jurisdiction for injunctive relief, specific performance or other equitable relief.
- (e) No Third Party Beneficiaries. Except as provided in Section 13, this Agreement is intended for the sole benefit of the parties and does not create any rights for any other person. Claims by non-parties indemnified under this Agreement may only be brought by Buyer or Tesla.
- (f) Further Assurances. Each party will execute all further instruments and documents, and take all further action, as may be reasonably necessary to effectuate this Agreement.
- (g) Survival. Provisions of this Agreement which by their nature contemplate or govern performance or observance after the termination or expiration of this Agreement (including Sections 4(e), 9, 13,

12, 13, and 19) shall survive such termination or expiration; provided, that all warranties and licenses granted by Tesla to Buyer under this Agreement shall terminate upon Tesla's termination for Buyer's Default based on Buyer's failure to pay Tesla in accordance with this Agreement. Except as otherwise set forth in this Agreement, the expiration or termination of this Agreement will not affect any liabilities of the Parties that accrued prior to such expiration or termination.

(h) Interpretation; Order of Precedence. This Agreement and the Order Documents shall not be construed either for or against either party. If any inconsistencies between this Agreement and the other Order Documents exist, the following order of precedence in the interpretation hereof or resolution of such conflict shall prevail:

- (1) duly authorized Change Orders, in reverse chronological order from latest to earliest;
- (2) the order;
- (3) this Agreement;
- (4) Attachment A;
- (5) the Scope of Work; and
- (6) the remaining Attachments in the order in which they appear.

(i) Order Documents:

Attachments provided at the time of the Order

Attachment A	Order Configuration Sheet
Attachment B	Scope of Work

Attachments finalized during Diligence Period

Attachment C	Performance Guarantees, Tests, and Liquidated Damages
Attachment D	Insurance Coverage Requirements
Attachment E	Project Labor Agreement

Attachments available upon request

The Attachments listed here are available from Tesla on request, and will be attached to this Agreement upon the completion of the Diligence Period

Attachment F	Substantial Completion Certificate
Attachment G	Form of Change Order
Attachment H	Nondisclosure Agreement ("NDA")
Attachment I	Megapack Specification
Attachment J	Manufacturer's Limited Warranty
Attachment K	Operations and Maintenance Manual
Attachment L	Controls and Communications Manual
Attachment M	Site Design Manual
Attachment N	Transportation and Storage Guidelines
Attachment O	Installation Manual

Attachment A
Order Configuration Sheet

The following parameters apply to the Order Documents and have been confirmed during the Diligence Period:

1.0 Initial Order Information

Parameter	Value	Notes
Price	\$	
Number of Megapacks		(To be adjusted to as required by Tesla during the Diligence Period to achieve Guaranteed Power and Energy Rating at the Point of Measurement)
System Power Rating		A guaranteed value will be established during the Diligence Period, taking into account losses and the metering location
System Energy Rating		A guaranteed value will be established during the Diligence Period, taking into account losses and the metering location
Buyer Name		
Installation Address ("Site")		
Site Contact Name		
Site Contact Phone Number		
Site Contact Email Address		

2.0 System Sizing

Parameter	Value	Notes
Point of Guarantee ("POG")	Megapack inverter terminals	Location where guarantees must be met To be adjusted in Diligence Period
Point of Measurement ("POM")	Megapack inverter terminals	Location of energy storage metering device To be adjusted in Diligence Period
Demarcation Point	Low side of LV:MV transformers including supply and installation of transformers	Location in the electrical system where Tesla's scope of supply and work ends
Line and Transformation Losses – Real Power	0%	Real Power losses between the Megapack inverter terminals and the POG To be adjusted in Diligence Period
Line and Transformation Losses – Reactive Power	0%	Reactive Power losses between the Megapack terminals and the POG To be adjusted in Diligence Period
Loss Adjustment Factor	0%	Real power losses between the POM and the POG

3.0 Important Schedule Milestones

Milestone	Value	Responsible Party	Notes
NTP Date	At completion of Diligence Period	Buyer	To be adjusted in Diligence Period
Backfeed Date	NTP + [12] months	Buyer	Utility backfeed is available to Demarcation Point To be adjusted in Diligence Period
Substantial Completion Date	Backfeed Date + 2 months		To be adjusted in Diligence Period
Final Completion Date	Substantial Completion Date plus 2 months		To be adjusted in Diligence Period

4.0 Buyer Credit Support

Requirement	
None	Assumes Buyer is Investment Grade. To be adjusted in Diligence Period

5.0 Price and Payment Milestones

Payment Milestone	Approximate Date	Value	Notes
NTP	Completion of Diligence Period	5%	To be adjusted in Diligence Period
Design Completion	NTP + 3 months	10%	To be adjusted in Diligence Period
50% Equipment Delivery	NTP + 9 months	35%	To be adjusted in Diligence Period
100% Equipment Delivery	NTP + 12 months	35%	To be adjusted in Diligence Period
Substantial Completion	NTP + 14 months	10%	To be adjusted in Diligence Period
Final Completion	NTP + 18 months	5%	To be adjusted in Diligence Period

6.0 Termination Fee Schedule

Begin	End	Amount	Notes
Order execution	NTP	Deposit	
After issuance of NTP	Substantial Completion	90% of Price	
After Substantial Completion	Final Completion	100% of Price	

7.0 Performance Guarantees

Performance Guarantee	Guaranteed Value (to be established during Diligence Period)	Minimum Performance Threshold for Substantial Completion
Guaranteed Energy Rating	[System Energy Rating] ¹	90% of Guaranteed Energy Rating
Guaranteed Power Rating	[System Power Rating]	90% of Guaranteed Power Rating
Guaranteed Round Trip Efficiency	94% ²	95% of Guaranteed Round Trip Efficiency

8.0 Liquidated Damages and Caps

Type	Timing	Value	Notes
Delay Damages	Substantial Completion	0.5% of Price per week	
Delay Damages Cap		15%	
Guaranteed Energy Shortfall Damages	Final Completion	\$1,000/MWh	
Guaranteed Power Shortfall Damages	Final Completion	\$500/MW	
Guaranteed Round Trip Efficiency Shortfall Damages	Final Completion	\$7,000/MW/% shortfall in Round Trip Efficiency	
Shortfall LD Cap		15%	
Aggregate LD Cap		20%	

9.0 Contact Information for Notices and Invoices

Tesla Representative for Day-to-Day Communications:	[Name]([email]).
Tesla Notice Address:	3500 Deer Creek Road, Palo Alto, CA 94304, USA Attn: General Counsel / Legal Phone: +1. 650.681.5000 Fax: +1.650.681.5203 Email: legal@tesla.com Cc : energynotices@tesla.com
Buyer Representative for Day-to-Day Communications:	[Name]([email]).
Buyer Invoice Address:	[•].

¹ The Guaranteed Energy Rating assumes a maximum design temperature of the Site as determined from ASHRAE Climatic Design Conditions 2017. For temperatures beyond that maximum design temperature (up to a maximum temperature of 50°C (122°F), the Guaranteed Energy Rating will be reduced by a derate factor. The derate factor will be determined by Tesla during the Diligence Period

² The Guaranteed Round Trip Efficiency assumes Standard Test Conditions, defined as System soaked at 25°C (77°F) and 1 atmosphere (101.3 kPa) of pressure. For temperatures beyond 25°C (77°F) (up to a maximum temperature of 50°C (122°F), the Guaranteed Round Trip Efficiency value will be adjusted as set forth in Section 4 of Schedule 1 to Attachment C.

Buyer Notice Address:	<div data-bbox="558 195 594 226">[•]</div> <div data-bbox="558 228 652 260">Attn: [•]</div> <div data-bbox="558 262 675 294">Phone: [•]</div> <div data-bbox="558 296 667 327">Email: [•]</div> <div data-bbox="558 329 956 361">Logistics Contact, Phone & Email: [•]</div>
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Attachment B
Scope of Work

1. Scope of Work

The Work includes the supply and installation of the System at the Site, the low voltage connection from the Megapack to the medium voltage transformers and installation of the Tesla site controller and field network enclosures. The Work ends at the medium voltage transformer (inclusive of the transformer).

The Work also includes System design, and once we have completed that design we will review it with you. Finally, Tesla will perform startup, commissioning, and performance testing of the System using fully trained and qualified personnel.

2. What Tesla provides

- 2.1. Promptly after placement of the order, Tesla will assign a representative ("Tesla Representative") to:
 - 2.1.1. act as Tesla's liaison with Buyer,
 - 2.1.2. have the authority to administer this Agreement on behalf of Tesla,
 - 2.1.3. have overall day-to-day responsibility for managing and directing the performance of the Work, and
 - 2.1.4. issue and receive communications on Tesla's behalf under this Agreement.
- 2.2. Tesla will provide the following with respect to the System:
 - 2.2.1. the quantity of Megapacks identified in the order (as updated during the diligence period),
 - 2.2.2. the "Tesla Site Controller",
 - 2.2.3. structural and electrical engineering design packages for the System at 60% and 90% design completion and when the design is issued for construction,
 - 2.2.4. field communication enclosures, if Tesla believes they are required,
 - 2.2.5. the Megapack meter,
 - 2.2.6. low voltage raceways and conductors, including terminations (which can be aluminum or copper, at Tesla's discretion),
 - 2.2.7. medium voltage transformers,
 - 2.2.8. area lighting (2 foot-candles average at the System's transformer area),
 - 2.2.9. grounding system as required by local code,
 - 2.2.10. ministerial permitting for the performance of Tesla's Work including any associated fees (but not including the discretionary permits described in Section 4 below. (We will acquire the permits before required under applicable law and maintain them in full force and effect for the duration of construction and we will provide copies to you upon obtaining them),
 - 2.2.11. Tesla's environmental health and safety management plan,
 - 2.2.12. until Substantial Completion, Tesla shall use reasonable efforts to secure the Site, the Work and all material and Equipment on the Site,
 - 2.2.13. maintenance of the Site and all other areas used by Tesla such that they are free from accumulation of waste material or rubbish generated by Tesla's performance of the Work,
 - 2.2.14. stamping and registration of construction design documents for the System by registered professional engineers per applicable state laws,
 - 2.2.15. copies of the record drawings and design documents with other customary documentation as required for the Megapack System to be capable of operating safely, and
 - 2.2.16. PSCAD model for Megapack with default settings.

3. Price Assumptions

- 3.1. The Price assumes the following are true with respect to the installation of the System:
- 3.1.1. You have control of the Site where the System will be installed and where Tesla will perform its Work,
 - 3.1.2. secondary containment is not required for any transformers,
 - 3.1.3. Tesla can spread excess dirt from excavation on-Site, and
 - 3.1.4. Tesla can use native dirt for construction purposes (backfill, etc.), will not need to import or use engineered fill.

4. What Buyer provides

- 4.1. Buyer will provide the following in connection with Tesla's performance (the "Buyer-Provided Information"):
- 4.1.1. a final American Land Title Association survey, signed and sealed, certifying Tesla to use for our design process,
 - 4.1.2. any utility upgrades required to interconnect the System to the local utility's electric power grid,
 - 4.1.3. civil and electrical scope for switchgear, substations, generator step-up (GSU) transformers, etc. that are outside of Tesla's scope,
 - 4.1.4. temporary/construction power feed and water (and associated costs) in support of Tesla's installation of the System,
 - 4.1.5. discretionary permitting and associated fees associated with the installation of the System,
 - 4.1.6. environmental and discretionary permits and payment of any accompanying permitting fees,
 - 4.1.7. biological and environmental surveys and/or studies,
 - 4.1.8. land acquisitions, entitlements, plat preparation and approvals,
 - 4.1.9. excavation/compaction of dirt outside of the installation area,
 - 4.1.10. any improvements to the Site required for Tesla to access the Site and install the System,
 - 4.1.11. administration of independent system operator (or similar) certification processes for ancillary services/market participation,
 - 4.1.12. removal/demolition of existing facilities and underground services clearing,
 - 4.1.13. reroute of existing underground services,
 - 4.1.14. management or remediation of hazardous soils or other hazardous materials,
 - 4.1.15. walls and/or other sound attenuation measures required by law,
 - 4.1.16. landscaping and irrigation.
 - 4.1.17. any Buyer-Furnished Equipment, if any, to the Site
 - 4.1.18. coordination with the Transmission Provider to:
 - 4.1.18.1. provide specifications for utility metering and telemetering equipment to permit interconnection of the System at the point of interconnection
 - 4.1.18.2. enable the Transmission Provider to permit interconnection of the System at the point of interconnection and accept electricity generated by or derived from the System, as needed in connection with Tesla's performance of the Work,
 - 4.1.18.3. make back-feed power available, to the System, to support Tesla's performance of the Work,
 - 4.1.18.4. all required coordination with the owner of the Site, if not you are not the owner, and
 - 4.1.18.5. provide project specific inverter settings and PSCAD model, 3 months before start of commissioning of Tesla provided equipment.
- 4.2. Buyer will also:
- 4.2.1. provide any data, design criteria or other documentation and information that are identified as Buyer's responsibility in this Scope of Work promptly (and in any event within 5 business days after request)
 - 4.2.2. provide any feedback requested by Tesla on any matter in respect of which Buyer has the right to be consulted as identified in this Scope of Work in a timely manner (and in any event within 5 business days)

- 4.2.3. review of all of the deliverables provided by Tesla in a timely manner, not more than 5 business days. You may, but are not obligated to, provide comments to Tesla on these deliverables. Tesla will then address any comments which demonstrate that such deliverables are not in compliance with the requirements of this Agreement. No such review or requested changes shall impose any liability on Buyer or relieve Tesla of any of its express obligations under this Agreement.
- 4.2.4. cause Buyer's personnel and separate contractors to:
 - 4.2.4.1. comply with Tesla's Site safety and security requirements at all times when such persons are present at the Site,
 - 4.2.4.2. coordinate performance of their work with Tesla's performance of the Work, and
 - 4.2.4.3. not interfere with the Work.

5. Exclusions from Tesla's Scope of Work

5.1. The Work does not include the following:

- 5.1.1. noise studies, conditional use permits, and Subdivision/replat approval and encroachment permits. Excludes all yet-unknown conditional use permit conditions of approvals that would apply to the System as a result of the authority having jurisdiction's discretionary approval,
- 5.1.2. biological, cultural, archaeological, and tribal construction monitoring. If such monitoring introduces costs due to stop-work orders, design changes, resulting delays, need to demobilize and remobilize, and/or other unforeseen circumstances, Tesla shall be entitled to be compensated for resulting additional costs,
- 5.1.3. fire suppression system,
- 5.1.4. lightning protection system design and installation,
- 5.1.5. unforeseen underground conditions,
- 5.1.6. permanent security systems, and
- 5.1.7. operations and maintenance building or other similar structures.

6. Diligence Period

6.1. As Tesla begins to work with Buyer on the installation of the System, Tesla will need information from Buyer to accurately size the System and to determine the Work required given constraints and characteristics of the Site. During the Diligence Period, Tesla will work with Buyer to develop information regarding various matters, including:

- 6.1.1. any permits that Tesla must obtain to perform the Work,
- 6.1.2. any permits that Buyer must obtain in connection with the Work or System,
- 6.1.3. a Site plan,
- 6.1.4. applicable interconnection or transmission provider requirements,
- 6.1.5. applicable Buyer requirements pertaining to the Site or the Work, and
- 6.1.6. applicable labor requirements

7. Installation of the System

7.1. While Tesla is installing the System, Tesla will provide safety training for any authorized personnel that come onto that portion of the Site. Safety is of the utmost importance to Tesla and a high level of safety vigilance with proactive documented preventative processes such as job safety assessments and safety walks will be implemented.

7.2. Tesla's installation-related Work generally occurs in the following order:

- 7.2.1. mobilization, survey and site stakeout, including opaque fencing and security at the Site,
- 7.2.2. civil works for grading, drainage, temporary construction stormwater pollution prevention,

- 7.2.3. civil work for installation of the System,
- 7.2.4. installation of Megapack(s),
- 7.2.5. installation of transformer(s),
- 7.2.6. installation of Tesla Site Controller,
- 7.2.7. cable pulling and terminations for electrical and communications/control systems within the Megapack area, and
- 7.2.8. startup and testing of the System.

8. Commissioning and Performance Testing

- 8.1. Tesla will perform the commissioning of Equipment.
- 8.2. Tesla will give Buyer at least 5 days' notice of the date(s) on which Tesla will perform the commissioning tests and allow a representative of Buyer to witness their performance. If a Buyer representative fails to attend the Site at the notified time, Tesla may proceed in that person's absence.

9. Work Schedule and Reports.

- 9.1. Tesla will perform all Work in material conformance with the Work Schedule.
- 9.2. Tesla will have discretion to determine Equipment delivery schedules, means and methods of installation and the sequencing of the Work.
- 9.3. Tesla will submit to Buyer updated Work Schedules on a regular basis (no less often than monthly).
- 9.4. From and after the commencement of the Work, Tesla's Representative will hold weekly progress meetings with Buyer's Representative.
- 9.5. Tesla will provide Buyer with copies of the "end of line" test reports prepared by Tesla for the Megapacks manufactured by Tesla.