



Megapack Reservation Terms

Thanks for your interest in Megapack! Now that we've received your completed reservation details and fee ("Reservation Fee"), you have a reservation ("Reservation") for a Megapack system ("System"). The below terms ("Terms") govern your Reservation, until we both execute definitive agreements for the purchase and long-term service of your System ("Project Agreements").

We look forward to working with you and are excited that you are joining our effort to transition the world to sustainable energy.

- 1. Your Reservation and Pricing.** The price and other terms in your Megapack Reservation Summary are non-final estimates based on the information you submitted when placing the Reservation. Tesla will contact you soon and begin working with you to complete the scope of Tesla's obligations and the design of the System, for 90 days or longer if necessary (the "Diligence Period"). If Tesla does not contact you to finalize the scope and design of the System within 90 days, you may terminate this Reservation upon notice to Tesla, and Tesla will refund your Reservation Fee. You agree to cooperate with Tesla during the Diligence Period including by promptly providing information and documents reasonably requested by Tesla. Delays in receiving requested information may delay Tesla's diligence or result in Tesla declining to proceed with the System as permitted in Section 2.
- 2. Project Agreements.** After Tesla completes the design of your System, Tesla will send you Project Agreements including the preliminary System design, schedule, and performance tests and guarantees for your System, finalized pricing for the System. You must sign the Project Agreements, or reject them in writing, within 30 days after Tesla's delivery of the Project Agreements. If you don't execute all of the applicable Project Agreements within 30 days, you will be deemed to have rejected them, and these Terms and the reservation of your System may be terminated by notice from Tesla, without liability to Tesla.
- 3. Project Agreement Template.** For your information, attached is a sample form of Project Agreement for small-to- medium-sized, equipment-only projects, which is current as of the date of your Reservation. The actual Project Agreement forms are subject to change, including for larger projects and for supply-and-installation projects. The Project Agreements that Tesla provides under Section 2 may be different from the one attached.
- 4. Cancellation.** Notwithstanding anything to the contrary, Tesla may determine in its sole discretion not to issue Project Agreements, including without limitation due to insufficient supply or the impracticability of developing the System. If Tesla declines to issue Project Agreements, Tesla will notify you and refund the Reservation Fee within a reasonable time, and these Terms will be terminated with no further liability to Tesla. In addition, at any time prior to executing a Purchase Agreement, you can cancel your Reservation by notifying Tesla in writing. If you cancel, the Reservation Fee will not be refunded, except as set forth in Section 1.
- 5. Assignment.** You are not permitted to assign the Reservation or these Terms to any other party.

Project Agreement Template

BESS SALE & PURCHASE AGREEMENT (US)

This **Battery Energy Storage System (“BESS”) Sale and Purchase Agreement** (this “Agreement”) is entered into as of [•], 20[•] (the “Effective Date”) between Tesla and Buyer (each as defined below, together the “Parties”). This Agreement comprises (i) the Key Terms set out below (the “Key Terms”), and (ii) all exhibits and schedules referenced in the “Attachments” sections of the Key Terms.

<u>Key Terms</u>	
These Key Terms set out the scope of this Agreement and certain key terms.	
<u>Parties:</u>	
Tesla:	Tesla, Inc., a corporation organized under the laws of Delaware, whose registered office is at 1 Tesla Road, Austin, TX 78725.
Buyer:	[•], a [•] company organized under the laws of [•] whose registered office is at [•].
<u>System:</u>	
System:	Energy storage system with the nameplate minimum power and energy capacities identified below:
	Standard (energy) mode:
Nameplate Minimum Power Capacity:	[•]kW/[•]kVA at nominal voltage [•]V AC
Nameplate Minimum Energy Capacity:	[•]kWh
System Specifications:	Attached as <u>Schedule 3</u> .
Microgrid:	<p>[N/A– the System will not be integrated within a microgrid and will only operate when 1) it remains synchronized to the utility grid and 2) utility grid is the primary source of voltage and frequency reference for the System]</p> <p>[Backup only – the System shall be capable of providing voltage and frequency reference while being disconnected from the utility grid. The System in such a case shall not be operated in parallel to any additional generators including a photovoltaic system]</p> <p>[The System shall be integrated by Buyer into a microgrid being installed by Buyer at the Installation Location. <u>Schedule 7</u> sets out the agreed configuration and specifications of the microgrid (the “<u>Microgrid Site Configuration</u>”), and <u>Schedule 8</u> sets out the Parties’ respective responsibilities relating to the design, delivery of equipment for, and installation and commissioning of the Microgrid (the “<u>Microgrid Scope of Work</u>”).</p>

System Applications:	Description:	Check one or more:
	Standard applications and controls of the BESS in accordance with the Tesla Energy Controls and Communication Manual.	
	Back-up.	
Delivery:		
Incoterm (2020):	[EXW (Incoterms 2020) (Delivery Point)][DDP (Incoterms 2020) (Delivery Point)].	
Delivery Point:	[•].	
Estimated Delivery Date:	[Insert date].	
Sunset Date:	[Insert date].	
Installation Location:	[•].	
End-User Statement Required:	Description:	Check one:
	Required from Buyer, in the form attached as <u>Schedule 6</u> .	
	None.	
Included Technical Support:		
Included Technical Support:	Description:	Check one or more:
	The Commissioning Support described in <u>Exhibit A</u> .	X
	The Additional Technical Support (if any) described in <u>Exhibit B</u> .	
False Call-Out LDs:	US\$2,500 per visit.	
Price and Payment:		
Contract Price*: To be adjusted by Lithium Carbonate Price Adjustment as set forth in <u>Section 10.1</u>	System price:	US\$[•].
	Logistics:	US\$[•][N/A].
	Additional Technical Support (if applicable):	US\$[•][N/A].
	Total:	US\$[•].
Invoice Schedule:	Tesla shall invoice as follows:	
	Milestones and Milestone Payments:	% of Contract Price:
	Upon execution of this Agreement.	[•]%

	Upon issue by Tesla to Buyer of the Ready for Shipment Notice under <u>Schedule 1, Section 4</u> .	[•]%		
	Upon delivery of the System to the Delivery Point in accordance with the Incoterm specified in the Key Terms.	[•]%		
	Upon the first to occur of (i) completion of the commissioning of the System in accordance with this Agreement; or (ii) the date falling 30 days after the System is delivered by Tesla.	[•]%		
Buyer Invoice Address:	[Email Address].			
Payment Terms:	Net-[•] days from the date of invoice.			
Buyer Credit Support:	[insert if required by Tesla].			
<u>Notices:</u>				
Tesla Notice Address:	1 Tesla Road, Austin, TX 78725 Attn: General Counsel / Legal Phone: +1.512.516.8177 Email: legal@tesla.com cc : energynotices@tesla.com			
Buyer Notice Address:	[•] Attn: [•] Phone: [•] Email: [•] Logistics Contact, Phone & Email: [•]			
<u>NDA:</u>				
NDA:	The [Mutual] Non-Disclosure Agreement dated [•] between Tesla and Buyer.			
<u>Tesla Manuals:</u>				
Tesla Manuals:	The current versions of the following Tesla manuals for the applicable Tesla BESS: (i) BESS Site Design Manual; (ii) BESS Transportation and Storage Guidelines; (iii) BESS Installation Manual; (iv) BESS Operation and Maintenance Manual; (v) BESS Internal Commissioning Checklist; and (vi) BESS Commissioning Protocol. Current versions of the Tesla Manuals will be provided by Tesla upon Buyer's request.			
<u>Attachments:</u>				
The attachments below are incorporated by reference into this Agreement. Attachments that are not checked below may be omitted from this Agreement without affecting its validity. In the event of any conflict between these Key Terms and any Exhibit or Schedule, the order of precedence shall be (i) these Key Terms and (ii) the Exhibits and Schedules, in order of appearance.				
Exhibit A:	Commissioning Support	X		
Exhibit B:	Additional Technical Support			
Schedule 1:	Standard Terms & Conditions	X		

Schedule 2:	Lithium Carbonate Price Adjustment	X
Schedule 3:	System Specifications	X
Schedule 4:	Manufacturer's Limited Warranty	X
Schedule 5:	Insurance	X
Schedule 6:	End-User Statement	
Schedule 7:	Microgrid Site Configuration	
Schedule 8:	Microgrid Scope of Work	
Schedule 9:	Project Flowdowns	

EXECUTED by the Parties on the Effective Date.

<p>[BUYER ENTITY]</p> <p>_____</p> <p>(SIGNATURE)</p> <p>_____</p> <p>(PRINT NAME)</p> <p>_____</p> <p>(PRINT TITLE)</p>	<p>TESLA, INC.</p> <p>_____</p> <p>(SIGNATURE)</p> <p>_____</p> <p>(PRINT NAME)</p> <p>_____</p> <p>(PRINT TITLE)</p>
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Exhibit A
Commissioning Support

Tesla shall provide the following Commissioning Support in accordance with this Agreement. The “Standard Commissioning Support” listed below covers the System only, and not the remainder of any microgrid or power generating or conditioning facility of which the System forms part. Tesla may perform this Commissioning Support remotely or at the System Installation Location, in Tesla’s discretion. Tesla may charge an additional fee if Buyer requests Tesla to perform Commissioning Support on a day that is not a Business Day, or outside normal business hours. Tesla and Buyer shall comply with the BESS Commissioning Protocol.

Prior to Tesla commencing “Commissioning Support” Buyer shall notify Tesla when:

1. It has completed the design of the System, no later than 4 months prior to the Buyer requesting Tesla to commence Commissioning Support, and include with such notice a completed BESS Design Review Checklist.
2. Buyer shall notify Tesla when the System has been properly and completely installed in accordance with the BESS Site Design and Installation Manual. Such notice shall include a completed BESS Construction Checklist and Islanding Acceptance Checklist (applicable for microgrid projects), each as available on the Tesla Partner Portal or provided by Tesla upon request.
 - a. If, after receiving that notice, Tesla is unable to perform the Commissioning Support because the System has not been properly and completely installed, or the installed system does not align with the previously completed Design Review Checklist, then Buyer shall pay to Tesla the False Call-Out LDs set out in the PO Key Terms, as liquidated damages for the time, costs and expenses incurred by Tesla in connection with the visit.
 - b. These liquidated damages have been agreed to by the Parties because the actual damages arising in these circumstances are difficult to predict. They represent a reasonable pre-estimate of the damages that Tesla would incur, and do not constitute a penalty. Payment of these liquidated damages shall be Tesla’s exclusive remedy and Buyer’s exclusive liability in the situation described above.

Commissioning Support:	
<ul style="list-style-type: none">• Tesla software and firmware update & self-test diagnostics<ul style="list-style-type: none">○ Self-test System’s components and sub-components.	
<ul style="list-style-type: none">• Site Controller start-up – Tesla Site Controller connectivity, meter communications and interface checks<ul style="list-style-type: none">○ Verify the Tesla Site Controller(s) have been energized by Buyer○ Verify internet connectivity has been provided by Buyer○ Verify communications between Tesla Site Controller(s) and all interfacing components has been established and data point check out has been completed.○ Configure the Tesla Site Controller(s) to accept commands and/or operate per control modes applicable to the project and as outlined in Communications Manual.	
<ul style="list-style-type: none">• BESS start-up – functional tests to demonstrate the ability of the BESS to produce power	
Microgrid-related Commissioning Support:	Check if applicable:
<ul style="list-style-type: none">• Tesla shall support microgrid-related commissioning activities as per <u>Attachment 8</u>.	

The Commissioning Support does not include reprogramming or debugging third-party controller interface, or debugging customer wiring. If Buyer requests Tesla to provide any additional support beyond what is defined in Attachment 2, Tesla may perform such services for an additional US\$200/hour. Tesla shall inform Buyer in advance if it expects such services to take more than 20 hours. Tesla shall invoice for any such fees following performance of the associated services and Buyer shall pay the invoice within 30 days of receipt.

Exhibit B
Additional Technical Support

This Exhibit only applies if the Key Terms indicate that Tesla is providing Additional Technical Support under this Agreement.

Tesla shall provide the following Additional Technical Support in accordance with this Agreement. The Technical Support is limited to Tesla assisting or supporting Buyer or its representative. As long as Tesla complies with Schedule 1, Section 9.3, Tesla shall have no liability in connection with its performance of the Technical Support. Unless expressly stated otherwise in the Key Terms or this Exhibit B, all Technical Support described in this Exhibit B will be provided remotely from the relevant Tesla office.

Additional Technical Support (check if included):	
• Power systems and/or detailed protection studies.	
• In-depth utility interaction to overcome interconnection barriers.	
• Detailed civil works analyses.	
• Configuration of islanding controller to manage the transition of the BESS between grid-tied and islanded mode.	
• Ordinary-course support of third-party Microgrid Controller integration (excluding reprogramming or debugging).	
• Reprogramming or debugging third-party controller interface.	
• [Insert others]	

Schedule 1
BESS Sale & Purchase Agreement - Standard Terms & Conditions

These standard terms conditions govern the sale and purchase of the System and any Included Technical Support under this Agreement. Depending on the elections made by Buyer and Tesla in the Key Terms, some sections do not apply, or only apply to a limited extent.

1. Purchase and Sale.
 - 1.1 Buyer shall purchase the System and any Included Technical Support from Tesla, and Tesla shall sell the System and any Included Technical Support to Buyer, in accordance with this Agreement. No separate purchase order is required. If Buyer elects to submit a separate purchase order, and it is inconsistent with this Agreement, the terms of this Agreement shall prevail.
 - 1.2 The System shall comply with the System Specifications on the date the System is delivered.
 - 1.3 Tesla is only responsible for supplying, and providing the Included Technical Support for, the equipment specifically identified in the description of the "System" in the Key Terms. If the System forms part of a microgrid, Tesla is not responsible for delivering any other microgrid equipment or providing any other support required for the microgrid's operation.
2. Delivery. Tesla shall deliver the System to the Delivery Point in accordance with the Incoterm specified in the Key Terms (modified as set out in Section 3, if applicable), in one or more shipments. Responsibility for the arrangement of and payment for the shipment (including carrier selection and scheduling), insurance and customs clearance of the System (including payment of applicable customs fees, duties and taxes) shall be determined in accordance with the Incoterm specified in the Key Terms.
3. Incoterm Modification; Export. If the Incoterm and Delivery Point specified in the Key Terms is EXW, the common meaning of EXW (Incoterms 2020) is modified so that delivery is complete and all risk of loss or damage to the System (or part) transfers to Buyer when the System (or part) has been loaded onto Buyer's carrier by Tesla at the Delivery Point, as evidenced by signature of a bill of lading or equivalent document by Buyer or its representative.
4. Delivery Timing: Delays.
 - 4.1 NTP. If Buyer fails to issue the NTP by the NTP Deadline such failure shall constitute a Buyer-Caused Delay; and if Buyer fails to issue the NTP within 30 days after the NTP Deadline, Tesla may terminate this Agreement upon notice to Buyer and in connection with such termination Buyer shall pay Tesla and Tesla shall be entitled to receive the Buyer Termination Payment set calculated by Tesla in accordance with Section 15.4, as Tesla's sole and exclusive remedy for such termination.
 - 4.2 Tesla shall make commercially reasonable efforts to deliver the System on or prior to the Estimated Delivery Date. Tesla will notify Buyer when the System is ready for the first shipment from the applicable Gigafactory (the "Ready for Shipment Notice"). Tesla shall give Buyer at least 10 days prior written notice of the scheduled delivery date for the System and each part thereof.
 - 4.3 If Buyer fails or refuses to accept delivery of a shipment once it has left the Gigafactory, such failure or refusal shall constitute a default under this Agreement to which no cure period applies and Tesla shall be entitled to recover its costs incurred by reason of the default in accordance with Section 15.1, in addition to any other remedies Tesla may have at law or under this Agreement.
 - 4.4 If the System is not delivered by Tesla in accordance with the Incoterm specified in the Key Terms on or prior to the Sunset Date, Buyer may, as its sole remedy for such delay, cancel the delivery of the System

and terminate this Agreement upon 10 days notice to Tesla, without liability to Tesla.

5. System Maintenance. Consistent with the Manufacturer's Limited Warranty, Tesla shall not be liable, under the Manufacturer's Limited Warranty or otherwise, for any System damage or failures resulting from (i) the operation, maintenance or repair of the System by the end user or any third party other than a Tesla Subcontractor; and (ii) a failure to perform (or cause to be performed) maintenance of the System required under the applicable Tesla Manuals.
6. Inspection and Rejection.
 - 6.1 Prior to unloading, Tesla shall grant the representative of Buyer who takes delivery of the System in accordance with the Incoterm specified in the Key Terms the right to visually inspect the external packaging of each part comprising the System; provided, that if the Incoterm is EXW, Buyer's visual inspection must occur prior to loading of the System.
 - 6.2 Buyer may reject any part of the System if, after such visual inspection, Buyer reasonably believes that such part is likely to be damaged or to not conform to the System Specifications.
 - 6.3 Upon execution of the bill of lading or equivalent for the System (or part thereof) by or on behalf of Buyer, Buyer shall be deemed to have accepted the System or affected part thereof. Thereafter, Buyer shall have no right to reject the System (or part).
7. Title; Risk of Loss. Risk of loss of the System (or part thereof) passes to Buyer at the Delivery Point in accordance with the Incoterm specified in the Key Terms (modified as set out in Section 3, if applicable). Title to the System shall transfer from Tesla to Buyer concurrently with the transfer of risk of loss. For clarity, if Buyer rejects the System in accordance with Section 6.2, title and risk of loss for the rejected System shall remain with Tesla.
8. Security Interest.
 - 8.1 If title to the System transfers from Tesla to Buyer prior to Buyer's payment in full for the System, Tesla shall retain, and Buyer hereby grants, a first priority security interest in and to all of the right, title and interest of Buyer in, to and under the System, as well as any insurance proceeds covering the System, until Tesla is paid in full for the System. Buyer authorizes Tesla to file financing statements in this regard and will take such action as is requested by Tesla to protect such interest.
 - 8.2 Until the Contract Price has been paid in full, Tesla may also exercise its rights under applicable mechanics' and suppliers' lien laws or any common law liens such as a common carrier's lien and other similar liens arising by operation of law or statute.
9. Included Technical Support; Warranty.
 - 9.1 Tesla shall provide the Commissioning Support in accordance with Exhibit A and the Key Terms ("Commissioning Support").
 - 9.2 Tesla shall use commercially reasonable efforts (at no out of pocket cost to Tesla) to assist with Buyer's reasonable requests for ordinary-course: (i) review of design and construction plans, (ii) questions from utilities or government authorities, (iii) support of third-party controller interface (excluding reprogramming, debugging monitoring and control interface(s), firewalls, jump servers, network devices or wiring to interact with the Tesla Site Controller), and (iv) interconnection related questions (excluding performance or functional testing support as needed to meet ISO, utility or market requirements).
 - 9.3 If the Key Terms indicate that Tesla shall perform any additional Technical Support, Tesla shall provide

that Technical Support in accordance with Exhibit B and the Key Terms ("Additional Technical Support").

- 9.4 Tesla shall perform the Commissioning Support and any Additional Technical Support (together, the "Included Technical Support") in accordance with Prudent Industry Practices, the BESS Commissioning Protocol, the BESS Operation & Maintenance Manual published by Tesla or its Affiliate, this Agreement and the Manufacturer's Limited Warranty. "Prudent Industry Practices" means the methods approved by a significant portion of the electrical services industry operating in the Installation Location that, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable law, reliability, safety, environmental protection, economy and expedition. Prudent Industry Practices are not limited to optimum methods, but rather include a spectrum of reasonable and prudent methods that take the conditions specific to the System into account.
- 9.5 Tesla warrants that (i) it shall perform all Included Technical Support in accordance with Prudent Industry Practices, this Agreement and the Manufacturer's Limited Warranty; and (ii) any labor performed in the performance of the Included Technical Support shall be free from defects in design and workmanship for 12 months after such labor was performed were installed (collectively, the "Support Warranty"). Tesla shall remedy any defect or otherwise cure a breach of the Support Warranty, at its own cost and expense, as promptly as reasonably practicable after Buyer notifies Tesla in writing of such breach, in a manner and at such times that reasonably minimizes interruption of the operation of the System and revenue loss to Buyer. This shall be Tesla's sole and exclusive liability, and Buyer's sole and exclusive remedy, in connection with a breach of the Support Warranty.
- 9.6 EXCEPT AS PROVIDED FOR IN THIS AGREEMENT, TESLA MAKES NO WARRANTIES OR GUARANTEES WITH RESPECT TO THE INCLUDED TECHNICAL SUPPORT 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. Price; Invoicing; Payment; Late Payments.

- 10.1 The price payable for the System and any Included Technical Support shall be the Contract Price stated in the Key Terms; provided that the Contract Price will be adjusted by the "Lithium Carbonate Price Adjustment" set forth in Schedule 2, and the term "Contract Price" means the Contract Price as adjusted by the Lithium Carbonate Price Adjustment, once the adjustment has been applied in accordance with Schedule 2.
- 10.2 Buyer shall pay the Contract Price in Milestone Payments (as reflected in the Key Terms) based on Tesla invoices. Tesla shall invoice Buyer in accordance with the Invoice Schedule. Tesla shall send invoices by electronic mail to the Buyer Invoice Address.
- 10.3 Buyer shall pay invoices in accordance with the Payment Terms, in U.S. dollars, and by wire transfer or other electronic means approved by Tesla.
- 10.4 Buyer shall notify Tesla of any invoice dispute and provide substantiating documentation within 20 days of Buyer's receipt of the disputed invoice. Notwithstanding any dispute, Buyer shall pay all undisputed amounts in accordance with the Payment Terms.
- 10.5 Buyer shall pay interest on late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Tesla for all costs incurred in collecting any late payments, including attorneys' fees.

11. Taxes.

- 11.1 The Contract Price is exclusive of, and Buyer is solely responsible for, all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer.
- 11.2 Where required or allowed by law, unless Buyer furnishes to Tesla lawful evidence of exemption, Tesla

will invoice Buyer for the amount of any such tax and remit such amount to the applicable taxing authority.

- 11.3 If Buyer is required by law to deduct or withhold any amount of tax from a payment to Tesla, Buyer shall (i) promptly remit such amount to the applicable taxing authority and provide Tesla with a receipt for such remittance; and (ii) increase the amount of its payment to Tesla by the amount necessary to ensure Tesla receives the full amount which it would have received if no deduction or withholding had been made.

12. No Set-off Right. Any claim for money due or to become due from a Party under this Agreement shall not be subject to deduction or set-off by such Party against any amount due or to become due to such Party from the other Party or its Affiliates, whether relating to a claim under this Agreement or relating to any other transaction.

13. Manufacturer's Limited Warranty.

- 13.1 Tesla provides a manufacturer's limited warranty for the System as set out in the Manufacturer's Limited Warranty for the System that is attached as Schedule 4 (the "Manufacturer's Limited Warranty").
- 13.2 EXCEPT AS SET OUT IN THE MANUFACTURER'S LIMITED WARRANTY, TESLA DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR USE, COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW.
- 13.3 Without limiting any of the other "exclusions" or "items not covered" identified in the Manufacturer's Limited Warranty, Buyer acknowledges that it shall be solely responsible for all costs associated with repairing or replacing any components of the System (including but not limited to battery pods) that require repair or replacement as a result of (i) Buyer's failure to connect and begin use and operation of the System within 180 days of the date Buyer takes title to the System, or (ii) Buyer's disconnection of the System at any time during the term of the Manufacturer's Limited Warranty for a period of 180 days or more.
- 13.4 Buyer (or the end user, if applicable) is responsible for establishing and maintaining a remote internet connection to the System for purposes of the Manufacturer's Limited Warranty. If Buyer sells or transfers the System to an end user, it shall ensure that it contractually obligates the end user to comply with this remote internet connection obligation.

14. Remote Monitoring; Firmware Upgrades; etc.

- 14.1 As a condition to providing the Manufacturer's Limited Warranty, Tesla requires the ability to (i) remotely monitor performance of the System, and (ii) provide remote firmware and software upgrades to the System. Buyer hereby consents to Tesla performing such remote monitoring and providing such firmware and software upgrades as Tesla reasonably deems appropriate, at any time and without further notice to or consent from Buyer.
- 14.2 "Buyer Data" consists of the data defined to be owned by Buyer in the appendices of the Communications Manual defined in Section 14.5. Buyer Data shall be owned by the System owner and shall be made available by Tesla to the System owner on request, in a reasonably accessible format. Buyer grants to Tesla an irrevocable, perpetual worldwide, royalty-free license to use of all data obtained via the remote monitoring of the System. Tesla may use Buyer Data (i) to perform its obligations under the Manufacturer's Limited Warranty, (ii) to improve Tesla's products and services generally (including by performing analyses on such information); provided that Tesla shall not reverse engineer such data to expose Buyer's dispatch algorithms, and (iii) to aggregate with other data. Notwithstanding anything to the contrary in the NDA, public disclosure of such information by Tesla is permitted if neither Buyer nor the owner or long-term occupant of the site where the System is located (the "Site Host") could reasonably be identified from the publicly disclosed information.
- 14.3 Any information obtained by Tesla through remote monitoring of the System that is not Buyer Data shall be owned by Tesla ("Tesla Data"), shall be Confidential Information of Tesla, and shall not be required to be made available by Tesla to any person.
- 14.4 Buyer represents and warrants that, prior to the installation of the System, it will obtain the written

consent of the subsequent owner and (if different) the Site Host with respect to the matters addressed in this [Section 14](#). If the subsequent owner or Site Host is a natural person or otherwise benefits from the protection of applicable Privacy and Data Protection Laws, such consents shall include any consents required under such laws. Buyer shall deliver copies of all such consents to Tesla upon request.

- 14.5 “[Communications Manual](#)” means the Controls and Communication Manual for the System that is published by Tesla or otherwise made available by Tesla to Buyer. “[Privacy and Data Protection Laws](#)” means all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality, security and protection of personal data.

15. [Default, Suspension and Termination.](#)

- 15.1 Tesla may suspend performance of any of its obligations under this Agreement, including its delivery obligations, if Buyer at any time is in default of any material Buyer obligation under this Agreement, and all reasonable costs incurred by Tesla by reason of such suspension (such as costs to warehouse the System until an overdue payment is received) shall be a debt due and owing from Buyer to Tesla within 30 days of Buyer’s receipt of a written invoice from Tesla at the Buyer Invoice Address.
- 15.2 In addition to any other remedies that may be provided under this Agreement, Buyer may terminate this Agreement (i) if Tesla has breached any material provision of this Agreement and such breach, to the extent curable, is not cured within 30 days after Tesla’s receipt of written notice thereof (or for defaults which Tesla has notified Buyer cannot be cured within 30 days but can be cured within 60 days, such default has not been cured by the extended 60-day deadline); (ii) if an Insolvency Event occurs with respect to Tesla; or (iii) in the circumstances described in [Section 4.3](#).
- 15.3 In addition to any other remedies that may be provided under this Agreement, Tesla may terminate this Agreement by written notice to Buyer if (i) Buyer fails to pay any undisputed amount when due under this Agreement and the failure is not cured within 10 days after Buyer's receipt of written notice thereof from Tesla; (ii) Buyer has breached any material provision of this Agreement and the breach is not cured within 30 days after Buyer's receipt of written notice thereof from Tesla thereof (or for defaults which Buyer has notified Tesla cannot be cured within 30 days but can be cured within 60 days, such default has not been cured by the extended 60-day deadline); (iii) Buyer fails to post any Buyer Credit Support by the date specified in the Key Terms, any Buyer Credit Support ceases to be in full force and effect or the party providing such Buyer Credit Support breaches the terms of such Buyer Credit Support; or (iv) Buyer or the party providing any Buyer Credit Support becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors (each an “[Insolvency Event](#)”).
- 15.4 If Tesla terminates this Agreement under this [Section 15.3](#), Tesla shall be entitled to be paid Milestone Payments owing to Tesla at the effective date of the termination and to retain any Milestone Payment(s) already received by Tesla at the effective date of the termination. In addition, Tesla shall be entitled to invoice for and Buyer shall pay the following amounts, as reasonably calculated by Tesla (collectively the “[Buyer Termination Payment](#)”):

15.4.1 any part of the System delivered or in transit to Buyer but not covered by a Milestone Payment;

15.4.2 an additional amount set out in the table below applicable to the effective date of the termination:

Effective date of termination	Amount
Prior to NTP	N/A
After NTP	30% of remaining Contract Price applicable to the portion of the System not delivered or in transit at the time of the termination. The Contract Price shall include the Lithium Carbonate Price Adjustment, if applied to the Contract Price at the time of termination.

- 15.4.3 all Direct Costs incurred by Tesla in connection with the termination of this Agreement, including demobilization costs and protecting the System and leaving the same in a clean and safe condition as reasonably directed by Buyer;
- 15.4.4 any other amounts owing to Tesla hereunder at the effective date of the termination; and
- 15.4.5 all Direct Costs incurred by Tesla in collecting the foregoing amounts.
- 15.5 Tesla's claim (which shall contain detailed supporting documentation) shall be submitted within 30 days after the effective date of termination under this Section 15.4 (excluding if applicable collection costs incurred after the date of termination, which shall be submitted within a reasonable time).
- 15.6 Subject to Tesla's receipt of the amounts described in Section 15.4.2 including the Buyer Termination Payment, all materials manufactured by Tesla and delivered (or in transit) to Buyer at the effective date of the termination shall be covered by the Megapack Limited Warranty and Tesla's standard licenses that Tesla then-grants or makes available to ordinary course purchasers of such goods, as applicable

16. Confidentiality; Publicity.

- 16.1 The NDA sets out the Parties' confidentiality obligations under this Agreement. It is incorporated by reference into this Agreement. 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 and conditions of this Agreement, and any information regarding the System shall be both Parties' Confidential Information for purposes of the NDA.
- 16.2 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.

17. Proprietary Rights.

- 17.1 As between the Parties, Tesla shall remain the sole and exclusive owner of any and all patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights ("Proprietary Rights") associated with the System or any parts or derivations thereof.
- 17.2 Effective when Tesla has been paid the Contract Price in full, Tesla grants to Buyer a limited, royalty-free, perpetual, world-wide, non-exclusive, non-sublicensable license to use, copy, distribute, and make derivative works from (i) any drawings, specifications, documents provided or developed by Tesla in connection with this Agreement; and (ii) any software (i.e., firmware) embedded by Tesla in the System, (ii) the Tesla manuals and similar documents provided by Tesla in connection with this Agreement (all of the foregoing, collectively, the "Licensed Materials") to the extent necessary for the ownership, operation, and maintenance of the System. Except for the foregoing, no license or other right to Tesla's the Licensed Materials or other Tesla intellectual property is granted under this Agreement.
- 17.3 For the avoidance of doubt, Buyer is not granted any license to modify the Licensed Materials and shall bear all responsibility for its use of the Licensed Materials other than as permitted by Tesla's license granted under Section 17.2.
- 17.4 The licenses provided in Section 17.2 will terminate upon termination of this Agreement as the result of Buyer's breach for failure to pay, except if Buyer has paid Tesla the Buyer Termination Payment.

18. Limitations of Liability.

- 18.1 NEITHER PARTY SHALL BE LIABLE 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.

18.2 NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL EXCEED THE AGGREGATE CONTRACT PRICE. THE LIMITATIONS OF LIABILITY UNDER THIS SECTION 18.2 AND THE MANUFACTURER'S LIMITED WARRANTY ARE CUMULATIVE. NEITHER BUYER NOR ANY END USER SHALL BE ENTITLED TO MAKE A CLAIM ARISING OUT OF THE SAME DEFECT, EVENT OR CIRCUMSTANCES UNDER BOTH THIS AGREEMENT AND THE MANUFACTURER'S LIMITED WARRANTY.

18.3 THE LIMITATIONS OF LIABILITY SET OUT IN THIS SECTION 18 SHALL NOT APPLY TO: (I) BUYER'S OBLIGATION TO MAKE PAYMENTS FOR THE SYSTEM UNDER THIS AGREEMENT; (II) DAMAGES ATTRIBUTABLE TO EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (III) ANY VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (IV) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION UNDER THIS AGREEMENT; (V) DAMAGES ATTRIBUTABLE TO A PARTY'S INTENTIONAL TORTS, UNLAWFUL CONDUCT OR GROSS NEGLIGENCE; OR (VI) ACTS OR OMISSIONS FOR WHICH LIABILITY CANNOT BE DISCLAIMED OR LIMITED UNDER APPLICABLE LAW.

19. General Indemnity. Each Party shall defend, indemnify and hold harmless the other Party, its Affiliates, and their respective directors, officers, partners, members, shareholders, agents, employees, subcontractors, successors and assigns (collectively, "Representatives") from and against any losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees (collectively, "Losses") arising from (i) any claim, action, suit, proceedings, demand, investigation or assessment made or brought by any third party (excluding any of the foregoing brought by shareholders or employees of the indemnified Party) (collectively, "Claims") alleging injury or death of persons, or damage to or loss of property, to the extent caused by or arising from the negligent acts or omissions or acts of willful misconduct of the indemnifying Party or its Representatives in connection with the System, its use, or the performance of this Agreement; or (ii) any failure by the indemnifying Party or its Representatives to comply with applicable laws (including, without limitation, the FCPA (as defined in Section 24) and any applicable export control laws). In addition, if Buyer resells the System in breach of Section 32.1, Buyer shall defend, indemnify and hold harmless Tesla and its Representatives from and against all Losses resulting from any Claim whatsoever that arises in connection with such breach (including, any acts or omissions of the purchaser and any subsequent transferee of the System).

20. Environmental Indemnity.

20.1 Tesla shall defend, indemnify, and hold harmless Buyer and Buyer's Representatives from and against all Claims arising out of or relating to any violations of any environmental laws by Tesla, including the release at, on, above, below or near the Installation Location in connection with the performance of this Agreement, of any hazardous materials to the extent such violation or release relates to (i) pre-existing hazardous materials or hazardous materials brought to the Installation Location by Buyer or anyone for whom Buyer is legally responsible (other than Tesla or its subcontractors), in either case whose presence and location were previously made known to Tesla by Buyer and that were negligently released on the Installation Location by Tesla or its subcontractor, or (ii) hazardous materials brought to the Installation Location by Tesla or its subcontractor that are released by Tesla or its subcontractors.

20.2 Buyer shall defend, indemnify, and hold harmless Tesla and its Representatives from and against any and all Claims made against any Tesla and its Representatives in connection with or arising from (i) pre-existing environmental conditions, including pre-existing hazardous materials, on the Installation Location, (ii) any releases of hazardous materials other than those for which Tesla is responsible under this Agreement, and (iii) any violations of any permits or environmental laws by Buyer or end user.

21. IP Indemnity.

21.1 Tesla shall indemnify, defend and hold harmless Buyer and its Representatives from any Losses arising out of any Claim alleging that the System infringes the intellectual property rights of a third party. However, Tesla shall have no obligation to indemnify Buyer or any of its Representatives to the extent the Claim arises out of: (i) use of the System in combination with any other products, materials or

equipment not expressly authorized by Tesla in circumstances where the infringement would have been avoided by the use of the System not so combined; or (ii) any modifications or changes made to the System other than by Tesla in circumstances where the infringement would have been avoided without such modifications or changes. If a Claim for infringement or alleged infringement of any intellectual property rights is made, Tesla may, at its own expense, (x) modify any or all of the intellectual property rights so as to avoid the infringement or the alleged infringement; or (y) take such other action as Tesla deems reasonable to avoid or settle such Claim in accordance with Section 22, and this shall be the sole and exclusive remedy available to Buyer in respect of such Claim.

- 21.2 Buyer shall indemnify and hold harmless Tesla and its Representatives from and against any and all Claims: (i) alleging infringement of any intellectual property right involving 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, or (ii) involving (A) any Buyer modification (directly or indirectly), use or reuse of the work product, (B) 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 (C) any modifications or changes made to the System other than by Tesla in circumstances where the infringement would have been avoided without such modifications or changes.
22. Indemnification Procedures. The indemnified Party will give the indemnifying Party prompt written notice of any claim for which indemnification is sought under Section 19, 20 or 21. Failure to give prompt notice will not diminish the indemnifying Party's obligations under this Section 22 to the extent such failure does not materially prejudice the indemnifying Party's ability to defend the claim. The indemnifying Party shall control the defense of the claim, and the indemnified Party may participate in the defense at its own expense with counsel of its choice. The indemnified Party shall make available information and assistance as the indemnifying Party may reasonably request, at the indemnifying Party's expense. The indemnifying Party may not, without the prior written consent of the indemnified Party, consent to any judgment or settlement that (i) provides for injunctive or other non-monetary relief affecting the indemnified Party or its Representatives or (ii) does not provide for an unconditional and full release of the indemnified Party and its Representatives and does not diminish any rights of the indemnified Party under this Agreement or result in additional fees or charges to the indemnified Party. If the indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend indemnified Party or its Representative against a claim, the indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Agreement.
23. General Compliance with Laws; Approvals. Each Party shall comply with all laws applicable to the performance of this Agreement, including those laws applicable to each Party's use, sale and/or export of the goods and/or Included Technical Support purchased under this Agreement. Buyer shall obtain all approvals, certifications, licenses and permits required by any applicable law or governmental authority (collectively, "Approvals") in connection with the purchase, installation and use of the System. Tesla shall obtain all Approvals with respect to the System that are required on a nationwide basis in the USA as at the Effective Date.
24. Anti-Bribery Laws. Each Party shall comply with all national or international anti-bribery laws applicable to it, including without limitation the Foreign Corrupt Practices Act of 1977 (the "FCPA") and shall, at all times during the term of this Agreement, remain in compliance and maintain appropriate policies and procedures to ensure ongoing compliance with all such laws. As of the Effective Date, (i) neither Party has any employees who are foreign officials as defined under the FCPA, and (ii) no foreign official as defined under the FCPA has any legal or beneficial interest in a Party (or, if a Party or its direct or indirect parent company is a publicly listed company, a more than 5% legal or beneficial interest in such Party). Each Party shall promptly notify the other Party in writing in the event any of the foregoing representations would be untrue if made by Buyer at any time during the Term. Each Party acknowledges that any violation of this Section 24 constitutes just cause for immediate termination of this Agreement by the other Party.
25. Economic Sanctions Laws; Export Control Laws; End-User Statement. Buyer shall not (i) directly or indirectly export, re-export or otherwise transfer the System or any part thereof or (ii) broker, finance or otherwise facilitate any transaction involving the System, in violation of any economic sanctions laws administered by the Office of Foreign Assets Control of the U.S. Treasury Department or any other governmental authority imposing economic

sanctions and trade embargoes against designated countries, entities or persons. Buyer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release the System, any part thereof, or any software, documentation or related technical data included with or contained in the System, in violation of applicable export control laws. If the Key Terms indicate that an End-User Statement is required, then Buyer shall deliver the completed and signed End User Statement (in the form referenced in the Key Terms) to Tesla within 30 days of the Effective Date.

26. Governing Law; Dispute Resolution; Venue. This Agreement will be governed by and interpreted in accordance with Texas law. The Parties hereby agree that United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any dispute arising from or relating to this Agreement shall first be promptly referred to the Parties' senior level management for resolution. In the event they are unable to resolve any such dispute within 20 days after referral, then either Party may take such dispute to binding arbitration in accordance with the then-current Streamlined 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 shall be conducted in English and in Austin, Texas. 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 its 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. In the event that any dispute in arbitration under this Agreement is substantially the same or involves common issues of law or fact (which may include, but not by way of limitation, matters involving other agreements related to the System), either Party shall be entitled to require that any such dispute be consolidated with the relevant arbitration pursuant hereto, and the other Party shall permit, and co-operate in, such consolidation. Notwithstanding the foregoing, each Party will have the right to apply at any time to a judicial authority for appropriate injunctive relief in connection with a breach by the other Party of its obligations in Section 16 or Section 17, 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.
27. Cumulative Remedies. Except as set out in Section 28, all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.
28. Certain Exclusive Remedies. The Parties understand and agree that (i) Buyer's rights under the Manufacturer's Limited Warranty are Buyer's exclusive remedies for the events or circumstances specified therein; and (ii) Buyer's sole recourse for Tesla's failure to provide any Additional Technical Support is withholding or reimbursement of the amount the Contract Price allocated to that Technical Support pursuant to the Key Terms.
29. Force Majeure; Buyer Delays.

29.1 Definitions.

- 29.1.1 "Buyer-Caused Delay" means a delay in Tesla's performance of its obligations under this Agreement, to the extent due to Buyer's failure to perform any of its obligations under this Agreement, or Buyer's failure to provide any information or cooperation reasonably requested by Tesla.
- 29.1.2 "Change in Law" means the enactment, adoption, promulgation, modification (including a change in interpretation by a governmental authority) or repeal of any law or permit, including of any tariff applicable to the goods Tesla will provide pursuant to this Agreement, after the Effective Date, other than publicly known proposals for changes in laws and permits applicable to Tesla's obligations that have been adopted by the applicable governmental authority on or before the Effective Date.
- 29.1.3 "Differing Site Condition" means (i) any condition at the Delivery Point (including any concealed or latent subsurface conditions at the Delivery Point or any subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar

significance); or (ii) a change in surface or subsurface conditions at the Delivery Point following the Effective Date.

29.1.4 “Direct Costs” means Tesla’s actual and reasonably documented direct cost of performing one or more applicable acts (whether internal or external), plus 20% of the foregoing amount for overhead and profit.

29.1.5 “Force Majeure” means any act or circumstance beyond the reasonable control and not attributable to the fault or negligence of Tesla, including acts of God, epidemic, pandemic, flood, fire, earthquake, climatic conditions at the Site that are unusual for the time of year, explosion, action or inaction of a public authority (including delays caused by permitting authorities) for reasons other than Tesla’s fault, war, terrorist threats or acts or other civil unrest, piracy, lock-outs, strikes or other labor disputes, restraints or delays affecting carriers, and shall include the inability or delay in obtaining supplies of adequate or suitable materials to the extent caused by a Force Majeure.

29.2 If a (i) Buyer-Caused Delay, Change in Law, or Differing Site Condition increases Tesla’s costs or delays Tesla’s performance of its obligations under this Agreement, or (ii) Buyer wishes to change the scope of Tesla’s obligations hereunder and such change is agreeable to Tesla in its sole discretion, then Tesla shall be entitled to a corresponding adjustment to the Contract Price to account for Tesla’s Direct Costs, and an adjustment to the Estimated Delivery Date and Sunset Date.

29.3 If a Buyer-Caused Delay increases Tesla’s costs or delays Tesla’s performance of its obligations under this Agreement, Tesla shall be entitled to a corresponding adjustment to the Estimated Delivery Date and Sunset Date, but not the Contract Price.

29.4 To the extent that Tesla is affected by the circumstances in Sections 29.2 or 29.3, Tesla shall provide a change order to the Buyer detailing the adjustment it believes is warranted the applicable section. Such proposal shall be deemed accepted by Buyer if Buyer has not disputed such proposal in writing within 10 days after Tesla provides such proposal.

30. Entire Agreement; Severability. This Agreement will be deemed to have been written by both Parties, constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be interpreted so as to best accomplish the objectives of the original provision and the remaining provisions of this Agreement shall remain in full force and effect.

31. Amendment; Modification; Waiver. No amendment or modification of this Agreement is effective unless it is in writing and signed by each Party. No waiver by either Party of any provision of this Agreement is effective unless set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise of that right or remedy or the exercise of any other right or remedy.

32. Resale; Assignment.

32.1 Buyer shall not transfer title to the System prior to its installation and commissioning (whether to resellers, distributors, installers or end users) without the prior written consent of Tesla. This Section 32 does not prohibit Buyer from entering into an agreement with an installer or end user prior to installation and commissioning of the System which provides that in connection with any permitted assignment under this Agreement, title to the System shall transfer to the installer or end user following installation and commissioning.

32.2 Subject to Section 32.3, neither Party may assign its right or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer may, with prior written notice to Tesla, assign this Agreement as collateral in connection with its financing activities. Any purported assignment or delegation in violation of this Section 32.2 is null and void. This Agreement shall be binding upon and inure to the benefit of and

be enforceable by the respective successors and permitted assigns of the Parties.

- 32.3 Each Party may (i) assign this Agreement to a successor in interest following a merger, acquisition or corporate reorganization (provided, that in the case of Buyer as assignor such assignee shall not be a direct or indirect competitor of Tesla with respect to the provision of battery energy storage equipment or maintenance services), and (ii) without the other Party's consent, collaterally assign this Agreement as security to or as part of any factoring arrangement with, any financing party; provided, however, that no assignment of this Agreement pursuant to the foregoing subsection (ii) shall release the assignor from its obligations and liabilities under this Agreement. A permitted assignee under this Section 32.3(ii) shall be bound by the obligations of this Agreement upon consummation of a foreclosure of its security interest and shall, upon the other Party's request, deliver a written assumption of assignor's rights and obligations under this Agreement to the other Party.
33. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. Nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Claims by non-parties indemnified pursuant to this Agreement may only be brought by a Party to this Agreement.
34. Notices. All notices under this Agreement shall be in writing and shall be deemed given (i) 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 (ii) if sent by email, upon receipt by the sender of an email confirming receipt of the notice by the recipient (in which case the email will be deemed received on the date it was actually received 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 34. In each case, notices shall be sent to the Notice Address given for Tesla and Buyer in the Key Terms, or such other address as either Party may notify the other Party in writing from time to time. Nothing in this Section 34 shall be construed to restrict the transmission of routine communications between representatives of Buyer and Tesla.
35. Expiry; Survival. Unless terminated earlier in accordance with its terms, this Agreement shall expire when the System has been delivered, and Buyer has paid the Contract Price in full. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration; provided, that all warranties and licenses granted by Tesla to Buyer pursuant to this Agreement shall terminate upon Tesla's termination for Buyer's default based on Buyer's failure to pay Tesla the Contract Price in accordance with this Agreement.
36. Counterparts. This Agreement may be signed in duplicate originals, or in separate counterparts, which are effective as if the Parties signed a single original. A .pdf of an original signature or electronically signed version transmitted to the other Party is effective as if the original was sent to the other Party.
37. Representations.
- 37.1 Each Party represents and warrants to the other Party that (i) it is a legal entity, duly organized and in good standing under the laws of jurisdiction of incorporation; (ii) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (iii) 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.
- 37.2 Buyer further represents and warrants to Tesla that (i) all financial information that it has provided to Tesla is true and accurate and fairly represents Buyer's financial position as at the date it was provided and (ii) it has all rights and consents required for Tesla to remotely monitor performance of the System.
38. Certain Defined Terms. For purposes of this Agreement, (i) "Affiliate" means, with respect to a Party, an entity that controls, is controlled by or is under common control with such Party; (ii) "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity,

whether through ownership of voting securities, by contract or otherwise; and (ii) "Business Day" means any day other than weekends and days when banks are not generally open for business in Austin, Texas.

Schedule 2
Lithium Carbonate Price Adjustment

1. The Contract Price shall be adjusted in accordance with the following price adjustment mechanism based on wholesale market pricing for lithium carbonate (the "Contract Price Adjustment").
2. Tesla shall notify Buyer of the Contract Price Adjustment no later than 15 days following the Lithium Carbonate Observation Period (the "Adjustment Notice"). Tesla's notice shall identify the LCE_m and F_x values used to calculate the Contract Price Adjustment. Buyer shall provide Tesla a written confirmation of the Contract Price Adjustment promptly upon request.
3. If the Contract Price Adjustment is positive, it will increase the Contract Price and Tesla may invoice for the Contract Price Adjustment contemporaneously with, or any time within sixty (60) days after, Tesla's issuance of the Contract Price Adjustment. If the Contract Price Adjustment is negative, it will reduce the Contract Price and Tesla will credit the difference against subsequent Milestone Payments.
4. If the Adjustment Notice indicates that the value for LCE_m is greater than 750,000 RMB (the "RMB Threshold"), either party may notify the other within 15 days after the date of the Adjustment Notice that it desires to negotiate a Contract Price adjustment that differs from that indicated in the Adjustment Notice. If Buyer fails to so notify Tesla, Buyer shall be bound by the Contract Price Adjustment indicated in the Adjustment Notice. If a Party timely notifies the other Party that it desires to negotiate a Contract Price adjustment that differs from that indicated in the Adjustment Notice, the Parties will seek to reach agreement in good faith on a revised Contract Price within 30 days following such notice.
5. If the Parties fail to agree on a revised Contract Price within the time required under Section 4 above, either Party may terminate the Agreement by written notice, provided that Buyer shall only be permitted to terminate this Agreement if no Buyer Default has occurred and is continuing under the Agreement at the time of termination. Upon a termination of this Agreement by either Party under this Section 5, Tesla shall be entitled to invoice, and Buyer shall be liable to pay Tesla, a termination payment in an amount equal to ten percent (10%) of the Contract Price (the "Lithium Threshold Termination Payment"); provided that, if the amount resulting from the foregoing calculation is a negative number, Tesla shall credit Buyer the difference against the unpaid portion of the Contract Price. Buyer shall pay the Lithium Threshold Termination Payment within 30 days after receipt of an invoice from Tesla in respect thereof.
6. The Contract Price Adjustment is calculated as follows, using the Lithium Carbonate Observation Period to determine the respective LCE_m and F_x values:

If LCE_m is less than LCE_f :

$$\text{Contract Price Adjustment} = (LCE_f - LCE_b) \times (MP_x / 1000) \times (1 / F_x) \times (\text{Estimated Actual Energy Capacity})$$

If LCE_m is greater than LCE_f :

$$\text{Contract Price Adjustment} = (LCE_m - LCE_b) \times (MP_x / 1000) \times (1 / F_x) \times (\text{Estimated Actual Energy Capacity})$$

The terms used in above calculations have the following meanings:

Estimated Actual Energy Capacity means:	[•] kWh
Lithium Carbonate Baseline Price (" LCEb ") means:	[•] Ren Min Bi/metric ton
Lithium Carbonate Floor Price (" LCEf ") means:	75,000 Ren Min Bi/metric ton
Lithium Carbonate Market Price (" LCEm ") means:	Means the Average Lithium Carbonate Market Price identified by Tesla during the Lithium Carbonate Observation Period, as determined by reference to the Shanghai Metals Market (" <u>SMM</u> ") price index for battery-grade pricing, or its successor, as identified in Renminbi/ton

	as indicated on https://www.metal.com/Chemical-Compound/201102250059 .
Lithium Carbonate Observation Period means:	[•]
Megapack Cost Factor (“ MPx ”) means:	0.844
Quarter Average Fx Rate (“ Fx ”) means:	The F _x identified by Tesla based on the average daily RMB rates during the Lithium Carbonate Observation Quarter per one (1) USD (or the currency in which the Megapack System Price is denominated) as reported by the Wall Street Journal.

Schedule 3
BESS Specifications

Schedule 4
Manufacturer's Limited Warranty

Schedule 5
Insurance

Tesla and Buyer shall maintain in effect with responsible insurance carriers with a Best Insurance Reports rating of "A-" or better or through a formal self-insurance mechanism that has either (a) a Best Insurance Reports rating of "A-" or better; or (b) a financial size category of "VI" or higher, provided, that if such self-insurance program does not meet either (a) or (b), then the party's use of self-insurance for the coverages herein shall be subject to the other party's approval, not to be unreasonably withheld, conditioned, or delayed:

1.1. Tesla's and Buyer's Commercial General Liability Insurance.

- 1.1.1. USD \$1,000,000 each occurrence or per claim, combined single limit for third party bodily injury or property damage.
- 1.1.2. USD \$2,000,000 general aggregate

1.2. Tesla's and Buyer's Business Automobile Liability Insurance.

- 1.2.1. USD \$1,000,000 combined single limit for third party bodily injury or property damage,
- 1.2.2. Coverages.
 - 1.2.2.1. Coverage with respect to any and all vehicles of each party whether owned, hired, leased, borrowed, or non-owned, assigned to or used in connection with the work performed under this Purchase Order.

1.3. Tesla's and Buyer's Workers Compensation and Employers Liability Insurance.

- 1.3.1. Workers Compensation
 - 1.3.1.1. Coverages.
 - 1.3.1.1.1. As required by state or federal laws.
 - 1.3.1.1.2. Each party may waive Workers' Compensation Insurance requirement if they are a qualified self-insured in the state in which the Work is performed.
- 1.3.2. Employer Liability
 - 1.3.2.1. USD \$1,000,000 bodily injury for each accident.
 - 1.3.2.2. USD \$1,000,000 bodily injury by disease for each employee.
 - 1.3.2.3. USD \$1,000,000 bodily injury by disease policy limit.

- 1.4. Subcontractor Insurance.** Tesla shall require each of its subcontractors performing Work at the Site to maintain insurance coverage in accordance with the insurance requirements of Tesla's standard subcontract, supplier or designer agreements, as applicable.

Schedule 6
Buyer End User Statement

Schedule 7
Microgrid Site Configuration

Schedule 8
Microgrid Scope of Work

Schedule 9
Project Flowdown Requirements

[NOTE TO DRAFT: THIS EXHIBIT IS INTENDED TO CAPTURE ONLY PROJECT-SPECIFIC PASS-THROUGHS FROM PROJECT AGREEMENTS TO WHICH BUYER IS BOUND (E.G., LEASES, INTERCONNECTION AGREEMENTS, ETC.). PASS-THROUGHS MAY BE PROPOSED BY BUYER FOR TESLA'S CONSIDERATION. TESLA WILL NOT CONSIDER BLANKET OBLIGATIONS TO COMPLY WITH ENTIRE PROJECT AGREEMENTS]

- 1) **Site access requirements**

- 2) **Interconnection-related requirements**

- 3) **Labor / permitting requirements**