

## BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of NEVADA POWER COMPANY d/b/a NV Energy and SIERRA PACIFIC POWER COMPANY d/b/a NV Energy, seeking approval to add 1,001 MW of renewable power purchase agreements and 100 MW of energy storage capacity, among other items, as part of their joint 2019-2038 integrated resource plan, for the three year Action Plan period 2019-2021, and the Energy Supply Plan period 2019-2021

Docket No. 18-06\_\_\_\_

### VOLUME 13 OF 18

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**REN-6-CMS5 (a)**

**LONG-TERM RENEWABLE  
POWER PURCHASE AGREEMENT**

**BETWEEN**

**NEVADA POWER COMPANY D/B/A NV ENERGY**

**AND**

**COPPER MOUNTAIN SOLAR 5, LLC**

**Copper Mountain Solar 5  
City of Boulder City, NV**

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## LONG-TERM RENEWABLE POWER PURCHASE AGREEMENT

This Long-Term Renewable Power Purchase Agreement (this “Agreement”) is made and entered into as of May 14, 2018 (the “Effective Date”) by and between **NEVADA POWER COMPANY**, a Nevada corporation, d/b/a NV Energy acting in its merchant function capacity (“Buyer”), and **COPPER MOUNTAIN SOLAR 5, LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are sometimes referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the PUCN and FERC (as such terms are defined below);

**WHEREAS**, Buyer intends to construct or cause to be constructed the Facility (as such term is defined below) upon the terms and conditions set forth herein; and

**WHEREAS**, Supplier desires to sell to Buyer, and Buyer desires to purchase from Supplier, Product (as such term is defined below) from the Facility upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “Accepted Compliance Costs” is defined in Section 3.5.
- 1.2 “Adjusted Annual Supply Amount” means, with respect to a Contract Year, the Annual Supply Amount less the total amount of Net Energy associated with Excused Product, if any, for such Contract Year.
- 1.3 “Adjusted Stub Period Supply Amount” means, with respect to the Stub Period, the Stub Period Supply Amount less the total amount of Net Energy associated with Excused Product, if any, for the Stub Period.
- 1.4 “Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, Affiliate shall only include

Berkshire Hathaway Energy Company and its direct and indirect, wholly owned subsidiaries.

- 1.5 “Agreement” means this Long-Term Renewable Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.6 “ALTA Survey” means a land survey prepared and certified in accordance with the standards jointly promulgated by the American Land Title Association and the American Congress on Surveying and Mapping.
- 1.7 “Annual Supply Amount” means, with respect to each Contract Year, the sum of the twelve (12) Monthly Supply Amounts for that Contract Year.
- 1.8 “ASC” is defined in Section 12.7.
- 1.9 “Assignee Buyer” means a party that has assumed and had assigned to it all of Buyer’s rights title and interest in this Agreement subsequent to the Effective Date. Following any assignment by Buyer in accordance with Section 23.1, any reference to “Buyer” hereunder shall be deemed a reference to “Assignee Buyer.”
- 1.10 “Assignee Buyer Security” is defined in Section 17.3.
- 1.11 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Section 14.2 notifying Buyer of the availability of the Facility.
- 1.12 “Average On-Peak Mead” means the simple average of the Mead for the On-Peak hours of the Summer Months or the Non-Summer Months, as applicable.
- 1.13 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.14 “Balancing Authority Area Operator” means a Person, and its agents and any successors thereto, that is responsible for the operation of the electric transmission system and for maintaining reliability of the electric transmission system, including the Transmission System, within the Balancing Authority Area where the Facility is located. As of the Effective Date, the Balancing Authority Area Operator is the Transmission Provider.
- 1.15 “Billing Period” is defined in Section 7.2.1.
- 1.16 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.
- 1.17 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.18 “Buyer ROFO Notice” is defined in Section 6.1.1.

- 1.19 “Buyer’s PC Account” means the account maintained by the PC Administrator for the purpose of tracking the production, sale, transfer, purchase and retirement of PCs by Buyer, or such other account, including a WREGIS account, as Buyer may designate from time to time.
- 1.20 “Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on Exhibit 9, and such others as are deemed by Buyer to be necessary or desirable from time to time.
- 1.21 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal Governmental Authority given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.22 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Facility.
- 1.23 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.24 “Clean Power Plan” means the provision commonly referred to as the “Clean Power Plan” codified under 40 CFR Part 60 Subpart TTTT and promulgated per Clear Air Act Section 111(d).
- 1.25 “Commercial Operation” means that: (a) the Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) all of the requirements set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6 and 7 (i) have occurred, and (ii) remain simultaneously true and accurate: (A) as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred; and (B) for the period Buyer has to review Supplier’s notice of Commercial Operation pursuant to Section 8.2.1.
- 1.26 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.27 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date may be extended if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure.
- 1.28 “Compliance Cost Cap” is defined in Section 3.5.

- 1.29 “Construction Contract” means one or more construction and equipment supply agreements, in each case, between a Construction Contractor and Supplier (or one of its Affiliates), pursuant to which, in the aggregate, the Facility will be designed, engineered, constructed, tested and commissioned.
- 1.30 “Construction Contractor” with respect to a Construction Contract, means the construction contractor and/or equipment supplier that is party to such Construction Contract.
- 1.31 “Contract Representative” of a Party, means the individual designated by that Party in Exhibit 4 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 29.1.
- 1.32 “Contract Year” means each year during the Term beginning on January 1 and ending on December 31 of the year following the Commercial Operation Date (or commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).
- 1.33 “Controlling Interest” with respect to a Person, means more than fifty percent (50%) of the outstanding ownership interest of such Person, or the power to vote such percentage of ownership interest.
- 1.34 “Covered Facility” is defined in Section 24.5.1.
- 1.35 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.
- 1.36 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.37 “Cure Period” is defined in Section 24.3.
- 1.38 “Curtailed Product” is defined in Section 10.3.
- 1.39 “Daily Delay Damages” means an amount equal to: (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Commercial Operation Deadline, one-hundred ninety-four and 44/100 dollars (\$194.44) per MW of Expected Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61st) through and including the one-hundred twentieth (120th) day subsequent to the Commercial Operation Deadline, three-hundred eighty-eight and 89/100 dollars (\$388.89) per MW of Expected Nameplate Capacity Rating per day; and (c) with respect to the one-hundred twenty-first (121st) through and including the one-hundred and eightieth (180th) day subsequent to the Commercial Operation

Deadline, five-hundred-eighty-three and 33/100 dollars (\$583.33) per MW of Expected Nameplate Capacity Rating per day.

- 1.40 “Daily On-Peak Supply Amount” means, with respect to a month, the sum of the Supply Amounts for the Delivery Hours ending 07:00 through 22:00 PPT for each day in that month.
- 1.41 “Daily Supply Amount” means, with respect to each day of a month, the sum of the Supply Amounts for the Delivery Hours ending 01:00 through 24:00 PPT for that month.
- 1.42 “Defaulting Party” is defined in Section 24.1.
- 1.43 “Deficit Damages” is defined in Section 8.6.1.
- 1.44 “Deficit Damages Rate” means two hundred thousand \$200,000 per MW.
- 1.45 “Delivered Amount” means, with respect to any Delivery Hour, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Delivery Hour.
- 1.46 “Delivered PCs” means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.47 “Delivery Hour” means each hour.
- 1.48 “Delivery Point” means, with respect to Net Energy, the delivery point on the Transmission System set forth in Exhibit 5.
- 1.49 “Derating” means a condition of the Facility as a result of which it is unable to produce the Supply Amount during a Delivery Hour.
- 1.50 “Development Security” is defined in Section 17.1.
- 1.51 “Dispute” is defined in Section 21.1.
- 1.52 “Early Purchase Option” is defined in Section 6.2.
- 1.53 “Economic Curtailment” is defined in Section 10.4.1.
- 1.54 “Economic Curtailed Product” is defined in Section 10.4.2.
- 1.55 “Effective Date” is defined in the preamble of this Agreement.
- 1.56 “Electric System Authority” means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, a Regional Transmission Organization,

a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.

- 1.57 “Emergency” means any circumstance or combination of circumstances or any condition of the Facility, the Transmission System or the transmission system of other transmission operators, which is determined or reported by Buyer, the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.
- 1.58 “Energy” means all energy that is generated by the Facility.
- 1.59 “Energy Choice Initiative” means the initiated constitutional amendment that: (a) appeared as ballot question 3 in the State of Nevada general election held on November 8, 2016 (titled Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment); (b) was approved by a majority of the Nevada voters in the State of Nevada general election on November 8, 2016; and (c) will appear on the ballot of the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 1.60 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.61 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or location, or of such form or character, as to constitute a violation of Laws and present a material risk under Laws that the Project Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.62 “Environmental Law” shall mean any Law relating to the protection, preservation or restoration of human health, the environment, or natural resources, including any Law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.
- 1.63 “Event of Default” is defined in Section 24.1.
- 1.64 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.65 “Excess Energy” means, (a) with respect to the Stub Period, the portion of the Delivered Amount for the Stub Period, if any, that exceeds one hundred percent (100%) of the Adjusted Stub Period Supply Amount, and (b) with respect to a

Contract Year, the portion of the Delivered Amount for such Contract Year, if any, that exceeds one hundred (100%) of the Adjusted Annual Supply Amount for such Contract Year; provided, however, that Delivered Amount in excess of the Maximum Amount for any Delivery Hour shall be excluded for purposes of determining Excess Energy.

- 1.66 “Excused Product” is defined in Section 3.6.4.
- 1.67 “Expected Nameplate Capacity Rating” is defined in Exhibit 1.
- 1.68 “Facility” means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B, and including mechanical equipment and associated facilities and equipment required to deliver Net Energy to the Delivery Point (other than Shared Facilities), as such generating power plant may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.69 “Fair Market Value” means the price which a willing buyer would pay for the Facility in an arm’s-length transaction to a willing seller under no compulsion to sell, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Article 21.
- 1.70 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.71 “Final Purchase Option” is defined in Section 6.3.
- 1.72 “Force Majeure” is defined in Section 20.2.
- 1.73 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Good Utility Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.



- 1.74 “Governmental Approval” means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing, notification, or registration of, by, with or to any Governmental Authority.
- 1.75 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the PUCN, NERC, WECC and WREGIS.
- 1.76 “Hazardous Substance” means: (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq., or any similar state statute.
- 1.77 “IA” means the Large Generator Interconnection Agreement, to be entered into by and between Supplier and the Transmission Provider for the Facility, as amended from time to time.
- 1.78 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.79 “Indemnified Party” is defined in Section 18.1.
- 1.80 “Indemnifying Party” is defined in Section 18.1.
- 1.81 “Invoice” means the statements described in Section 7.2 setting forth the information required therein, as well as the associated payment due for the Billing Period, the Measurement Period or the Contract Year, as the case may be, in accordance with Exhibits 2B and 2C.
- 1.82 “ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

- 1.83 “Law” means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party or any of its property.
- 1.84 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon such Person or incurred in connection with a claim by a third party against such Person.
- 1.85 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who: (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion; (c) has no economic relationship, association, or nexus with Supplier and is not an employee of its members or Affiliates, other than with the prior written consent of Buyer, for services previously or currently being rendered to Supplier or its members or Affiliates; and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility.
- 1.86 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for the Energy Imbalance Market.
- 1.87 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on: (a) the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate; (b) the validity or enforceability of this Agreement or the transaction contemplated hereby; or (c) on the business, assets, operations, property or condition (financial or otherwise) of such Party.
- 1.88 “Maximum Amount” means, with respect to a Delivery Hour, 250 MWh.
- 1.89 “Mead” means the Hourly Mead Index published by Powerdex.
- 1.90 “Measurement Period” means each two (2) consecutive Contract Years commencing with the first two (2) Contract Years of the Term.
- 1.91 “Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for: (a) accurate determination of the: quantities of Delivered Amounts and Station Usage from the Facility and for recording other related parameters required for the reporting of data to Supplier; (b) the computation of the payments due from one Party to another under this Agreement; and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not

include any check meters Supplier may elect to install as contemplated by Section 7.1.1.

- 1.92 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s and (b) Baa3 (or its equivalent) as determined by Moody’s.
- 1.93 “Monthly Supply Amount” means, with respect to a month, the sum of the Daily Supply Amount for each day in such month.
- 1.94 “Monthly On-Peak Supply Amount” means, with respect to a month, the sum of the Daily On-Peak Supply Amount for each day in such month.
- 1.95 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.96 “MW” means megawatts of electrical power in AC.
- 1.97 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.98 “NAC” means the Nevada Administrative Code.
- 1.99 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.100 “Net Energy” means all Energy and capacity produced by the Facility, less Station Usage and transformation and transmission losses and other adjustments (e.g., Supplier’s load other than Station Usage), if any, delivered to and received by Buyer at the Delivery Point. Buyer’s payment for Net Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Delivery Point.
- 1.101 “Network Resource” is defined in the OATT.
- 1.102 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.103 “Non-Summer Months” means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.104 “Notice” is defined in Section 29.1.1.
- 1.105 “Notice to Proceed” means a full notice to proceed notification given by Supplier to its Construction Contractor to commence work under the Construction Contract.
- 1.106 “Notice to Proceed Daily Delay Damages” means an amount equal to: (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Notice to Proceed Deadline, one-hundred ninety-four and 44/100 dollars (\$194.44) per MW of Expected Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61st) through and including the one-hundred twentieth

(120th) day subsequent to the Notice to Proceed Deadline, three-hundred-eighty-eight and 89/100 dollars (\$388.89) per MW of Expected Nameplate Capacity Rating per day; and (c) with respect to the one-hundred twenty-first (121st) through and including the one hundred and eightieth (180th) day subsequent to the Notice to Proceed Deadline, five-hundred-eighty three and 33/100 dollars (\$583.33) per MW of Expected Nameplate Capacity Rating per day.

- 1.107 “Notice to Proceed Deadline” means the Critical Project Milestone date for Notice to Proceed set forth in Exhibit 6.
- 1.108 “NTP Delay Damages Period” is defined in Section 8.5.1.
- 1.109 “NRS” means the Nevada Revised Statutes.
- 1.110 “OATT” means Transmission Provider’s or the Balancing Authority Area Operator’s then-effective Open Access Transmission Tariff, which has been accepted for filing by FERC.
- 1.111 “Offered Interests” is defined in Section 6.1.1.
- 1.112 “Off-Peak” means hours ending 01:00 through 06:00 PPT and hours ending 23:00 through 24:00 PPT of each day.
- 1.113 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.114 “Operating Representative” of a Party means any of the individuals designated by that Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 29.1.
- 1.115 “Operating Security” is defined in Section 17.2.
- 1.116 “Operation Date” means the first date on which the Facility is energized and operates in parallel with the Transmission System and delivers Net Energy to and at the Delivery Point.
- 1.117 “OSHA” means the Occupational Safety and Health Act, codified as 29 U.S.C. §651 et seq.
- 1.118 “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.119 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.120 “PC” or “Portfolio Energy Credit” means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Facility, all

as calculated by the PUCN operations staff and certified by the PC Administrator pursuant to the Renewable Energy Law (or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.

- 1.121 “PC Administrator” means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Portfolio Standard or a successor Governmental Authority pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada.
- 1.122 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.123 “PC Shortfall” is defined in Section 3.7.1.
- 1.124 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.125 “Penalties” means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.126 “Permitted Transaction” means (a) any sale, transfer or issuance of direct or indirect equity interests in Supplier to a tax equity investor for purposes of a Tax Equity Financing, (b) any transfer or assignment of a Controlling Interest or a non-Controlling Interest in Supplier, in either case in accordance with Section 23.2, or (c) any sale or transfer of a non-Controlling Interest in Supplier to a third party occurring prior to mechanical completion of the first block of the Facility; (d) any other sale, transfer or issuance of direct or indirect equity interests in Supplier other than the sale, transfer or issuance of equity interests by a parent company of Supplier that has, as its only significant asset, a direct or indirect interest in Supplier; or (e) any foreclosure, sale or conveyance contemplated under any consent to collateral assignment entered into pursuant to Section 23.8.
- 1.127 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.128 “Planned Outage” is defined in Section 11.1.
- 1.129 “Portfolio Standard” means the amount of electricity that Buyer must generate, acquire, or save from renewable energy systems or efficiency measures specified by the percentage of the total amount of electricity sold by Buyer to its retail customers in the State of Nevada pursuant to the Renewable Energy Law, as established pursuant to NRS 704.7821, and the regulations, guidance and requirements promulgated thereunder, as may be amended, preempted or

superseded from time to time (or pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada).

- 1.130 “Power Quality Standards” means the power quality standards established by NERC, WECC, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, or their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.131 “Product” means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits, and (d) Capacity Rights, in each case, arising from or relating to the Facility.
- 1.132 “Product Rate” means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.133 “Project Milestone” means each of the milestones listed in Exhibit 6.
- 1.134 “Project Site” means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.135 “Provisional Energy” means Net Energy (but not Test Energy) that is delivered by Supplier to Buyer prior to the Commercial Operation Date and at the request of Buyer in increments of no less than five (5) MW up to an aggregate maximum of 250 MW.
- 1.136 “Provisional Rate” is defined in Section 4.1.1.2.
- 1.137 “PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.138 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.139 “PUCN Approval” is defined in Section 16.2.
- 1.140 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.141 “PUCN Approval Deadline” means December 28, 2018.
- 1.142 “Qualified Financial Institution” means a financial institution having an office in the United States, with a total tangible net worth of at least ten billion dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least “A-” by S&P and “A3” by Moody’s.

- 1.143 “Qualified Guarantor” means (a) Sempra Energy, a California corporation, for so long as it is a direct or indirect owner of Supplier, and/or (b) a Person that is a direct or indirect owner of Supplier and has a Minimum Credit Rating.
- 1.144 “Qualified Operator” means (a) Sempra Renewable Services, Inc., a Delaware corporation, or (b) any other operator (i) with at least three (3) years of experience operating a utility scale generating plant of similar technology to the Facility, and (ii) which, at the time it is performing operations and maintenance services, is not involved in litigation directly against Buyer or any of its Affiliates, or otherwise prohibited from performing due to a direct conflict of interest with Buyer or any of its Affiliates, (iii) which has, during the previous three (3) years, an OSHA reportable incident average of less than 1.5, as well as no fatalities; and (iv) which has not, during the previous three (3) years, been subject to any enforceable environmental penalty by any Governmental Authority.
- 1.145 “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Supplier as of the Effective Date and, at a minimum, (a) has a tangible net worth of at least thirty million dollars (\$30,000,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer, provided that such approval shall not be unreasonably withheld or delayed, and provided further that if such Qualified Transferee provides Development Security or Operating Security (as applicable) in accordance with the requirements of this Agreement such approval shall be deemed given, and (b) is a Qualified Operator or agrees to contract with an operator who is a Qualified Operator, provided that if, at the time of such transfer, a Qualified Operator is in place, this subsection (b) shall be deemed satisfied.
- 1.146 “Relevant Rating Agency” means Moody’s or S&P.
- 1.147 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions attributes, Portfolio Energy Credits (and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all: (a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Facility or the generation, transmission or use of the Product, including those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; (b) associated with the production of Energy or based in whole or part on the Facility’s use of renewable resources for generation or because the Facility constitutes a Renewable Energy System or the like or because the Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable; (c) credits, offsets, allowances or benefits attributable to Energy generated and consumed by the Facility, such as Station Usage (parasitic load), if any; (d) claims,

credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or generation of the Product, and include : (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include: (i) any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; (ii) matters designated by Buyer as sources of liability; and (iii) adverse wildlife or environmental impacts.

- 1.148 “Renewable Energy Benefits Reporting Rights” means the exclusive right of a purchaser of Renewable Energy Benefits to report ownership of Renewable Energy Benefits in compliance with any applicable Law, and to Governmental Authorities or other Persons at such purchaser's discretion, and include reporting under: (a) Section 1605(b) of the Energy Policy Act of 1992; (b) the Environmental Protection Agency; (c) the Clean Air Act Amendments Section 111(d) and regulations thereunder; and (d) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
- 1.149 “Renewable Energy Law” means an act of the Nevada Legislature relating to energy that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS §§ 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case, as such Laws, rules, regulations, guidance and other requirements may be amended, preempted or superseded from time to time.
- 1.150 “Renewable Energy System” means a generation facility that is both (a) a “renewable energy system” as defined in the Renewable Energy Law and (b) a “renewable Generating Unit” under WREGIS.
- 1.151 “Replacement Costs” is defined in Section 3.6.1.3 with respect to the Summer Months and Section 3.6.2.3 with respect to Non-Summer Months.
- 1.152 “Required Facility Documents” means the Governmental Approvals, rights and agreements now or hereafter necessary for construction, operation and maintenance of the Facility set forth in Exhibit 12. Nothing set forth in Exhibit 12 limits Supplier's obligation to obtain the Governmental Approvals set forth in Exhibit 12 or otherwise required hereunder or with respect to the Facility.
- 1.153 “Restricted Period” is defined in Section 24.5.1.



- 1.154 “Restricted Transaction” is defined in Section 6.1.1.
- 1.155 “ROFO” is defined in Section 6.1.
- 1.156 “ROFO Period” is defined in Section 6.1.1.
- 1.157 “ROFO Seller” is defined in Section 6.1.1.
- 1.158 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.159 “Shared Facilities” means communications equipment; operations and maintenance buildings; warehouses; drainage features; fencing; rights-of-way; gen-tie poles, lines and other equipment and ancillary facilities which are used by one or more solar projects in addition to the Facility.
- 1.160 “Shared Facilities Agreement” is defined in Section 8.1.
- 1.161 “Shortfall” is defined in Section 3.6.1.1 with respect to the Summer Months and Section 3.6.2.1 with respect to Non-Summer Months.
- 1.162 “Shortfall Amount” is defined in Section 3.6.1.2 for the Summer Months and Section 3.6.2.2 for Non-Summer Months.
- 1.163 “Shortfall Threshold” is defined in Section 3.6.1.1 for the Summer Months and Section 3.6.2.1 for the Non-Summer Months.
- 1.164 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.165 “Standby Service” means the electric service supplied by Nevada Power Company for Station Usage pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.166 “Station Usage” means all Energy used by the Facility, excluding, for purposes of this definition, Energy used by any Shared Facilities.
- 1.167 “Stub Period” means the period of time commencing on the Commercial Operation Date and ending on December 31 of the year in which the Commercial Operation Date occurs (provided, however, that if the Commercial Operation Date occurs on January 1, then the term “Stub Period” will have no application to this Agreement).
- 1.168 “Stub Period Supply Amount” means the sum of the Daily Supply Amount for each day of the Stub Period.
- 1.169 “Summer Months” means the months of June, July, August and September occurring during the Stub Period or a Contract Year.

- 1.170 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.171 “Supplier’s Lenders” means any Person, other than an Affiliate of Supplier (except pursuant to an arms-length transaction), and its permitted successors and assigns, providing money or credit in connection with any development, bridge, construction, takeout, permanent debt or tax equity financing or refinancing for the Facility, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.
- 1.172 “Supplier’s Required Regulatory Approvals” means the Governmental Approvals listed on Exhibit 10.
- 1.173 “Supply Amount” means, with respect to any Delivery Hour, the amount of Net Energy stated in Exhibit 13.
- 1.174 “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.175 “Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.
- 1.176 “Tax Equity Financing” means, with respect to Supplier or any Affiliate of Supplier, any transaction or series of transactions in which one or more tax equity investors buys an equity interest in Supplier or an Affiliate of Supplier for the purpose of raising a portion of the funds needed to finance the development, construction or operation of the Facility by monetizing Tax Credits, depreciation and other tax benefits associated with the Facility.
- 1.177 “Term” is defined in Section 2.2.
- 1.178 “Test Energy” is defined in Section 4.1.1.1.
- 1.179 “Test Product Rate” is defined in Section 4.1.1.1.

- 1.180 “Transmission Provider” means Nevada Power Company, or any successor operator or owner of the Transmission System.
- 1.181 “Transmission System” means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
- 1.182 “Weather Meter” is defined in Section 7.1.8.
- 1.183 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.184 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.
- 1.185 “Yearly PC Amount” means the amount of PCs for a Contract Year as stated in Exhibit 18.

## **2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS**

- 2.1 Effective Date. Subject to Article 16, this Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier’s obligation to deliver Product, and Buyer’s obligation to accept and pay for Product, shall commence on the Operation Date and shall continue for a period of 25 Contract Years, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”); provided, however, that Buyer’s obligations to pay for or accept any Product are conditioned on the receipt of the PUCN Approval in form and substance acceptable Buyer, in its sole discretion. Buyer shall not be obligated to accept or pay for any Product unless the PUCN Approval is received in form and substance acceptable to Buyer in its sole discretion, or Buyer waives its right to terminate this Agreement pursuant to Article 16.
- 2.3 Termination.
- 2.3.1 For Cause. Except as provided below in this Section 2.3.1, this Agreement may be terminated at any time by the Non-Defaulting Party upon two (2) Business Days’ prior notice to the Defaulting Party if an Event of Default has occurred and is continuing (after the applicable Cure Period (if any) in Section 24.3 has expired); provided, however, that any purported termination by Supplier shall first require that Supplier deliver Notice to Buyer stating prominently therein in type font no smaller than 14 point all-capital letters that “THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED,” and shall state therein any amount purported to be owed and wiring instructions.

- 2.3.2 Failed Condition Precedent. This Agreement may be terminated by Buyer in accordance with Section 16.3 without payment or penalty or liability of any kind.
- 2.3.3 Force Majeure. This Agreement may be terminated by Buyer if Supplier's obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than twelve (12) consecutive months or three-hundred sixty (360) days in any five-hundred forty (540) day period.
- 2.4 Effect of Termination - Survival of Obligations. The termination or expiration of this Agreement shall not release either Party from any applicable provisions of this Agreement with respect to:
  - 2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;
  - 2.4.2 Indemnity obligations contained in this Agreement, including Article 18, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;
  - 2.4.3 Limitation of liability provisions contained in Article 19;
  - 2.4.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21; or
  - 2.4.5 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination.

### **3. SUPPLY SERVICE OBLIGATIONS**

- 3.1 Dedication. One hundred percent (100%) of the Product from the Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Subject to Section 24.2, Supplier shall not: (a) sell, divert, grant, transfer or assign Product to any Person other than Buyer; (b) provide Buyer with any Product from any source other than the Facility; or (c) divert, redirect or make available the Facility or any resource therefrom to another generating facility or any third party. The Parties agree that remedies at Law may be inadequate in the event of a breach of this Section 3.1, and Supplier agrees that Buyer shall be entitled, without proof of actual damages and without necessity of posting bond or other security, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 3.1.
- 3.2 Purchase and Sale. For and in consideration of Buyer's payment for the Product, Supplier sells to Buyer, and Buyer accepts from Supplier, any right, title and interest that Supplier may have in and to the Product, including Capacity Rights and Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term.

- 3.3 No Double Sales. Supplier represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other Person, the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term, other than as provided in Section 24.2. During the Term, Supplier shall not report to any person or entity that the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.
- 3.4 Delivery Responsibilities.
- 3.4.1 Product. Subject to the provisions of this Agreement, commencing on the Operation Date and throughout the Term, Supplier shall supply and deliver the Product to Buyer at the Delivery Point.
- 3.4.2 Delivered Amount. Buyer shall take delivery of the Net Energy, including any Excess Energy, at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Energy up to the Delivery Point, including transmission costs, transmission line losses and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. Without limiting the generality of the foregoing, Buyer, in its merchant capacity, shall not bear costs associated with the modifications to the Transmission System (including system upgrades) caused by or related to: (a) the interconnection of the Facility with the Transmission System; and (b) any increase in generating capacity of the Facility. The Parties agree that the terms of the IA shall govern the allocation of costs associated with any modifications or upgrades to the Transmission System. To the extent any terms of this Agreement conflict with the IA, the terms of the IA shall prevail.
- 3.4.3 Title and Risk of Loss. Title and risk of loss with respect to Net Energy delivered by Supplier shall pass from Supplier to Buyer at the Delivery Point. Supplier shall be deemed in exclusive control of the Net Energy and shall be responsible for any damage or injury caused prior to the Delivery Point. Buyer shall be deemed in exclusive control of the Net Energy and shall be responsible for any damage or injury caused at and after the Delivery Point. Supplier warrants that all Product delivered to Buyer is free

and clear of all liens, security interests, claims and encumbrances of any kind.

3.4.4 Provisional Energy Delivery. Buyer may request by written notice to Supplier to deliver Provisional Energy prior to the Commercial Operation Date, in increments as defined in Section 1.136, and on and after a specified date. Supplier may, in its sole discretion, elect to deliver such Provisional Energy to Buyer by delivering written notice thereof to Buyer. Notwithstanding the foregoing, Buyer and Supplier shall mutually agree on the amounts of Provisional Energy to be supplied and the date and time when such Provisional Energy shall be supplied.

3.4.5 Voltage Support. The IA will require the Facility to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to the Facility and all generators in the control area on a comparable basis. In addition to the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection within the range of 0.90 leading to 0.90 lagging at full rated real-power output, as available, within the capabilities of the Facility. The Facility shall provide dynamic reactive power as required for voltage regulation twenty-four (24) hours per day, if the Facility is capable of providing reactive power, regardless of real power output. The performance of reactive power output to provide voltage support shall be according to unit real/reactive capability curves provided in Exhibit 22 subject to modifications as may be required to reflect the final design of the Facility.

3.5 Renewable Energy System. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if the Facility: (a) is not at the time of delivery qualified as a Renewable Energy System; or (b) is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy being delivered; provided that if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy from the Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Supplier shall use commercially reasonable efforts to comply with such Renewable Energy Law. For purposes hereof, commercially reasonable efforts shall include the expenditure of amounts up to two-hundred-forty thousand dollars (\$240,000) (the “Compliance Cost Cap”) in any Contract Year. If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate such notice and either: (i) agree to reimburse Supplier for such excess costs (the “Accepted Compliance Costs”); or (ii) waive Supplier’s obligation to comply with the Renewable Energy Law to the extent such inability results from failing to expend amounts in excess of the Compliance Cost Cap. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law,

and Buyer shall reimburse Supplier for Supplier's actual and reasonable out-of-pocket compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Supplier's inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute an Event of Default.

- 3.6 Shortfall; Replacement Costs. Supplier shall pay Buyer Replacement Costs and any Penalties incurred as a result of any Shortfall in any Measurement Period in accordance with the following provisions:

3.6.1 Summer Months – On-Peak.

- 3.6.1.1 If, for the Summer Months of any Measurement Period, the sum of all Delivered Amounts during the On-Peak hours of such Summer Months is less than the Shortfall Threshold for such Summer Months, then a shortfall of Net Energy (a "Shortfall") will be deemed to exist for such Summer Months. "Shortfall Threshold" means, with respect to the Summer Months in any Measurement Period, the product of (a) 0.90 multiplied by (b) the difference between (i) the sum of the Monthly On-Peak Supply Amount for such Summer Months minus (ii) the total amount of Net Energy associated with Excused Product (if any) during the On-Peak hours of such Summer Months.
- 3.6.1.2 If a Shortfall exists with respect to the Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. "Shortfall Amount" means, with respect to the Summer Months in any Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Summer Months, provided that if the calculation of Shortfall Amount yields an amount of zero or less for the Summer Months in any Measurement Period, then no Shortfall Amount will be deemed to exist with respect to such Summer Months.
- 3.6.1.3 Buyer's "Replacement Costs" with respect to any Summer Months in any Measurement Period shall equal (a) the Shortfall Amount for such Summer Months multiplied by (b) the greater of (i) ten-percent (10%) of the applicable Product Rate or (ii) an amount equal to Average On-Peak Mead for the Summer Months minus the applicable Product Rate, provided that if the calculation of Replacement Costs yields an amount of zero or less for such Summer Months, then no Replacement Costs will be payable with respect to such Summer Months.
- 3.6.1.4 Within five (5) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Summer

Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

### 3.6.2 Non-Summer Months – On-Peak.

- 3.6.2.1 If, for the Non-Summer Months of any Measurement Period, the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months is less than the Shortfall Threshold for such Non-Summer Months, then a shortfall of Net Energy (a “Shortfall”) will be deemed to exist for such Non-Summer Months. “Shortfall Threshold” means, with respect to the Non-Summer Months in any Measurement Period, the product of (a) 0.90 multiplied by (b) the difference between (i) the sum of Monthly On-Peak Supply Amount for such Non-Summer Months minus (ii) the total amount of Net Energy associated with Excused Product (if any) during the On-Peak hours of such Non-Summer Months.
- 3.6.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. “Shortfall Amount” means, with respect to the Non-Summer Months in any Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Non-Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months, provided that if the calculation of Shortfall Amount yields an amount of zero or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to such Non-Summer Months.
- 3.6.2.3 Buyer’s “Replacement Costs” with respect to any Non-Summer Months in any Measurement Period shall equal (a) the Shortfall Amount for such Non-Summer Months multiplied by (b) an amount equal to Average On-Peak Mead for the Non-Summer Months minus the applicable Product Rate, provided that if the calculation of Replacement Costs yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will be payable with respect to such Non-Summer Months.
- 3.6.2.4 Within five (5) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Non-Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.



- 3.6.3 Not a Penalty. The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.6 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the damages for the failure of Supplier to supply and deliver Net Energy are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.
- 3.6.4 Calculations. As soon as practicable following any period of: (a) Force Majeure; (b) Buyer's failure to accept Net Energy or PCs in breach of this Agreement; (c) Emergency (except for an Emergency with respect to the Facility that is not also a Force Majeure); (d) Planned Outage; (e) Curtailed Product; or (f) Economic Curtailed Product, in each case as a result of which Supplier has failed to deliver Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor may be excused, Supplier shall calculate the amount of Net Energy that Supplier was unable to generate and deliver to Buyer at the Delivery Point solely as a result of such event, by summing for each hour of the period the difference between (i) the Net Energy that Supplier would have been capable of delivering if not for such event during each hour (not to exceed the Supply Amount) and (ii) the Delivered Amount during each hour (the "Excused Product"); provided that the amount of Curtailed Product shall be determined in accordance with Section 10.3 and the amount of Economic Curtailed Product shall be determined in accordance with Section 10.4. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If Buyer disagrees with the calculation of Excused Product, then the Excused Product will be determined through the Dispute resolution provisions of Article 21.

### 3.7 PC Shortfall; PC Replacement Costs.

- 3.7.1 If after the PC Administrator issues all the PC statements or certificates for any Measurement Period there is a PC Shortfall, then Supplier shall pay Buyer for the replacement costs and any Penalties associated with such PC Shortfall (collectively, the "PC Replacement Costs"). Subject to the last sentence of this Section 3.7.1, for purposes of this Agreement a "PC Shortfall" shall occur in any Measurement Period if the sum of all Delivered PCs is less than the product of (a) 0.90 multiplied by (b) an amount equal to (i) the sum of the Yearly PC Amount for the Contract Years in such Measurement Period minus (ii) the total amount of PCs associated with Excused Product during such Measurement Period. For purposes of this Agreement, a "PC Shortfall Amount" with respect to any Measurement Period means: (A) the sum of the Yearly PC Amount for the Contract Years in such Measurement Period; minus (B) the total amount of PCs associated with Excused Product during such Measurement Period; minus (C) the

Delivered PCs during such Measurement Period. If the calculation of the PC Shortfall Amount set forth in this Section 3.7.1 yields an amount of zero or less for any Measurement Period, then no PC Shortfall will be deemed to exist with respect to such Measurement Period.

3.7.2 The PC Replacement Costs shall be determined by Buyer exercising its reasonable discretion based on the estimated cost of purchasing PCs to replace the PC Shortfall Amount from the same resource type with a comparable expiration date or the cost of replacing the PC Shortfall Amount with PCs of Buyer's choice already in Buyer's PC Account; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Penalties allocable to Supplier's proportionate amount of Buyer's aggregate shortfall under the applicable Portfolio Standard (factoring in Supplier's shortfall in prior years carried forward as a deficit or reducing the surplus in such prior years).

3.7.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.7 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.7 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

3.7.4 All information used by Buyer to establish PC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide reasonable access to all such information supporting calculations within five (5) Business Days of Supplier's request for such information. Supplier agrees to execute a confidentiality agreement regarding the review of this information upon request by Buyer.

3.7.5 For any Measurement Period, Buyer, at its sole option, may allow Supplier to meet its PC Replacement Cost obligation by transferring a quantity of PCs to Buyer in the amount of no less than the PC Shortfall Amount. Such PCs shall be from the same resource type with a comparable expiration date as the PCs that should have been delivered to Buyer under this Agreement.

3.8 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by five-tenths of one percent (0.5%). No later than January 1 of each Contract Year Buyer shall deliver to Supplier revised Exhibits 13 and 18 which shall reflect such reductions, and effective as of January 1 of each Contract Year this Agreement shall automatically be amended to substitute such revised Exhibits 13 and 18 for the then existing Exhibits 13 and 18.

## 4. PRICE OF PRODUCT

### 4.1 Product Payments. Supplier shall be paid for the Product as follows:

#### 4.1.1 Prior to the Commercial Operation Date.

4.1.1.1 On and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Facility, other than Excess Energy (which shall not be compensable) (“Test Energy”), shall be paid for by Buyer at the lesser of: (i) fifty percent (50%) of the applicable Product Rate; or (ii) the Mead for each Delivery Hour of Test Energy (“Test Product Rate”).

4.1.1.2 Notwithstanding the above, if Buyer requests Supplier to deliver Provisional Energy and Supplier elects to deliver Provisional Energy and delivers written notice from Supplier to Buyer that it is delivering Provisional Energy in accordance with Section 3.4.4. Buyer shall pay Supplier seventy-five percent (75%) of the applicable Product Rate (“Provisional Rate”) for such Provisional Energy.

4.1.1.3 Provisional Energy shall be distinguished from Test Energy in so far as Provisional Energy is for a determined amount of energy provided as the Facility is capable of consistently generating such amounts of energy, whereas Test Energy is energy generated after the Operation Date and prior to Commercial Operation that is needed to commission the Facility. Supplier shall provide notice when Provisional Energy is available and Buyer and Supplier shall mutually agree to the date and time when Provisional Energy shall be supplied in accordance with Section 3.4.4. Five (5) Business Days prior to the start of each month Supplier shall provide notice to Buyer with an estimate of the forecasted amounts of Test Energy and Provisional Energy for that month with correlated meter data for actual amounts of Test Energy and Provisional Energy amounts to be provided with invoicing. Such determination shall be subject to verification by Buyer in the exercise of its reasonable discretion.

#### 4.1.2 Subsequent to the Commercial Operation Date.

4.1.2.1 All Product associated with Delivered Amounts of Net Energy from the Facility, other than Excess Energy, shall be paid for by Buyer at the applicable Product Rate set forth in Exhibit 2A and based on the quantity of Net Energy; provided, however, that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Product associated with Delivered Amounts of Net Energy;

provided further that Supplier shall be paid at the Test Product Rate for the month in which the Commercial Operation Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16<sup>th</sup>) day of such month.

4.1.2.2 All Product associated with Economic Curtailed Product shall be paid for at the Product Rate.

4.1.2.3 All Product associated with Excess Energy shall be paid for at the Test Product Rate.

4.1.3 No payment shall be owing to Supplier for any Product associated with Energy that is for any reason not Net Energy except as otherwise provided in Section 4.1.2..

4.1.4 Buyer shall not be required to accept from Supplier any Product associated with Delivered Amounts of Net Energy from the Facility delivered during any Delivery Hour in excess of the Maximum Amount, and no payment shall be owing to Supplier for any Product associated with Delivered Amounts of Net Energy from the Facility accepted by Buyer during any Delivery Hour in excess of the Maximum Amount.

4.2 Excused Product. Buyer shall not pay for Product comprising Excused Product except for Economic Curtailed Product.

4.3 Tax Credits. The Parties agree that neither the Product Rate, nor the Test Product Rate are subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Supplier or the Facility in whole or in part, or Supplier or its investors are unable to benefit from any Tax Credits. Supplier shall bear all risks, financial and otherwise, throughout the Term, associated with Supplier's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Supplier's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Supplier's obligation to deliver Net Energy and Product, shall be effective regardless of whether the sale of Energy or Net Energy from the Facility is eligible for, or receives Tax Credits during the Term.

## **5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS**

5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.

5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Facility, including Renewable Energy Benefits associated with Energy for Station Usage. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or Person and otherwise to cause the

Renewable Energy Benefits to vest in Buyer, without further compensation, including: (a) taking all actions necessary to register or certify any Renewable Energy Benefits or the Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise) and WREGIS; (b) causing the automatic transfer of the Renewable Energy Benefits derived from the Facility to Buyer (pursuant to NAC 704.8927 or otherwise); (c) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable; and (d) cooperating in any registration by Buyer of the Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Facility, including providing copies of all such information as Buyer reasonably requires for such registration. Without limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to cooperate with Buyer in all respects to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer (or its designee) will be entitled to claim Renewable Energy Benefits in any jurisdiction in connection with the Facility. All representations and warranties made by Supplier with respect to Renewable Energy Benefits are freely transferrable by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof.

5.1.2 On or before January 31 of each year following the Operation Date, Supplier, as owner or operator of the Renewable Energy System, shall deliver to Buyer a written attestation for the prior year that no part of the Renewable Energy Benefits: have been or will be (a) used for or by any Person to obtain renewable energy credit in any state or jurisdiction, except for Buyer pursuant to this Agreement; (b) sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and (c) included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction, pursuant to Chapter 704 of the NAC. No Person other than Buyer (or its designee) will be entitled to claim Portfolio Energy Credits, Renewable Energy Benefits (or equivalents in any jurisdiction) in connection with the Facility.

5.2 Injunction. If any Person other than Buyer (or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and Supplier hereby in advance agrees: (a) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 5.2; and (b) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such

Renewable Energy Benefits (including joining with or otherwise assisting Buyer in seeking the relief described in clause (a)).

- 5.3 Transfers. Buyer shall be entitled to PC Replacement Costs for Renewable Energy Benefits associated with any Energy for which WREGIS Certificates, PCs or any part of the Renewable Energy Benefits that are not delivered to Buyer. Supplier shall promptly give Buyer copies of all documentation it submits to WREGIS or PUCN or otherwise with respect to Renewable Energy Benefits. Further, in the event of the promulgation of a scheme involving any part of the Renewable Energy Benefits administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Supplier shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Renewable Energy Benefits belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the Renewable Energy Benefit Reporting Rights, Buyer may report under such program that all Renewable Energy Benefits purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

## **6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; EARLY PURCHASE OPTION; END OF TERM PURCHASE OPTION**

### **6.1 Right of First Offer ("ROFO").**

- 6.1.1 Except in accordance with this Section 6.1.1, other than a Permitted Transaction, Supplier: (a) shall not sell, transfer or offer or negotiate to sell or transfer, the Facility; and (b) shall cause any upstream direct or indirect equity owner of Supplier (together with Supplier, each a "ROFO Seller") not to sell, transfer or offer or negotiate to sell or transfer, any ownership interest in Supplier (the Facility and ownership interests in Supplier, each the "Offered Interests") (each of (a) and (b), a "Restricted Transaction") without the prior consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed. If a ROFO Seller intends to enter into a Restricted Transaction, Supplier shall provide Buyer with written notice of same (a "Seller ROFO Notice"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within fifteen (15) days after receipt of the Seller ROFO Notice, Buyer shall notify Supplier in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the "Buyer ROFO Notice"). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Supplier shall cause ROFO Seller to, and Buyer shall, negotiate continuously, diligently, exclusively and in good faith, the terms of a purchase by Buyer or its designee of the Offered Interests for a period of up to ninety (90) days following ROFO Seller's receipt of the Buyer ROFO Notice (such fifteen (15)-day initial period as extended, if applicable, by such ninety (90)-day negotiation period, collectively, the "ROFO Period"). If Buyer elects not to negotiate with ROFO Seller, or, after commencing

negotiations, if Buyer determines that it will not purchase the Offered Interests, then, in either case, Buyer shall promptly notify Supplier thereof, and the ROFO Period shall terminate as of the date that any such notice is provided by Buyer. If PUCN approval of such purchase of the Offered Interests is required, Buyer shall request approval from the PUCN for such purchase as early as reasonably practicable during the ROFO Period.

6.1.2 In the event that (a) Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 6.1.1; or (b) negotiations commence pursuant to Section 6.1.1 but Buyer thereafter notifies Supplier that it has determined it will not purchase the Offered Interests; or (c) definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, then ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including Section 6.1.3 and the provisions of Article 23. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on material terms (including with respect to price) less favorable to ROFO Seller than such terms, if any, as were offered by Buyer during the ROFO Period, other than any less favorable terms arising as a result of Buyer's role as both Buyer under this Agreement and co-owner (including with respect to governance and voting rights) in the case of a Restricted Transaction in which Buyer would become an indirect co-owner of the Facility.

6.1.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests by entering into definitive transaction documents within one hundred eighty (180) days following the expiration of the ROFO Period, ROFO Seller and any Offered Interests shall again be subject to this Section 6.1 with respect to any Restricted Transaction.

6.2 Early Purchase Option. Supplier hereby grants to Buyer options to purchase ("Early Purchase Option") on a date chosen by Buyer during the six (6) months after the Facility's 10<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> anniversaries of the Commercial Operation Date for an amount equal to the greater of (a) Fair Market Value and (b) (i) with respect to the 10th anniversary of the Commercial Operation Date, three-hundred twelve million dollars (\$312,000,000), and (ii) with respect to the 15th anniversary of the Commercial Operation Date, two-hundred ninety-one million two-hundred thousand dollars (\$291,200,000), and (iii) with respect to the 20th anniversary of the Commercial Operation Date, two-hundred sixty million dollars (\$260,000,000), which option may be exercised by Buyer providing written notice to Supplier no less than one-hundred and eighty (180) days before the applicable anniversary.

6.3 Purchase Option at the End of Term. Supplier hereby grants to Buyer the option to purchase the Facility at the end of the Term for an amount equal to the greater of (a) the Fair Market Value and (b) two-hundred eight million dollars (\$208,000,000) (the "Final Purchase Option"), which option may be exercised by Buyer providing

written notice to Supplier no less than one-hundred and eighty (180) days prior to the end of the Term of Buyer's election to exercise such option.

- 6.4 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises the Early Purchase Option, the Final Purchase Option or otherwise agrees to purchase the Facility pursuant to Section 6.1, then such purchase shall occur pursuant to a form of purchase and sale agreement prepared by Buyer which shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to Buyer and Supplier. It shall be a condition of any such purchase that each Party obtains all necessary Governmental Approvals and, notwithstanding any language to the contrary in this Agreement, each Party shall be given sufficient time to obtain such approvals in accordance with applicable statutes and regulations. Pursuant to the purchase and sale agreement, Supplier will take all actions necessary to transfer by deed, bill of sale, or both, the Facility to Buyer, as well as all other improvements placed on the Project Site by Supplier that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance created by or on behalf of Supplier or its Affiliates, other than customary permitted encumbrances. In addition, Supplier will assign to Buyer all transferrable Governmental Approvals applicable to the Facility and Required Facility Documents, and all transferrable warranties for the Facility. Supplier shall cooperate with Buyer to assign and enforce any and all warranties that apply to the Facility or any of its component parts, which obligation shall survive the termination of this Agreement.
- 6.5 Due Diligence; Cooperation; Governmental Approvals; Notice of Rights. Supplier will provide in a timely manner information regarding the Offered Interests which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Offered Interests pursuant to this Article 6. Supplier shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer's efforts to properly account for and obtain any necessary Governmental Approvals with respect to the purchase of the Offered Interests pursuant to this Article 6. Notwithstanding anything in this Agreement or any definitive transaction documentation, neither Party shall be obligated to proceed with the purchase of any Offered Interests pursuant to this Article 6 if such Party does not receive all necessary Governmental Approvals in connection with such transaction. Supplier shall put any Person with which it enters into discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in this Article 6. Buyer shall be permitted to file a notice of the rights contained in this Article 6 with respect to the Project Site.
- 6.6 Termination of Agreement. Upon the acquisition of the Facility by Buyer pursuant to Section 6.4, this Agreement shall terminate and neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

## **7. METERING, INVOICING AND PAYMENTS**



## 7.1 Metering.

- 7.1.1 Meters. Buyer shall, at Supplier's cost, provide, install, own, operate and maintain all Meter(s) in good operating condition. The metering system design shall be subject to Buyer's approval and shall be submitted to Buyer not later than Supplier's completion of the Project Milestone in Section (A) of Exhibit 6. The meter system shall have Buyer specified equipment to connect with Buyer's automated meter database. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional, shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity and account for losses from the meter location to the Delivery. The Meters shall also be used for, among other things, metering Station Usage of the Facility. Supplier, at its expense, may install additional check meters. Supplier shall not install any check-metering equipment on or connected to Buyer-owned facilities including instrument transformers or metering circuitry wiring. Supplier shall, at its sole expense, install any additional or different Meters or related equipment necessary to comply with the requirements of Transmission Provider, any Electric System Authority or any Governmental Authority.
- 7.1.2 WREGIS Metering. Supplier shall cause, at its sole cost and expense, the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Supplier shall be responsible to obtain all qualified reporting entity services required by WREGIS at Supplier's expense should Buyer not in its sole and absolute discretion provide them.
- 7.1.3 Location. Meters shall be installed at the location(s) specified in Exhibit 5, or as otherwise may be reasonably determined by Buyer to effectuate this Agreement.
- 7.1.4 Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expense, and liability associated with any such interference with the Meters. Metering requirements shall apply such that there is no impact on the infrastructure and output associated with the Facility due to the presence of any other contiguous project.
- 7.1.5 Meter Testing. Meters shall be tested at least once every two (2) years by Buyer. Either Party may request a special test of Meters or check meters, but the requesting Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both

Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) Business Days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 7.1.1, Supplier shall test and calibrate each such meter at least once every two (2) years. Supplier's Operating Representative shall provide fifteen (15) Business Days prior notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other with as much advance notice as practicable.

- 7.1.6 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; provided, however, that the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Supplier within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section 7.1.6 shall accompany Supplier's next Billing Period statement.
- 7.1.7 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, that the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Delivered Amount. In such event, such payments made based upon the Parties' estimate of the Delivered Amount shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the Dispute shall be resolved in accordance with Article 21.
- 7.1.8 Weather Meter. Supplier shall, at Supplier's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a device for the measurement of weather conditions relevant to the generation of Energy at the Project Site (the "Weather

Meter”), provided that Supplier shall not select the type of Weather Meter without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than twelve (12) months prior to the Commercial Operation Date, the Parties shall agree on the location of the Weather Meter and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Meter.

## 7.2 Invoices.

- 7.2.1 Monthly Invoicing and Payment. On or before the 10<sup>th</sup> day of each month, Supplier shall send to Buyer an Invoice for the prior month (a “Billing Period”). Supplier shall calculate the Invoice based upon Meter data available to Supplier and as set forth in Exhibit 2B. Any correction or Dispute with respect to an Invoice is waived unless Buyer is notified within twelve (12) months, or Supplier is notified within thirty-six (36) months, after the Invoice is rendered or any specific adjustment to the Invoice is made. If an Invoice is not delivered to Buyer within twelve (12) months after the close of the Billing Period, the right to payment for such Billing Period is waived.
- 7.2.2 Replacement PC Invoice Calculation. In addition to the requirements for monthly Invoices set forth in this Section 7.2, if after the PC Administrator issues its final PC statement covering any Measurement Period and a PC Shortfall (as determined in accordance with Section 3.7.1) exists, Buyer shall send to Supplier an Invoice for such Measurement Period, which shall include the calculations set forth in Exhibit 2C.
- 7.2.3 Amounts Owing to Buyer. The Invoice referred to in Section 7.2.1 shall offset any amounts owing to Buyer with amounts owing to Supplier, and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Buyer may prepare and send to Supplier an Invoice for amounts owing to Buyer under this Agreement, and any such amounts will be payable to Buyer within ten (10) Business Days from Supplier’s receipt of such Invoice, subject to the terms and provisions of Section 7.2.5.
- 7.2.4 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to the instructions stated in Exhibit 4. Payment will be made on or before the later of the twentieth (20<sup>th</sup>) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20<sup>th</sup>) day does not fall on a Business Day) or ten (10) Business Days from receipt of Invoice.
- 7.2.5 Examination and Correction of Invoices. As soon as practicable either Party shall notify the other Party in writing of any alleged error in an Invoice.

- 7.2.5.1 If a Party notifies the other Party of an alleged error in an Invoice, the Parties agree to use good faith efforts to reconcile the billing and mutually agree on the appropriate correction, if any.
- 7.2.5.2 If a correction is determined to be required, the invoicing Party shall provide an adjusted Invoice to the invoiced Party. If such error results in an additional payment to the invoicing Party, the invoiced Party shall pay such invoicing Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the adjusted Invoice. If such error resulted in a refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to the invoicing Party.
- 7.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a.
- 7.4 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2.
- 7.5 Parties' Right to Offset. Either Party shall have the right to offset any amounts owed to the other Party under this Agreement including amounts owed by Supplier to Buyer for Standby Service.
- 7.6 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Net Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Net Energy or its delivery up to or at the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 18 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 7.6.

## **8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS**

- 8.1 Construction of Facility. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practices and the Project Milestones and to ensure that: (a) Supplier is capable of meeting its supply and delivery obligations with respect to Product over the Term; (b) the Facility is consistent with the technical specifications set forth in Exhibit 11; (c) the Facility is at all times considered a Renewable Energy System; and (d) the Facility is at all times in

compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten (10) days of such survey becoming available to Supplier, but in no event later than the issuance of the Notice to Proceed in accordance with Exhibit 6. Supplier shall provide to Buyer in a form satisfactory to Buyer: (y) not later than the Project Milestone described in Section (A) of Exhibit 6, a completed version of Exhibit 11 and Exhibit 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as-built. At Buyer's request, Supplier shall provide Buyer with copies of the Construction Contract and any documentation and drawings reasonably requested by Buyer, redacted of any pricing information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement, provided that Supplier shall use commercially reasonable efforts to secure in the Construction Contract the ability to disclose the terms of the Construction Contract other than pricing information. The Facility shall not share facilities with another facility, whether an Affiliate of Supplier or not, other than the Shared Facilities. The Facility and its mechanical components, buildings, and infrastructure (other than the Shared Facilities) shall be used solely for the purpose of generating, Energy under this Agreement. The provisions governing the use and ownership of the Shared Facilities shall be set forth in one or more agreements by and among Supplier and the other owners of such Shared Facilities (each, a "Shared Facilities Agreement"), which shall be in form and substance substantially similar to the agreement provided to Buyer as of the Effective Date, except as may be required to account for the particular Shared Facilities and arrangements required by the Facility.

8.2 Performance of Project Milestones. Supplier shall complete each Project Milestone specified in Exhibit 6 on or before 16:00 hours PPT on the date specified for each Project Milestone listed in Exhibit 6 (as such dates may be extended in accordance with this Agreement).

8.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing, pursuant to Section 29.1, documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion. Such documentation shall be provided within thirty (30) days of such completion but not later than the date specified for such Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation provided under this Section 8.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) Business Days of receipt of the documentation. If Buyer does not acknowledge receipt or provide written acceptance or denial of any Project Milestone within fifteen (15) Business Days, then such Project Milestone will be deemed to occur on the date that such documentation was provided to Buyer. Failure of Supplier to achieve a Critical Project Milestone on or before the scheduled date (or, in the case of (a) the Notice to Proceed Deadline, after expiration of the applicable period for which Notice to Proceed Daily Delay Damages are owed by Supplier pursuant to Section

8.5.1, or (b) the Commercial Operation Deadline, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.2) will constitute an Event of Default as provided in Article 24. If any Project Milestone (other than a Critical Project Milestone) is not completed on or before the date specified in Exhibit 6 (as may be extended in accordance with this Agreement), Supplier will (i) inform Buyer of a revised projected date for the occurrence or completion of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone) and (ii) provide Buyer with a written report containing Supplier's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Supplier intends to undertake to ensure the timely achievement of the Commercial Operation Date. So long as Supplier complies with the preceding sentence, no failure of Supplier to achieve a Project Milestone (other than a Critical Project Milestone) on or before the scheduled date will constitute an Event of Default.

8.2.2 Progress Towards Completion. Supplier shall notify Buyer's Contract Representatives promptly (and in any event within ten (10) Business Days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with Buyer to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.

### 8.3 Commercial Operation Date.

8.3.1 Notice of Testing. Supplier shall notify Buyer's Contract Representatives at least ten (10) Business Days prior to the commencement of any performance tests required by the Construction Contract, including any performance tests required by Exhibit 7. Buyer shall have the right to witness all tests or have Buyer's representatives witness all tests. The presence of Buyer or a Buyer representative shall not be construed as an obligation on Buyer's part to design, conduct, monitor or endorse any test results or as a ratification or acceptance thereof. Buyer shall be deemed to waive its right to be present at the performance tests if Buyer fails to appear at the scheduled time for the performance tests.

8.3.2 Certifications. Within five (5) Business Days of the successful completion of the performance tests pursuant to Exhibit 7, Supplier shall provide Buyer with written notice stating when Supplier believes that the Facility has achieved Commercial Operation, including the following written certifications.

8.3.2.1 A certification by a duly authorized officer of Supplier stating the following:

“I, [Name], in my capacity as the duly appointed [Title] of [Supplier] (“Supplier”) hereby certify, on behalf of Supplier that: (a) the Facility has been constructed in accordance with Good Utility Practice and the Facility has delivered Net Energy to and at the Delivery Point; (b) all of the requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6 and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [\_\_\_\_], (“Agreement”) have been satisfied; (c) I am authorized to act on behalf of and bind Supplier with respect to this certificate; (d) Supplier has received the Supplier Required Regulatory Approvals listed in Exhibit 10 and has entered into or obtained all Required Facility Documents as listed in Exhibit 12, true, correct and complete copies of which are attached (other than confidential or commercial terms which have been redacted); and (e) Supplier acknowledges that Buyer is relying on this certification in connection with carrying out its obligations under the Agreement and Supplier will indemnify Buyer for any inaccuracy related to this certification.”

8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer confirming: (1) the nameplate capacity rating of the Facility, measured at the Delivery Point, at the anticipated time of Commercial Operation in MW (“Certified Nameplate Capacity Rating”) and (2) that the Facility is able to generate and deliver electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Operating Procedures; and, (3) performance tests required by Exhibit 7 have been successfully completed. The Certified Nameplate Capacity Rating must not be less than 245 MW.

8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer stating that, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System and able to deliver Net Energy consistent with the terms of this Agreement.

8.3.2.4 An opinion from an attorney licensed in the state of Nevada that is not an employee of Supplier (or any Affiliate) and has no financial interest in the Facility addressed to Buyer with respect to such customary matters as Buyer may reasonably request and in substantially the form attached hereto as Exhibit 24.

8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to Dispute the Commercial Operation Date by written notice to Supplier. In the event of such a Dispute, Buyer and Supplier will attempt in good faith to resolve the Dispute. If the

Parties are unable to resolve the Dispute within fifteen (15) Business Days' after Buyer's notice of Dispute, then either Party may seek resolution of the Dispute in accordance with Article 21. Notwithstanding the foregoing, Buyer's failure to Dispute the certification will in no way affect its rights to indemnification for any inaccuracy related to the certification, including overpayments that may be paid by Buyer due to such inaccurate certification.

#### 8.4 Failure to Achieve Commercial Operation.

8.4.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and Supplier fails to promptly pay Daily Delay Damages as provided in Section 8.5.2, Buyer may elect to terminate this Agreement and, Supplier shall pay to Buyer, and Buyer shall be entitled to collect or retain, as applicable, the full Development Security amount as liquidated damages for Supplier's failure to meet its obligations prior to the Commercial Operation Deadline. Upon Buyer's collection of the full Development Security amount from Supplier (or from security provided on Supplier's behalf), this Agreement may be terminated pursuant to Section 24.1.6, except those obligations expressly provided to survive termination pursuant to Section 2.4. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that retention by Buyer of the full Development Security is reasonable as liquidated damages and is not a penalty.

8.4.2 [Reserved] .

8.4.3 Except as otherwise provided herein, the provisions of this Section 8.4 are in addition to, and not in lieu of, any of Buyer's rights or remedies under this Agreement, including Article 24.

#### 8.5 Delay Damages.

8.5.1 In the event Supplier fails to issue a Notice to Proceed for the Facility by the Notice to Proceed Deadline, then for each day up to, but not exceeding, one hundred eighty (180) days thereafter (the "NTP Delay Damages Period") that Supplier fails to issue the Notice to Proceed, Supplier shall be obligated to pay liquidated damages to Buyer in the amount of the Notice to Proceed Daily Delay Damages. If Notice to Proceed has not been issued by Supplier by the expiration of the NTP Delay Damages Period, Buyer may terminate this Agreement pursuant to Section 24.1.6, provided that Buyer provides Supplier with written notice of such termination within thirty (30) days of the expiration of the NTP Delay Damages Period. Notwithstanding anything to the contrary herein, Supplier's aggregate liability in the event of a termination for failure to achieve Notice to Proceed by the expiration of the NTP Delay Damages Period shall in no event exceed



the aggregate amount of the Development Security. If the Agreement is not terminated by Buyer in accordance with the foregoing, and Supplier nonetheless thereafter timely achieves the Commercial Operation Date, then Buyer shall refund the amount of liquidated damages paid by Supplier under this Section 8.5.1.

8.5.2 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, then for each day up to, but not exceeding, one-hundred and eighty (180) days, that Supplier fails to achieve Commercial Operation, Supplier shall be obligated to pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have been accumulated for one hundred and eighty (180) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement pursuant to Section 24.1.6. Notwithstanding anything to the contrary herein, Supplier's aggregate liability in the event of a termination for failure to meet the Commercial Operation Date within one-hundred and eighty (180) days following the Commercial Operation Deadline shall in no event exceed the aggregate amount of the Development Security. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Periods immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose.

8.5.3 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Notice to Proceed Deadline or the Commercial Operation Deadline, and, accordingly, the Parties agree that payment by Supplier of each of the Notice to Proceed Daily Delay Damages and of Daily Delay Damages is reasonable as liquidated damages, and is not a penalty.

## 8.6 Nameplate Capacity.

8.6.1 If the Certified Nameplate Capacity Rating is less than 245 MW, Supplier shall provide Buyer a one-time payment in an amount equal to (a) subtracting (i) the Certified Nameplate Capacity Rating from (ii) 245 MW, multiplied by (b) Deficit Damages Rate per MW of difference ("Deficit Damages"). Supplier's total liability for Deficit Damages shall not exceed four-million nine-hundred eighty-thousand dollars (\$4,980,000). Deficit Damages, if any, shall be paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages: (1) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and (2) the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly. Such revisions and adjustments shall be memorialized in an amendment to this Agreement executed by the Parties.

- 8.6.2 If the Certified Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, but greater than 245 MW: (i) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and (ii) the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, Exhibits 13 and 18 shall be revised accordingly, and the purchase price for each Early Purchase Option and for the Final Purchase Option set forth in Sections 6.2 and 6.3 shall be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating. Such revisions and adjustments shall be memorialized in an amendment to this Agreement executed by the Parties.
- 8.6.3 If the Certified Nameplate Capacity Rating is greater than the Expected Nameplate Capacity Rating by greater than two percent (2%), which failure is not cured by Supplier within the applicable cure period set forth in Section 24.3, Supplier shall pay Buyer a one-time payment in an amount equal to one-half of the Development Security, paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. If Supplier fails to make such payment in a timely manner, Buyer may retain such amount from the Development Security or Operational Security, as applicable. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.
- 8.7 Modification. Without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion, Supplier shall not make any modification to the Facility that might reasonably be expected to: (a) expose Buyer to any additional liability or increase its obligations under this Agreement; (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third party; or (c) increase the Expected Nameplate Capacity Rating or the Certified Nameplate Capacity, generating capability, or the rate of production and delivery of Net Energy of the Facility. Any modifications for which Buyer has provided consent hereunder shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time, and the requirements of Article 11. If Supplier makes a modification to the Facility that requires Buyer's approval in accordance with this Section 8.7 and which is not approved by Buyer, in addition to any other remedy available to Buyer, Buyer shall be entitled to receive, as liquidated damages, the full amount of the Development Security or Operating Security, as applicable. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder, and, accordingly, the Parties agree that payment by Supplier of Development Security or Operating Security, as applicable, is reasonable as liquidated damages and is not a penalty.

- 8.8 Operation and Maintenance. Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure: (a) Supplier is capable of meeting its supply obligations over the Term; (b) the Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law. Supplier shall (x) maintain records of all operations of the Facility in accordance with Good Utility Practice, and (y) follow all regulations, directions and procedures of Buyer, Transmission Provider, any Electric System Authority and any other Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Facility. In the event of an inconsistency between any applicable procedures, Buyer may direct which procedures shall govern (or barring direction from Buyer, the more stringent procedure shall govern). Supplier shall use all reasonable efforts to avoid any interference with Buyer's operations. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and shall operate the Facility consistent with WECC, NERC, Buyer, Electric System Authority, Governmental Authority and Transmission Provider requirements.
- 8.9 Operation and Maintenance Agreement. No later than one hundred eighty (180) days prior to the Commercial Operation Date, if Supplier intends to subcontract any aspect of the operation of the Facility, Supplier shall provide a redacted copy of any proposed agreement between Supplier and such sub-operator which requires the sub-operator to operate the Facility in accordance with the terms hereof which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the sub-operator is a corporation, limited liability company or partnership in good standing with the State in which the Facility is located, which certificate shall be attached to this Agreement as part of Exhibit 15. If such sub-operator is not a Qualified Operator, Buyer shall have fifteen (15) days in which to notify Supplier of any objection to such proposed sub-operator, in which case Supplier shall not subcontract with such proposed sub-operator.
- 8.10 Right to Review. Buyer shall have the right to review during normal business hours and upon reasonable advance notice the relevant books and records of Supplier to confirm the accuracy of anything relating to this Agreement. Buyer is under no obligation to exercise any of these review rights. Buyer shall have no liability to Supplier for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or this Agreement.
- 8.11 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professionals or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts, including engineers, attorneys or accountants, that Supplier may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Supplier. In entering into this Agreement and the undertaking by Supplier of the obligations set forth herein, Supplier has investigated and determined that it

is capable of performing hereunder and has not relied upon the advice, experience or expertise of Buyer in connection with the transactions contemplated by this Agreement.

## 9. EMERGENCY

- 9.1 Compliance. Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, transmission operator or their successors, regarding the reduced or increased production of the Facility or otherwise in the event of any Emergency.
- 9.2 Notification. Supplier shall provide prompt oral and written notification to Buyer of any Emergency, including a description in reasonable detail of the Emergency and any actions undertaken to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service.
- 9.3 Due Care. In the event of an Emergency, Supplier shall take all reasonable actions to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service; provided, however, that Supplier shall give Buyer prior notice, if practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.
- 9.4 Not Excused Product. An Emergency declared by Supplier will not result in any Excused Product except to the extent the Emergency qualifies as an event of Force Majeure.
- 9.5 No Buyer Liability. Notwithstanding any provision to the contrary contained in this Agreement, Buyer shall have no obligation to pay Supplier in respect of any Product Supplier is unable to deliver or Buyer is unable to receive in accordance with the requirements of this Agreement due to an Emergency or Force Majeure.

## 10. CURTAILMENT

- 10.1 Compliance. Supplier shall obey all orders for curtailment of Energy by the Transmission Provider or any Electric System Authority.
- 10.2 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for or pay any damages associated with or impose any liability on Buyer with respect to, compliance or curtailment of Energy by Supplier made in response to any orders for curtailment provided for in Section 10.1, including in respect of Net Energy (or associated Renewable Energy Benefits) not delivered to the Delivery Point for any of the following reasons: (a) the interconnection between the Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part; (b) the Transmission Provider, Electric System Authority or Market Operator directs a general curtailment, reduction or re-dispatch of generation in the area (which would include the Net Energy), for any reason, even if such curtailment, reduction or re-dispatch directive is carried out by Buyer (acting in its capacity as Transmission Provider only), which

may fulfill such directive by acting in its sole discretion; (c) if Buyer curtails or otherwise reduces the Net Energy as directed by the Transmission Provider, Electric System Authority or Market Operator to operate within system limitations; (d) the Facility's Energy is not received because the Facility is not fully integrated or synchronized with the Transmission System; or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy at the Delivery Point.

10.3 Curtailed Product. The amount of Net Energy curtailed under Sections 10.1 or 10.2 ("Curtailed Product") shall be reasonably determined by Supplier after the curtailment has ended based upon the Net Energy that could have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of such curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Transmission Provider) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.3 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.

10.4 Economic Curtailment.

10.4.1 Buyer shall be permitted to require curtailment of Energy for economic reasons or otherwise refuse to take Product for economic reasons in accordance with the provisions of this Section 10.4 ("Economic Curtailment"). Buyer shall provide notice to Supplier of any Economic Curtailment, including the Delivery Hours in which Energy is to be curtailed, in accordance with the requirements of the Operating Procedures.

10.4.2 Supplier shall obey all orders for Economic Curtailment issued by Buyer in accordance with Section 10.4.1. The amount of Net Energy curtailed under this Sections 10.4.2 ("Economic Curtailed Product") shall be reasonably determined by Supplier after the Economic Curtailment has ended based upon the Net Energy that would have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of the Economic Curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Economic Curtailed Product that was not generated as a result of the Economic Curtailment. During any period of Economic Curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third party. Economic Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.4.2 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.

- 10.4.3 Buyer shall pay Supplier for each MWh of Economic Curtailed Product in accordance with Section 4.1.2.2.
- 10.4.4 For the avoidance of doubt, in no event shall curtailment of Energy pursuant to Section 10.3 be treated as Economic Curtailed Product.
- 10.5 Network Resource Designation. Within sixty (60) days after the Effective Date, Buyer will submit an application to Transmission Provider to designate the Facility as a Network Resource. Supplier will provide all information related to the Facility required for such application within thirty (30) days after the Effective Date. Buyer will provide a copy of such application to Supplier.

## 11. PLANNED OUTAGES

- 11.1 Approvals. Supplier shall request and obtain Buyer's prior written approval, which approval shall not be unreasonably withheld, before conducting any non-forced outage of the Facility or reducing the capability of the Facility to deliver the Supply Amount (each such reduction or outage, a "Planned Outage") so as to minimize the impact on the availability of the Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, and as may be otherwise restricted by Law.
- 11.2 Schedules. Planned Outages will be scheduled and conducted in accordance with the following:
- 11.2.1 Within ninety (90) days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the remainder of the year or upcoming Contract Year, as applicable. The proposed schedule will designate the Delivery Hours and amount (in MW) in which the Energy will be reduced in whole or in part by the proposed Planned Outages. Each proposed schedule shall include all applicable information, including the following: the month, day and Delivery Hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information. The total combined Delivery Hours of Planned Outages in any Contract Year shall not exceed four percent (4%) of the MWhs comprising the Annual Supply Amount (prorated for the Stub Period, if any) unless otherwise approved by Buyer.
- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either require modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requires modifications to the proposed schedule, then Supplier shall promptly circulate a revised schedule of Planned Outages to Buyer consistent with Buyer's requested modifications. Product not delivered to Buyer during periods of Planned Outages, up to the MW specified, (a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in

accordance with this Article 11, and (b) will not comprise Excused Product to the extent any outage period or MW exceed that set forth in the Planned Outage schedule approved by Buyer in accordance with this Article 11, or is not approved by Buyer. Supplier shall make reasonable efforts to accommodate any proposed revisions by Buyer to the approved Planned Outage schedule.

11.2.3 Regardless of approval of a Planned Outage, Supplier shall not start a Planned Outage on the Facility without confirming the approved Planned Outage with Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.

11.2.4 If following a notice pursuant to Section 11.2.3, Buyer requests that Supplier not undertake an approved Planned Outage as scheduled, for reasons other than Force Majeure or Emergency, then Supplier may promptly deliver to Buyer a written reasonable estimate of the costs expected to be incurred as a result of Supplier not undertaking the Planned Outage as scheduled. If Buyer agrees to the estimated costs, then Supplier shall not undertake the Planned Outage, and Buyer shall reimburse Supplier for its documented out-of-pocket costs actually incurred by Supplier in connection with not undertaking such Planned Outage (not to exceed the written estimated costs prepared by Supplier and delivered to Buyer). Any Planned Outage that is not instituted pursuant to this Section 11.2.4 will be rescheduled to occur in the same Contract Year in which it was originally scheduled, in accordance with Section 11.2.2.

## **12. REPORTS; OPERATIONAL LOG**

12.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating any violation of Laws which relate to Supplier or construction, operation or maintenance of the Facility. Supplier shall keep Buyer apprised of the status of any such matters.

12.2 Notification of Facility Regulatory Status. Supplier shall notify Buyer of the regulatory status of the Facility as an EWG no later than ninety (90) days prior to the Operation Date, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such designation (as such approvals are set forth in Exhibit 10). Following the Operation Date, Supplier shall notify Buyer, as soon as practicable, of any changes in regulatory status of the Facility, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such changed regulatory status (as such approvals are set forth in Exhibit 10) and reasonable support data requested by Buyer.

12.3 Notices of Change in Facility. In addition to any consent required pursuant to Section 8.7, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics,

or major generation components (such as turbines, generators, inverters, solar panels or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Nameplate Capacity Rating, generating capability, the rate of production and delivery of Net Energy, and other Product, interconnection and transmission issues, and any additional information requested by Buyer.

#### 12.4 Project Reports and Project Review Meetings.

12.4.1 Prior to the Commercial Operation Date. Prior to the Commercial Operation Date, Supplier shall provide to Buyer a monthly project report, which shall include the following: status in obtaining Project Milestones, including level one schedule; progress in obtaining any Governmental Approvals in connection with achieving the Commercial Operation Date; and a discussion of any foreseeable disruptions or delays. The monthly project reports will be provided to Buyer no later than ten (10) Business Days after expiration of the previous month. The Parties shall conduct meetings every six (6) months (or more frequently if requested by Buyer) to review this data and any information related to Supplier's completion of or progress toward the Project Milestone activities listed in Exhibit 6. In addition to any other requirements for Commercial Operation under this Agreement, Supplier shall: (a) provide notice to Buyer of its best estimate of the projected Operation Date and the Commercial Operation Date; (b) notify Buyer as soon as Supplier becomes aware of any changes in such projected dates; and (c) coordinate with Buyer regarding the commencement of operation of the Facility. In addition to the foregoing, Supplier will provide Buyer with such other operational or technical data as Buyer may reasonably request and as may be reasonably necessary to determine Supplier's compliance with its obligations hereunder and its progress toward Commercial Operation.

12.4.2 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer within thirty (30) days of the end of each quarter throughout the Term, in electronic format, a report which shall include all pertinent information in connection with the Facility, including: (a) all weather data from any collection device measuring data with respect to the Facility (such as a met tower or similar measurement device); (b) any available site condition reports; (c) all reporting information maintained in the operational log and any other SCADA data from the Facility; and (d) any reports pertaining to the Facility resource and such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology. In addition, Supplier shall provide remote access to Buyer for the Facility's operations and maintenance data for purposes of Buyer integrating such data into Buyer's Monitoring & Diagnostics center.

12.4.3 Operations Log. Supplier shall maintain in accordance with Good Utility Practice an operations log, which shall include: (a) all Planned Outages and



unplanned outages, alarms, circuit breaker trip operations, partial deratings of equipment, mechanical impairments defects or unavailability with respect to generating equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); (c) the Delivered Amounts for the Stub Period and each Contract Year; and (d) any other significant event or information related to the operation of the Facility or the delivery of Net Energy or other Product. The operations logs shall be available for inspection by Buyer upon forty-eight (48) hours' notice together with all data maintained by Supplier as support for such logs. Supplier shall be responsible for maintaining sufficient evidentiary support in order to document the information contained in such operation logs.

- 12.5 Financial Information. Within thirty (30) days of Buyer's written request, Supplier shall provide Buyer with copies of Supplier's most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles.
- 12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer, provide Buyer with data collected by Supplier related to the construction, operation and maintenance of the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer or an Affiliate thereof. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge after due inquiry. Supplier shall use best efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting Governmental Authority.
- 12.7 Accounting Standards. If Buyer or one of its Affiliates determines that it may hold a variable interest in Supplier under the Accounting Standards Codification ("ASC") 810, Consolidation of Variable Interest Entities, or requirements of Law, but it lacks the information necessary to make a definitive conclusion, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under ASC 810 or requirements of Law. If Buyer or its Affiliate determines that, it holds such a variable interest in Supplier, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 or applicable Law. Supplier shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 12.7 is subject to Buyer's rights to disclose such information pursuant to this Agreement and pursuant to any applicable requirements of Law.

- 12.8 Documents to Governmental Authorities. Supplier shall promptly provide to Buyer a copy of any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility.
- 12.9 Environmental Information. Supplier shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under any Required Facility Document listed in Exhibit 12 or otherwise in effect with respect to the Facility. Supplier shall further provide Buyer with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. As soon as it is known to Supplier, Supplier shall disclose to Buyer, the extent of any actual or alleged violation of any Environmental Laws arising out of the construction or operation of the Facility, or the actual or alleged presence of Environmental Contamination at the Facility or on the Project Site, or occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

### **13. COMMUNICATIONS**

- 13.1 Supplier's Operating Representative. Supplier's Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol with Buyer's Operating Representative at Buyer's operations center and with Buyer's scheduling personnel, as listed on Exhibit 4, to maintain communications between personnel at the Facility and Buyer's Operating Representative, Buyer's schedulers and Electric System Authorities at all times.
- 13.2 Communications. In connection with meeting its obligations pursuant to this Article 13, Supplier shall provide at its expense:
- 13.2.1 For the purposes of telemetering, a telecommunications circuit from the Facility to Buyer's operations center, or other readily accessible real-time performance monitoring (e.g., a web-based performance monitoring system);
- 13.2.2 Two (2) dedicated T1 lines for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center; and
- 13.2.3 Equipment to transmit to and receive facsimiles and email from Buyer and the Balancing Authority Area Operator, including cellular telephones.

### **14. SCHEDULING NOTIFICATION**

- 14.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative notices containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount and the

availability of Product otherwise, in accordance with the Availability Notice procedures in Section 14.2.

14.2 Availability Notice Procedures.

14.2.1 No later than 05:00 PPT each day or as otherwise specified by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice in the form set forth in Exhibit 8. The Availability Notice will cover WECC scheduling practices for day-ahead energy or such other period specified by Buyer consistent with Good Utility Practice. The Parties agree to modify the Availability Notice as may be required consistent with other scheduling practices which may be applicable to the Facility from time to time.

14.2.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as soon as practical after becoming aware of (a) an expected Derating; or (b) an expected increase of Delivered Amount.

14.2.3 The information in the Availability Notice, including the forecasted Delivered Amount, will be Supplier's good faith forecast and will indicate any Delivery Hour for which the Delivered Amount is expected to be less than or greater than the Supply Amount.

14.2.4 In the event of a Derating of the Facility, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; (b) the magnitude of the Derating; (c) the Delivery Hours during which the Derating is expected to apply; and (d) the cause of the Derating.

**15. COMPLIANCE**

15.1 Laws. Each Party shall comply with all relevant Laws in connection with the performance of its obligations under this Agreement. Supplier shall comply with all Laws to ensure that, the Facility is at all times a Renewable Energy System and Supplier is at all times in compliance with all requirements of a renewable energy generator as set forth in the Renewable Energy Law, and shall, at its sole expense, maintain in full force and effect all relevant material Governmental Approvals required for the maintenance of the Facility and the performance of its obligations under this Agreement. Supplier shall be responsible for any costs associated with the Clean Power Plan, if any, including for obtaining, at its sole cost, any allowances that may be required under applicable Law pertaining to the Clean Power Plan, in a quantity or amount sufficient to support Supplier's obligations set forth in this Agreement. Each Party and its representatives shall comply with all relevant requirements of each Electric System Authority, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.

- 15.2 Good Utility Practice. Each of Buyer and Supplier shall perform, or cause to be performed, its obligations under this Agreement in all material respects in accordance with Good Utility Practice.
- 15.3 Interconnection Agreement. Supplier shall operate the Facility in accordance with the IA, provided that any failure by Supplier to operate the Facility in accordance with the IA shall not be an event of default hereunder so long as the IA has not been terminated. Following any termination of the IA, Supplier's failure under this Section 15.3 shall be an Event of Default not subject to any Cure Period. To the extent there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the IA, the terms and conditions of the IA shall prevail.

## 16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Agreement is subject to Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion.
- 16.2 PUCN Approval. Within one hundred twenty (120) days after the Effective Date and in accordance with the requirements of Law, Buyer shall submit this Agreement to the PUCN for approval ("PUCN Approval") consisting of:
- 16.2.1 A determination that the terms and conditions of this Agreement are just and reasonable; and
- 16.2.2 A determination that the costs of purchasing Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.
- 16.3 Failure to Obtain PUCN Approval; Conditions of PUCN Approval. If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline or grants the PUCN Approval on or before the PUCN Approval Deadline, but in form and substance not acceptable to Buyer in its sole discretion, then within thirty (30) days after the PUCN Approval Deadline or the date PUCN grants the PUCN Approval, as the case may be, Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall Buyer have any liability to Supplier due to the failure of the PUCN to grant PUCN Approval by the PUCN Approval Deadline or the inclusion of conditions to the PUCN Approval which are unacceptable to Buyer.
- 16.4 Energy Choice Initiative. If the Energy Choice Initiative should pass a second consecutive vote by a majority of the Nevada voters in the State of Nevada general election scheduled to be held on or about November 6, 2018, then within thirty (30) days after the date of the general election Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under

no circumstances shall either Party have any liability to the other Party due to the Energy Choice Initiative passing a second consecutive vote by a majority of the Nevada voters in the State of Nevada general election scheduled to be held on or about November 6, 2018.

- 16.5 Cooperation. If requested by Buyer, Supplier shall cooperate with Buyer as Buyer may deem necessary in order to obtain any Governmental Approval (including the PUCN Approval and any FERC approval) in connection with this Agreement, including providing affidavits, providing timely responses to data requests of the relevant Governmental Authority, intervening in any relevant dockets, and requesting “commenter” or “intervener” status in any relevant docket. Each Party agrees to notify the other Party of any significant developments in obtaining any Governmental Approval in connection with achieving Commercial Operation of the Facility, including the PUCN Approval. Each Party shall use reasonable efforts to obtain such required Governmental Approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each Governmental Approval necessary to effectuate this Agreement.

## 17. SECURITY

- 17.1 Development Security. As a condition of Buyer’s execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, one or more of the following instruments: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; (b) a Guaranty substantially in the form of Exhibit 20 from a Qualified Guarantor; or (c) a cash deposit, in each case, in an aggregate amount equal to six million two-hundred fifty thousand dollars (\$6,250,000) (the “Development Security”). The Development Security shall be posted within five (5) Business Days after the Effective Date. Upon the PUCN Approval Date, the Development Security shall increase to an aggregate amount equal to seventeen million five-hundred thousand dollars (\$17,500,000). The revised amount of Development Security shall be posted within five (5) Business Days after the PUCN Approval Date and be maintained until fifteen (15) Business Days after the Commercial Operation Date. Buyer shall have the right to draw upon the Development Security, at Buyer’s sole discretion: (i) as a remedy available to Buyer in accordance with Article 24; (ii) in the event Supplier fails to achieve Notice to Proceed by the Notice to Proceed Deadline and fails to pay Notice to Proceed Daily Delay Damages in accordance with Section 8.5.1; (iii) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and fails to pay Daily Delay Damages in accordance with Section 8.5.2; (iv) if Supplier fails to make any payments owing under this Agreement; or (v) if Supplier fails to make any payments for Penalties owing under this Agreement. Unless this Agreement is terminated, any such drawing on the Development Security by Buyer following a failure by Supplier to achieve Notice to Proceed by the Notice to Proceed Deadline and to pay Notice to Proceed Daily Delay Damages shall give rise to a one-time obligation of Supplier to replenish the Development Security to its required amount within two (2) Business Days of the drawing. Supplier shall have no other obligation to replenish the Development Security. In

the event that no amounts are due and owing by Supplier to Buyer under this Agreement as of the date that is fifteen (15) Business Days after the Commercial Operation Date and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) the fifteenth (15<sup>th</sup>) Business Day after the Facility achieves Commercial Operation. With the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 17.2.

- 17.2 Operating Security. As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder, one or more of the following instruments: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; or (b) a cash deposit, or (c) a Guaranty substantially in the form of Exhibit 20 from a Qualified Guarantor, in each of (a), (b) or (c), in an aggregate amount equal to fifteen million five-hundred twenty thousand eight-hundred dollars (\$15,520,800) (the "Operating Security"). The Operating Security shall be posted no later than five (5) Business Days prior to the Commercial Operation Date. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion: (1) as a non-exclusive remedy available to Buyer in the event this Agreement is terminated in accordance with Article 24; (2) in the event Supplier fails to make any payments owing under this Agreement; or (3) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties that Buyer has incurred or may incur as a result of Supplier's failure to perform its obligations under this Agreement. Unless this Agreement is terminated, any such drawing on the Operating Security by Buyer shall give rise to a one-time obligation of Supplier to replenish the Operating Security to its original amount within two (2) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement upon the expiration of the Term, the Operating Security shall be released to Supplier upon the fifteenth (15<sup>th</sup>) Business Day after the earlier of (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term. If any amounts are due and owing by Supplier to Buyer under this Agreement upon the expiration of the Term, the Operating Security shall be released to Supplier promptly following payment by Supplier therefor, and no later than ten (10) Business Days following receipt by Buyer of such payment.
- 17.3 Post-Assignment Assignee Buyer Security. If, at any time following the Effective Date: (a) Buyer assigns this Agreement or delegates its rights and obligations under Section 23.1(c), (d), or (e) of this Agreement to an Assignee Buyer, and (b) such Assignee Buyer, at any time following the assignment date, no longer meets the Minimum Credit Rating, then, no more than four (4) Business Days following the occurrence of such downgrade, Assignee Buyer shall provide to Supplier, as security for the performance of Assignee Buyer's obligations hereunder, one of the following instruments: (a) a letter of credit from a Qualified Financial Institution in a form reasonably acceptable to Supplier or substantially in the form attached hereto as Exhibit 17; (b) a cash deposit; or (c) a Guaranty in form reasonably acceptable to Supplier or substantially in the form of Exhibit 20 from a Qualified Guarantor, in each case of (a), (b) or (c), in an amount equal to the Operating

Security (the “Assignee Buyer Security”). Supplier shall have the right to draw upon the Assignee Buyer Security, at Supplier’s sole discretion, as a remedy available to Supplier in accordance with Article 24. Unless this Agreement is terminated, any such drawing on the Assignee Buyer Security by Supplier shall give rise to a one-time obligation of Assignee Buyer to replenish the Assignee Buyer Security to its original amount within four (4) Business Days following any draw made thereunder. In the event that no amounts are due and owing by Assignee Buyer to Supplier under this Agreement upon the expiration of the Term, the Assignee Buyer Security shall be released to Assignee Buyer upon the fifteenth (15th) Business Day after the earlier of (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.

- 17.4 Letters of Credit. With respect to any letter of credit posted by (a) Supplier, as Development Security or Operating Security, and (b) Assignee Buyer, as Assignee Buyer Security: (i) no later than thirty (30) days prior to the expiration date of any such letter of credit, the Party providing the letter of credit shall cause such letter of credit to be renewed or replaced with another letter of credit in an equal amount; (ii) in addition to the conditions specified in Sections 17.1, 17.2 and 17.3, the other Party shall have the right to draw on such letter of credit, at such Party’s sole discretion (A) if such letter of credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (B) if the Credit Rating of the financial institution that issued such letter of credit has been downgraded to below that required of a Qualified Financial Institution and the Party that provided such letter of credit has not caused a replacement letter of credit to be issued for the benefit of the other Party within five (5) Business Days of such downgrade pursuant to Section 17.5.
- 17.5 Maintaining Letter of Credit. If at any time after the Effective Date of this Agreement, Standard & Poor’s, Moody’s or another nationally recognized firm downgrades the Credit Rating of the financial institution issuing a letter of credit pursuant to this Agreement to below that required of a Qualified Financial Institution, then the Party issuing the letter of credit shall: (a) provide the other Party with written notice of such downgrade within two (2) Business Days of the issuing Party being notified of any such downgrade; and (b) cause a replacement letter of credit satisfying the conditions of Section 17.4 or other acceptable Development Security, Operating Security, or Assignee Buyer Security, as applicable, to be issued in favor of the other Party within five (5) Business Days of such downgrade. In the event such a downgrade also constitutes an Event of Default pursuant to Article 24, then the requirements of this Section 17.5 are in addition to, and not in lieu of, the provisions of Article 24. The issuing Party shall take all necessary action and shall be in compliance with Section 17.1, Section 17.2 or Section 17.3, as applicable, within five (5) Business Days of the downgrade.
- 17.6 Guarantors. If at any time after the Effective Date, any guarantor providing a guaranty pursuant to Sections 17.1, 17.2 or 17.3 no longer meets the requirements of a Qualified Guarantor, then (a) in the case of Section 17.1 or 17.2, Buyer shall notify Supplier in writing and Supplier shall cause a letter of credit or cash in the amount of the Development Security or Operating Security, as the case may be, to

be delivered to Buyer within five (5) Business Days following receipt of such notice, or (b) in the case of Section 17.3, Supplier shall notify Assignee Buyer in writing and Assignee Buyer shall cause a letter of credit or cash in the amount of the Assignee Buyer Security to be delivered to Supplier within five (5) Business Days following receipt of such notice. Failure to provide replacement Development Security, Operating Security or Assignee Buyer Security, as applicable, pursuant hereto in a timely manner shall constitute an Event of Default pursuant to Article 24.

- 17.7 No Interest on Supplier Security. Neither Party shall earn or be entitled to any interest on any security provided pursuant to this Article 17, including any cash amounts deposited.
- 17.8 Grant of Security Interest. To secure its obligations under this Agreement, Supplier hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Development Security or Operating Security, as the case may be, posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Supplier agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. In the event any Assignee Buyer Security is posted with Supplier, to secure its obligations under this Agreement, Assignee Buyer shall be deemed to grant to Supplier, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Assignee Buyer Security posted with Supplier in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether then or thereafter held by, on behalf of, or for the benefit of, Supplier. Assignee Buyer shall take such action as Supplier may reasonably require in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, the Non-Defaulting Party may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Development Security. Operating Security or Assignee Buyer Security, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its right of setoff against any and all property of the Defaulting Party, in the possession of the non-Defaulting Party or its agent; (c) draw on any outstanding letter of credit issued for its benefit; and (d) liquidate all Development Security, Operating Security, or Assignee Buyer Security, as applicable, then held by or for the benefit of the other Party free from any claim or right of any nature whatsoever by the Defaulting Party, including, in the case of Supplier as the Defaulting Party, any equity or right of purchase or redemption by Supplier. The Non-Defaulting Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Defaulting Party's obligations under the Agreement (the Defaulting Party remaining liable for any amounts owing



to the non-Defaulting Party after such application), subject to the non-Defaulting Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

- 17.9 Waiver of Buyer Security. Except with respect to the Assignee Buyer Security, Supplier hereby waives any and all rights it may have, including rights at Law or otherwise, to require Buyer to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.
- 17.10 Security is Not a Limit on Supplier's Liability. Except as otherwise specifically provided in this Agreement, (a) the Development Security and the Operating Security, as applicable: (i) constitute security for, but are not a limitation of, Supplier's obligations hereunder; and (ii) shall not be Buyer's exclusive remedy for Supplier's failure to perform in accordance with this Agreement, and (b) the Assignee Buyer Security: (i) constitutes security for, but is not a limitation of, Buyer's obligations hereunder; and (ii) shall not be Supplier's exclusive remedy for Buyer's failure to perform in accordance with this Agreement.

## 18. INDEMNIFICATION

- 18.1 Indemnification for Losses. Each Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, on an after state and federal Tax basis, the other Party, its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an "Indemnified Party") from, for and against any and all Losses arising out of, relating to, or resulting from the Indemnifying Party's breach, or performance or non-performance of its obligations under this Agreement, including the Indemnifying Party's negligence and willful misconduct (including reasonable attorneys' fees and costs); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own gross negligence, fraud or willful misconduct. Supplier shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Supplier's acts that affect the Transmission System.
- 18.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers' compensation Laws.
- 18.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Article 18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

18.2 No Negation of Existing Indemnities; Survival. Each Party's indemnity obligations under this Agreement shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive the termination or expiration of this Agreement to the extent that any third-party claim is commenced during the applicable statute of limitations period.

18.3 Indemnification Procedures.

18.3.1 Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

18.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

18.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party;

18.3.2.2 May result in material liabilities which may not be fully indemnified hereunder; or

18.3.2.3 May have a Material Adverse Effect on the Indemnified Party (including a Material Adverse Effect on the Tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

18.3.3 Subject to Section 18.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, that said consent shall not be unreasonably withheld, conditioned or delayed.

## 19. LIMITATION OF LIABILITY

- 19.1 Responsibility for Damages. Except where caused by the other Party's breach or performance or non-performance of its obligations under this Agreement, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction.
- 19.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding any other provisions of this Agreement to the contrary, except for the payment of (a) Replacement Costs under Section 3.6, (b) PC Replacement Costs under Section 3.7, (c) Notice to Proceed Daily Delay Damages and Daily Delay Damages under Section 8.5, (d) Deficit Damages under Section 8.6, (e) damages arising under Section 8.7 due to modifications to the Facility, or (f) Losses to third parties under Section 18.1, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement (unless due to the willful or intentional breach of this Agreement by such Party, in which case this limitation shall not apply).
- 19.3 Survival. The provisions of this Article 19 shall survive the termination or expiration of this Agreement.

## **20. FORCE MAJEURE**

- 20.1 Excuse. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.
- 20.2 Definition. "Force Majeure" or "an event of Force Majeure" means an event that: (a) is not within the reasonable control of the Party affected by the event; (b) is not specifically, reasonably anticipated as of the Effective Date; (c) is not the result of the affected Party's negligence or failure to act; and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements set forth in the preceding sentence): acts of God such as storms, hail, hurricanes, floods, lightning, fire, explosion, earthquakes, tornadoes, or other natural disasters affecting the Facility site; civil disturbance; sabotage; strikes not attributable to Supplier's actions; lock-outs not attributable to Supplier's actions; work stoppages not attributable to Supplier's actions; action or restraint by court order or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint).

20.3 Exclusions. Notwithstanding the foregoing, none of the following shall constitute Force Majeure:

20.3.1 Economic hardship of either Party, including lack of money;

20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Facility, including due to weather, high or low temperatures or climate conditions (except to the extent caused by an act of God);

20.3.3 A Party's failure to obtain any Governmental Approval from a Governmental Authority;

20.3.4 A Party's failure to meet a Project Milestone, except to the extent it is caused by an event of Force Majeure;

20.3.5 The imposition of costs or Taxes on a Party;

20.3.6 Supplier's failure to obtain, or perform under, the IA, or its other contracts and obligations to Transmission Provider unless due to a Force Majeure event;

20.3.7 Supplier's ability to sell, or Buyer's ability to purchase energy, PCs (and equivalent rights in any other jurisdiction), Renewable Energy Benefits, or Capacity Rights at a more advantageous price than is provided hereunder;

20.3.8 Any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure;

20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event;

20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event;

20.3.11 Maintenance upgrade or repair of any facilities or right of way corridors whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); or

20.3.12 The increased cost of electricity, equipment, steel, labor, or transportation.

20.4 Conditions. In addition to the conditions set forth in Section 20.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

20.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the

performance of its obligations under this Agreement (which notice, in the case of Supplier, shall be provided within forty-eight (48) hours following such Force Majeure event);

20.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

20.4.3 Expeditiously takes action to correct or cure the Force Majeure event excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;

20.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the Force Majeure event; and

20.4.5 Provides prompt notice to the other Party of the cessation of the Force Majeure event giving rise to its excuse from performance.

## **21. DISPUTES**

21.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other Party arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity hereof (“Dispute”) shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

21.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

21.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party. If the Parties fail to resolve any Dispute through informal negotiations within thirty (30) days after the Dispute is submitted in writing to the other Party in accordance with Section 21.1, then either Party may exercise their rights at equity or law to resolve such Dispute.

21.4 Jurisdiction, Venue. Each Party irrevocably: (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Washoe, State of Nevada; (b) waives any objection which it may have to the laying of jurisdiction or venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.

- 21.5 Recovery of Costs and Attorneys' Fees. In the event of a Dispute arising from or relating to this Agreement, whether or not an action is commenced in any court to enforce any provision or for damages by reason of any alleged breach of this Agreement, the prevailing Party will be entitled to recover from the other Party all costs and attorneys' fees reasonably incurred in resolving the Dispute. For purposes hereof, the "prevailing" Party need not prevail on every issue involved in the Dispute, but only on the main issue giving rise to the Dispute.
- 21.6 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

## 22. NATURE OF OBLIGATIONS

- 22.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 22.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the services provided under this Agreement to the public.

## 23. ASSIGNMENT

Except as stated below, neither this Agreement nor any of the rights or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

- 23.1 Buyer Assignment. Buyer may, without the consent of Supplier, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made to: (a) Sierra Pacific Power Company; or (b) any successor in interest to Buyer, provided, in the case of (a) and (b), that such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704, where such assignment does not occur by operation of Law, and; (c) a Person (other than a natural person) providing retail electric service in Nevada; or (d) a wholesale electric provider; or (e) a Person (other than a natural person), including pursuant to an assignment required by Law, provided, in the case of (c), (d) or (e), that such assignee meets or exceeds the Minimum Credit Rating, as published by either Relevant Rating Agency. Buyer shall provide Supplier with written notice of any assignment pursuant to this Section 23.1.

- 23.2 Supplier Assignment. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer or assign any interest (Controlling Interest or non-Controlling Interest) in Supplier to any of Supplier's Affiliates or this Agreement to any of Supplier's Affiliates in connection with a transfer of the Facility to such Affiliate or a corporate reorganization between Supplier and its Affiliates so long as the purposes of the ROFO in Article 6 are not frustrated by such a transfer or assignment; provided that Supplier provides Buyer prior notice of any such transfer or assignment, and (a) either (i) the Credit Rating of such Affiliate is equal to or superior to the Credit Rating of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, or (ii) the Development Security or Operational Security, as applicable, is maintained without change due to such transfer or assignment or is replaced with Development Security or Operational Security, as applicable, in accordance with the requirements of Article 17, (b) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement, and (c) an operations and maintenance agreement with a Qualified Operator has been entered into in accordance with Section 8.9. Supplier agrees that it will provide written notice to Buyer (and, if required, the PUCN Regulatory Operations Staff, and the State of Nevada Attorney General's Bureau of Consumer Protection) of any transfer or assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the transfer or assignment in accordance with the requirements of this Section 23.2, no less than five (5) Business Days prior to the effective date of any such transfer or assignment.
- 23.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided that such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 23.4 Transfers of Ownership. Subject to the provisions of Article 6, Supplier shall not directly or indirectly sell, transfer, assign or otherwise dispose of its ownership interest in the Facility to any third party absent: (a) a transfer of this Agreement to such third party; (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; (c) Buyer's prior written approval, not to be unreasonably withheld, of such third party; and (d) such third party being a Qualified Transferee. This Section 23.4 shall not apply or restrict (i) any sale, transfer, assignment or disposal of the Facility in accordance with the provisions of Section 23.2, or (ii) or any other Permitted Transaction. This Section 23.4 shall also not apply to any transfer that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee or, if such

transfer is not to a Qualified Transferee, provided that Buyer consents to such transfer, which consent may be withheld in Buyer's sole discretion.

- 23.5 Controlling Interest. Subject to the provisions of Article 6, no Controlling Interest in Supplier may be directly or indirectly sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Buyer's prior written approval, not to be unreasonably withheld, and then only to a Qualified Transferee. Notwithstanding the foregoing, this Section 23.5 shall not apply or restrict any (a) sale, transfer or assignment that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee, or (b) Permitted Transaction.
- 23.6 Assignee Obligations with Respect to Granting a Security Interest. As a condition precedent to granting any Person a security interest in the Facility, Supplier shall (a) satisfy the requirements of Section 23.8 or (b) procure and deliver to Buyer an agreement, enforceable by Buyer and in form and substance satisfactory to Buyer, from each such Person to the effect that, if such Person forecloses on its security interest, (i) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (ii) it will not sell, transfer or otherwise dispose of its interest in the Facility to any Person other than in accordance with the provisions of this Article 23.
- 23.7 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.
- 23.8 Collateral Assignment by Supplier. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer, pledge, encumber or collaterally assign this Agreement or the account, revenues or proceeds hereof to Supplier's Lender in connection with any financing, including tax equity financing, or other financial arrangements for the Facility. In the event that Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide at least thirty (30) days' prior written notice thereof to Buyer, including the address of Supplier's Lenders. Any negotiation of documentation required in connection with a collateral assignment or other financing activity of Supplier shall be at the sole cost and expense of Supplier, and Supplier shall reimburse Buyer for all actual, reasonable, and documented third-party and internal costs in connection with such activities. As a condition precedent to the effectiveness of any such transfer, pledge, encumbrance or collateral assignment to Supplier's Lenders, Buyer and Supplier and Supplier's Lenders shall have entered into a consent to collateral assignment agreement, which agreement shall be substantially in the form and substance of the Lender's Consent in Exhibit 19.

## **24. DEFAULT AND REMEDIES**



- 24.1 Events of Default. An event of default (“Event of Default”) shall be deemed to have occurred with respect to a Party (the “Defaulting Party”) upon the occurrence of one or more of the following events and expiration of any applicable Cure Period:
- 24.1.1 failure to comply with any of its material obligations under this Agreement (not otherwise specifically addressed below) or failure of any its representations or warranties in this Agreement to be true and correct in all material respect when made or deemed made;
  - 24.1.2 failure to make timely payments due under this Agreement;
  - 24.1.3 failure to comply with the material requirements of any Electric System Authority, Transmission Provider or any Governmental Authority;
  - 24.1.4 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Facility as a Renewable Energy System;
  - 24.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Facility in accordance in all material respects with Good Utility Practice;
  - 24.1.6 in the case of Supplier, unless excused by an event of Force Majeure, its failure to timely achieve: (a) any of the Critical Project Milestones (excluding Notice to Proceed and Commercial Operation) before the scheduled date set forth in Exhibit 6; (b) Notice to Proceed by the expiration of the NTP Delay Damages Period pursuant to Section 8.5.1; and (c) Commercial Operation by the Commercial Operation Deadline as set forth in Exhibit 6, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.2;
  - 24.1.7 in the case of Supplier or Assignee Buyer, failure to comply with the provisions of Article 17 (including any replenishment requirement);
  - 24.1.8 failure to comply with the provisions of Article 23;
  - 24.1.9 in the case of Supplier, its failure to comply with the provisions of Article 27;
  - 24.1.10 in the case of Supplier or Assignee Buyer at any time, or, in the case of Buyer, at any time prior to the Commercial Operation Date, such Party: (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days); (b) makes an assignment for the benefit of creditors; (c) is unable to pay its debts as they become due; or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days); and
  - 24.1.11 in the case of Supplier, if Supplier: (a) relinquished possession and control of all or substantially all of the Facility, other than pursuant to a transfer

permitted under this Agreement; or (b) after commencement of the construction of the Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Facility for ninety (90) consecutive days, if not attributable to an Event of Default of, or request by Buyer, or an event of Force Majeure; and

- 24.2 Duty/Right to Mitigate. Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement. For the purpose of this Section 24.2, commercially reasonable efforts by Supplier shall include maximizing the price for Product received by Supplier from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such Product to third parties in accordance with the terms of this Agreement.
- 24.3 Cure Period. Other than for an Event of Default under Sections 24.1.6 or 24.1.10 for which there is no cure period, an Event of Default shall not be deemed to have occurred under Section 24.1, unless and until the Defaulting Party shall: (a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, 24.1.9, and 24.1.11, had a period of ten (10) Business Days from the date the applicable payment or performance was due; and (b) for purposes of all other Events of Default described in Section 24.1 (other than Sections 24.1.2, 24.1.6, 24.1.7, 24.1.8, 24.1.9, 24.1.10 or 24.1.11 which are addressed above), had a period of thirty (30) days from the date of receipt of written notice of the occurrence of any of the Events of Default described in Section 24.1 (each of the cure periods in Section 24.3(a) and (b), a "Cure Period") to cure such potential Event of Default; provided that such thirty (30)-day period may be extended for an additional reasonable period of time (not to exceed ninety (90) days) if: (i) the potential Event of Default is not reasonably capable of being cured within such thirty (30)-day period; (ii) such potential Event of Default is capable of being cured within an additional reasonable period of time (not to exceed ninety (90) days); and (iii) Supplier is diligently and continuously proceeding to cure such potential Event of Default.
- 24.4 Remedies. If an Event of Default is not cured by the Defaulting Party during the applicable Cure Period, if any, then the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited or otherwise limited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3, payment of damages, and (a) in the case of Buyer, drawing upon the Development Security and the Operating Security, and (b) in the case of Supplier, drawing upon the Assignee Buyer Security.
- 24.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Supplier, neither Supplier nor any Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Facility or any electric generation facility constructed on the Project Site, under

the Public Utility Regulatory Policies Act of 1978 or any other Law, for any periods that would have been within the Term had this Agreement remained in effect. Supplier, on behalf of itself and any other entity on whose behalf it may act, hereby waives its rights to require Buyer so to do.

- 24.5.1 Right of First Offer for Product. If Buyer terminates this Agreement in accordance with either Section 2.3.1 or 2.3.3, neither Supplier nor Supplier's Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site ("Covered Facility") to a party other than Buyer for a period of three (3) years following the effective date of such termination ("Restricted Period"). Supplier shall provide Buyer with no less than six (6) months' prior written notice of the anticipated commercial operation date for any Covered Facility. Buyer shall notify Supplier within thirty (30) days of receipt of such notice from Supplier as to whether Buyer elects to purchase such Product. If Buyer elects to purchase such Product, then the Product shall be sold to Buyer at the Product Rate and the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially similar with this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Supplier nor Supplier's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Project Site (including the interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 24.5.1 apply, unless the transferee agrees to be bound by the terms set forth in this Section 24.5.1. Notwithstanding the above prohibition on a sale of transfer, this prohibition will not prevent the sale to a third party if an independent engineer provides a notarized certification to the fact that a solar facility cannot be developed on the Project Site. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Project Site. Supplier shall indemnify and hold Buyer harmless from all Losses sustained by Buyer as a result of any breach of the covenants contained in this Section 24.5.1.

24.6 Step-In Rights.

- 24.6.1 Step-In Rights following an Event of Default. If Supplier commits an Event of Default, including pursuant to Section 24.1.6(b), and Supplier's Lenders do not cure such Event of Default, and this Agreement has not been terminated by Buyer, then without limiting its other rights and remedies hereunder, Buyer shall have the right to enter the Project Site and take possession of the Facility and to take or cause to be taken all such actions and do or cause to be done all such things as Buyer may consider necessary or desirable to cure the Event of Default, including to complete the Facility and cause Commercial Operation to occur. Following the cure of the Event of Default, Buyer shall: (a) return possession of the Facility to Supplier

upon execution by Supplier of an indemnity and release agreement, in form and substance reasonably acceptable to Buyer, pursuant to which Supplier shall indemnify and release Buyer from all claims arising out of Buyer's exercise of its rights pursuant to this Section 24.6; or (b) failing the execution of such indemnity and release agreement: (i) operate the Facility for all or such portion of the remaining Term as Buyer may elect, in its sole discretion, pursuant to the license granted in Section 24.6.2; and/or (ii) exercise its other rights and remedies under this Agreement, including the right to terminate this Agreement without the payment of any damages by Buyer.

24.6.2 License to Operate Facility. Subject to Section 24.6.1, Supplier hereby irrevocably grants to Buyer the right, license and authority to enter the Project Site, to construct, operate and maintain the Facility for the Term during the continuance of and following any Event of Default by Supplier. During any period in which Buyer constructs, operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Supplier shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility.

24.6.3 Records and Access. Supplier shall collect and have available at a convenient, central location at the Project Site all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Facility in accordance with Good Utility Practice. Upon Buyer's notice of intent to exercise its rights under this Section 24.6, Buyer, its employees, contractors, or designated third parties shall have the right to enter the Project Site and the Facility for the purpose of constructing, operating or maintaining the Facility. Upon the exercise by Buyer of the its rights under this Section 24.6, Supplier shall cause the Facility contractor or operator (and any Person within the control of Supplier) to give Buyer access to and control of the construction, operation and maintenance of the Facility, as applicable, to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of responsibility for construction, operation and maintenance as may be requested by Buyer. Supplier shall execute such documents and take such other action as may be necessary for Buyer to effectuate its rights under this Section 24.6.

24.6.4 Return. Buyer may, at any time and in its sole discretion, terminate its exercise of its rights under this Section 24.6 whether or not the applicable Event of Default has been cured. If at any time after exercising its rights under this Agreement, Buyer elects to return possession of the Facility to Supplier or Supplier's Lender, Buyer shall provide Supplier with at least ten (10) days advance notice of the date Buyer intends to return such possession, and upon receipt of such notice Supplier shall take all actions necessary to resume possession of the Facility on such date.

24.6.5 No Assumption. Buyer's exercise of its rights under this Section 24.6 shall not be deemed an assumption by Buyer of any liability of Supplier due and owing prior to the exercise of such rights. Buyer shall not assume any liability of Supplier for the period during which Buyer exercises its rights under this Section 24.6. During any period that Buyer is exercising its rights, Supplier shall retain legal title to and ownership of the Facility and all of its other property and its revenues, subject to any security interests held by Supplier's Lenders. When exercising its rights under this Section 24.6, Buyer shall assume possession, operation, and control of the Facility solely as agent for Supplier. In no event shall Buyer's election to exercise its rights under this Section 24.6 be deemed to constitute a transfer of ownership of or title to the Facility, the Project Site or any assets of Supplier.

24.6.6 Costs and Expenses. Supplier shall indemnify and hold harmless Buyer from and against all Losses incurred by Buyer in connection with exercise of its rights under this Section 24.6 other than due to the gross negligence or willful misconduct of Buyer. In connection with its exercise of its rights under this Section 24.6, Buyer shall have the right to recoup and set off all such Losses against amounts otherwise owed by Buyer hereunder. Buyer's exercise of such recoupment and set off rights shall not limit the other rights and remedies available to Buyer hereunder or otherwise.

## **25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

Unless otherwise indicated in this Section 25, Supplier represents and warrants to Buyer as of the Effective Date as follows, and covenants to Buyer that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

25.1 Organization. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite entity power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business and is in good standing in the State of Nevada and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Supplier.

25.2 Authority. Supplier has full authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of

creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.

- 25.3 Governmental Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, the execution, delivery and performance of this Agreement by Supplier shall not: (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any Governmental Approval, except where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Supplier; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 25.4 Regulation as a Utility. Except for its anticipated future status as a "public utility" as defined in the Federal Power Act, and as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 25.5 Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all of its obligations under this Agreement and to consummate the transactions contemplated pursuant hereto.
- 25.6 Interconnection Process; Transmission. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Facility to the Transmission System in order to provide for the delivery of Net Energy to and at the Delivery Point.
- 25.7 Interconnection Cost Due Diligence. Supplier has conducted due diligence regarding the costs of all facilities and equipment necessary to interconnect the Facility to and at the Delivery Point and all such costs are covered by payments for Product provided for in this Agreement.
- 25.8 Required Facility Documents. All Required Facility Documents known to Supplier as of the Effective Date are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under requirements of Law), and will maintain for the Term all Required Facility Documents (including all material authorizations, rights and entitlements) necessary to construct, own, operate and maintain the Facility and to perform its obligations under this Agreement, including the sale and delivery of Product to Buyer in accordance with this Agreement. The anticipated use of the Facility will comply with all applicable restrictive covenants affecting the Facility or the Project Site from the time of commencement of construction of the Facility.

- 25.9 Governmental Approvals. Supplier has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and, as of the Effective Date, no other Governmental Approvals are required by Supplier to construct, own, operate and maintain the Facility or perform its obligations under this Agreement. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material Governmental Approvals that are required for the ownership, operation and maintenance of the Facility or the performance by Supplier of its obligations under this Agreement, in each case, promptly after Supplier makes any such determination.
- 25.10 Related Agreements. Supplier has entered into or will enter into all material agreements as listed in Exhibit 12 necessary for the construction, ownership, operation and maintenance of the Facility and the performance of its obligations under this Agreement.
- 25.11 Certification. The Facility will qualify as a Renewable Energy System and Supplier will be in compliance with all requirements set forth in the Renewable Energy Law.
- 25.12 Title. Supplier will own all Product attributable to the Facility and will have the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third party.
- 25.13 Project Execution Plan. Supplier will execute the development and construction of the Facility in all material respects in accordance with the project execution plan submitted by Supplier to Buyer pursuant to the request for proposals dated January 5, 2018 but subject to modifications as may be required to reflect the final design of the Facility. To the extent the Facility uses equipment listed on Exhibit 23, Supplier shall construct the Facility using only such equipment manufactured by the vendors, subcontractors and equipment suppliers listed on Exhibit 23, which shall be provided by Buyer. Buyer shall have the right to consent to any material modifications to the project execution plan arising after the Effective Date (other than any modifications that are expressly permitted under this Section 25.13), such consent not to be unreasonably withheld, conditioned or delayed, and in no event more than fifteen (15) days following a request therefor from Supplier.
- 25.14 Work Site Agreement. Supplier has entered into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21.
- 25.15 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 25 are made as of the Effective Date and shall be deemed repeated as of the Commercial Operation Date. If at any time during the Term, Supplier obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time

given or deemed given or at any time thereafter for so long as this Agreement is in force and effect, then Supplier shall provide Buyer with written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Supplier intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 25.15 shall be given as soon as practicable after Supplier obtains actual knowledge of any such fact, circumstance, event or information.

## **26. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Supplier as of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 26.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Buyer.
- 26.2 Authority. Buyer has full authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 26.3 Governmental Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of its obligations under this Agreement by Buyer shall not: (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any Governmental Approval, except: (i) where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Buyer; or (ii) for Governmental Approvals which become applicable to Buyer as a result of specific regulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which Governmental Approvals have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture,



agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

- 26.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 26 are made as of the Effective Date. If at any time during the Term, Buyer obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 26 to be materially untrue or misleading at the time given or at any time thereafter for so long as this Agreement is in force and effect, Buyer shall provide Supplier with prompt written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Buyer intends to take to make the representations and warranties true and correct.

## **27. INSURANCE**

- 27.1 General Requirements. From and after the Effective Date, Supplier shall maintain at all times, at its own expense, commercial general liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth in this Article 27. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 27.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A-" or better and shall include provisions or endorsements:
- 27.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
- 27.2.2 Stating that no reduction, cancellation or non-renewal of the policy shall be effective until thirty (30) days from the date notice thereof is actually received by Buyer; provided that upon Supplier's receipt of any notice of reduction, cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;
- 27.2.3 Providing Buyer with subrogation waivers on all coverage;
- 27.2.4 Providing for Separation of Insured coverage in the general liability and auto liability insurance policies; and

- 27.2.5 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 27.3 Certificates of Insurance. Within thirty (30) days of the Effective Date and each anniversary thereafter during the Term, and upon any change in coverage or at the request of Buyer (not to exceed once each year), Supplier shall provide to Buyer properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
- 27.3.1 The name of insurance company, policy number and expiration date;
- 27.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier; and
- 27.3.3 A statement indicating that Buyer shall receive at least thirty (30) days prior notice of cancellation or non-renewal of a policy or of a reduction of liability limits with respect to a policy.
- 27.4 Copies of Insurance Policies' Declaration Page. At Buyer's request, in addition to the foregoing certificates of insurance, Supplier shall deliver to Buyer a copy of each insurance policy declaration page, by an authorized representative of the issuing insurance company.
- 27.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 27.6 Supplier's Minimum Insurance Requirements.
- 27.6.1 Worker's Compensation. Workers' compensation insurance in the form and manner required by statutory requirements and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable. Employer's liability insurance with the following limits: (a) one million dollars (\$1,000,000.00) per each bodily injury by accident; (b) one million dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and (c) one million dollars (\$1,000,000.00) in the annual aggregate per each bodily injury by occupational disease.
- 27.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.

- 27.6.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage with a combined single limit of at least two million dollars (\$2,000,000).
- 27.6.4 The minimum insurance limits set forth in Sections 27.6.1, 27.6.2, and 27.6.3 can be met by Supplier's underlying workers' compensation/employer's liability, general liability, and automobile liability policies in combination with an excess/umbrella insurance policy.
- 27.6.5 Failure to Comply. If Supplier fails to comply with the provisions of this Article 27, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 27, in accordance with the indemnification provisions of Article 18.

## **28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS**

- 28.1 No Expectation of Confidentiality. Supplier has no expectation that any of the terms of this Agreement will be treated as confidential by Buyer, and Buyer has no obligation to seek confidential treatment of this Agreement in connection with Buyer's Required Regulatory Approvals or otherwise.
- 28.2 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and Supplier shall not issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Facility for educational, promotional or informational purposes and Supplier may disclose this Agreement and information regarding the Facility to its members, officers, directors, employees, attorneys, agents and representatives in connection with the execution, delivery and performance of its obligations under this Agreement. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Facility and authorizing the use of pictures of the Facility for such activities. It shall not be deemed a violation of this Section 28.2 to file this Agreement with the PUCN or FERC or any other Governmental Authority in connection with Buyer's Required Regulatory Approvals, Supplier's Required Regulatory Approvals or otherwise.

## **29. MISCELLANEOUS**

- 29.1 Notices.

- 29.1.1 All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties’ Contract Representatives as set forth in Exhibit 4, as the same may be modified from time to time by Notice from the respective Party to the other Party.
- 29.1.2 All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be effective upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, then such Notice shall be deemed validly and effectively given upon such tender. All oral notifications required under this Agreement shall be made to the receiving Party’s Contract Representative or Operating Representative (as applicable) and shall promptly be followed by Notice as provided in this Section 29.1.
- 29.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 20 or Article 24, respectively, and Notices of a change to Exhibit 4 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery or electronic mail. If any such Notice is sent via electronic mail, then a copy of such Notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery. Such Notices will be effective as provided in Section 29.1.2.
- 29.1.4 Any payments required to be made to a Party under this Agreement shall be made pursuant to the payment instructions in Exhibit 4, as such payment instructions may be amended by such Party from time to time by Notice to the other Party.
- 29.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter contained herein whether written or oral.
- 29.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

- 29.4 Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” are to articles, sections, schedules, or exhibits hereof; (c) all references to a particular Person include a reference to such Person’s permitted successors and assigns; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” (and the correlative terms “include”, “includes” and “included”) means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Law means that Law as amended, supplemented or otherwise modified from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days”, “months”, “quarters” and “years” shall be to calendar days, months, quarters and years, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- 29.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and shall not be used to construe this Agreement.
- 29.6 Discontinued or Modified Index. If any index publisher discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate adjustments to take into account any changes in the location of measurement.
- 29.7 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 29.8 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as

a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. Other than as otherwise specifically provided herein, and other than payment of the following liquidated damages payments: (a) Replacement Costs under Section 3.6; (b) PC Replacement Costs under Section 3.7; (c) Notice to Proceed Daily Delay Damages and Daily Delay Damages under Section 8.5; or (d) Deficit Damages under Section 8.6, which shall, in each case, be the sole and exclusive remedy of Buyer for the specified failure (except with respect to any remedy specifically provided for under such Section), the remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law or in equity.

- 29.9 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party. Buyer may determine that submitting an amendment or modification to this Agreement to the PUCN and FERC, as applicable, for filing, acceptance or approval shall be a condition precedent to the effectiveness of any such amendment.
- 29.10 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, agreements, obligations and conditions hereof.
- 29.11 Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.
- 29.12 Further Assurances. The Parties agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize the same in a reasonable written instrument, to be executed and delivered by both Parties.
- 29.13 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 29.14 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.
- 29.15 Specific Performance. Except as otherwise specifically provided herein, Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual

or threatened breach of any material obligation of Supplier hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of Supplier hereunder, and that, except as otherwise specifically provided herein, any liability limits contained herein shall not operate to limit the exercise of the Buyer's remedies in equity to cause the Supplier to perform its obligations hereunder. Supplier shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

**BUYER:**

**NEVADA POWER COMPANY**  
**d/b/a NV ENERGY**

By: 

Name: Douglas A. Cannon  
Title: President

**SUPPLIER:**

**COPPER MOUNTAIN SOLAR 5, LLC**

By: 

Name: L.S. FOLKS  
Title: VICE PRESIDENT



## **EXHIBIT 1**

### **DESCRIPTION OF FACILITY**

1. Name of Facility: Copper Mountain Solar 5

(a) Location: City of Boulder City, Clark County, Nevada

(b) Delivery Point: Nevada Solar One (NSO) 230-kV switchyard

2. Supplier: Copper Mountain Solar 5, LLC

3. Parent: Sempra Energy (ultimate parent)

4. Operator: Sempra Renewables Services, LLC, or a Qualified Operator

5. Equipment:

(a) Type of Facility: Solar Photovoltaic

(b) Installed Nameplate Capacity:

(i) Total capacity: 274 MVA (sum of inverters rating)

(ii) Expected Nameplate Capacity Rating: 250 MW AC @ +/- 0.95, subject to the provisions of Section 3.4.5 (at the Delivery Point)

(iii) Total gross output capacity: 254 MW (sum of inverters rating)

(iv) Total capacity net of Station Usage: 250 MW (net of losses up to the Delivery Point)

(c) Additional Technology Specific Information, if any: N/A

6. Operating Characteristics of Facility:

(a) VAR, leading: 83M (sum of inverters rating)

(b) VAR, lagging (-): 83M (sum of inverters rating)

(c) Controlled Ramp Rate (MW/minute): 25 (adjustable)

(d) Minimum Operating Capacity (MW): 0

(e) Power Factor: +/- 0.95, subject to the provisions of Section 3.4.5

## **EXHIBIT 2A**

### **PRODUCT RATES**

#### **PRODUCT RATE**

The Product Rate during the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1<sup>st</sup>, during the first Contract Year) shall be \$21.55 per MWh (the “Initial Product Rate”).

Thereafter, for the Term of the Agreement, the Product Rate shall be increased on January 1<sup>st</sup> of each Contract Year by an amount equal to two and five-tenths percent (2.5%) of the Product Rate for the previous Contract Year; (except that, solely with respect to the January 1<sup>st</sup> immediately following the Stub Period, such percentage shall be prorated as determined by the following formula:

$$\text{Product Rate} = \text{Initial Product Rate} * [1 + (2.5\% * \text{FCM}/12)];$$

where FCM is the number of full months between the Commercial Operation Date and December 31<sup>st</sup> (the Initial Product Rate, as so adjusted during the Term, the “Product Rate”).

**EXHIBIT 2B**

**FORM OF MONTHLY ENERGY INVOICE**

**Supplier Letterhead**

**Facility:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Facility ID:** \_\_\_\_\_

**Billing Period:** \_\_\_\_\_

**Invoice Number:** \_\_\_\_\_

**CURRENT MONTHLY BILLING DATA INPUT**

<b>Pricing</b>	<b>\$/MWh</b>
Product Rate	_____
Provisional Rate	_____
Test Energy Rate	_____

<b>Monthly Supply Amount (kWh)</b>	<b>On-Peak</b>
Supply Amount	_____

<b>Excused Product</b>	
Planned Outages	_____
Force Majeure	_____
Emergencies	_____
Curtailed Product	_____
Economic Curtailed Product	_____
<b>Total Excused Product</b>	_____

<b>Delivered Amount (kWh)</b>	<b>On-Peak</b>	<b>Off-Peak</b>
Net Energy (excluding Excess Energy)	_____	_____
Excess Energy	_____	_____
<b>Total Delivered Amount</b>	_____	_____

**CURRENT MONTHLY INVOICE CALCULATION**

	<b>Net Energy</b>		<b>Rate/kWh</b>		<b>Amount</b>
a. Product <sup>1</sup>	_____	x	_____	=	\$ _____
b. Excess Energy	_____	x	_____	=	\$ _____
c. Provisional Energy	_____	x	_____	=	\$ _____
d. Test Energy	_____	x	_____	=	\$ _____
e. Shortfall/Replacement Cost (from page 2B-2)					\$ _____
<b>f. Total Product Payment (a+b+c+d-e)</b>					\$ _____
g. Adjustments (+/-)					\$ _____
<b>TOTAL AMOUNT DUE (g + h)</b>					\$ _____

**PAYMENT DUE DATE NO LATER THAN:** \_\_\_\_\_

<sup>1</sup> Excluding Provisional Energy and Test Energy

## **EXHIBIT 2B**

### **FORM OF MONTHLY ENERGY INVOICE**

#### **REPLACEMENT COST CALCULATION – For Billing Period: September**

##### **Summer On-Peak**

a. Monthly On-Peak Supply Amounts	_____	kWh
b. Excused Product – On-Peak	_____	kWh
c. Difference (a – b)	_____	kWh
d. 90% of Difference (0.90 * c)	_____	kWh
e. Delivered Amount	_____	kWh
Shortfall (Y/N)? _____		
f. Shortfall Amount (max d – e or zero)	_____	kWh
Replacement Cost Calculation		
g. Average On-Peak Mead	_____	\$/MWh
h. Summer On-Peak Product Rate	_____	\$/MWh
i. Difference (max g – h or zero)	_____	\$/MWh
j. 10% of Product Rate (0.1 x i)	_____	\$/MWh
k. Replacement Cost (max of f * j or f * i)	\$ _____	

#### **REPLACEMENT COST CALCULATION – For Billing Period: December**

##### **Non-Summer On-Peak**

l. Monthly On-Peak Supply Amounts	_____	kWh
m. Excused Product – On Peak	_____	kWh
n. Difference (l – m)	_____	kWh
o. 90% of Difference (0.90 * n)	_____	kWh
p. Delivered Amount	_____	kWh
q. Shortfall (Y/N)?	_____	
r. Shortfall Amount (max o – p or zero)	_____	kWh
Replacement Cost Calculation		
s. Average On-Peak Mead	_____	\$/MWh
t. Non-Summer On-Peak Product Rate	_____	\$/MWh
u. Difference (max s – t or zero)	_____	\$/MWh
v. Replacement Cost (r * u)	\$ _____	

**EXHIBIT 2B**

## FORM OF MONTHLY ENERGY INVOICE DETAIL

[illegible]

**EXHIBIT 2C**

**FORM OF PC REPLACEMENT INVOICE**

**Buyer Letterhead**

Facility: \_\_\_\_\_  
Facility ID: \_\_\_\_\_

Date: \_\_\_\_\_  
Contract Year(s): \_\_\_\_\_  
Invoice Number: \_\_\_\_\_  
Payment Due Date: \_\_\_\_\_

**Contract Year Data**

**PCs**

a. Yearly PC Amount

\_\_\_\_\_

b. Delivered PCs

\_\_\_\_\_

PCs associated with Excused Product

\_\_\_\_\_

c. Planned Outage

\_\_\_\_\_

d. Force Majeure

\_\_\_\_\_

e. Emergencies

\_\_\_\_\_

f. Curtailed Product

\_\_\_\_\_

g. Economic Curtailed Product

\_\_\_\_\_

h. Excused Product (c + d + e + f + g)

\_\_\_\_\_

**i. PC Shortfall Amount (a – b – h)**

\_\_\_\_\_  
\_\_\_\_\_

**PC REPLACEMENT CALCULATION**

j. PC Replacement Rate

\$ \_\_\_\_\_

**k. PC REPLACEMENT COSTS (i \* j)**

\$ \_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT 3A**

### **DESCRIPTION OF PROJECT SITE**

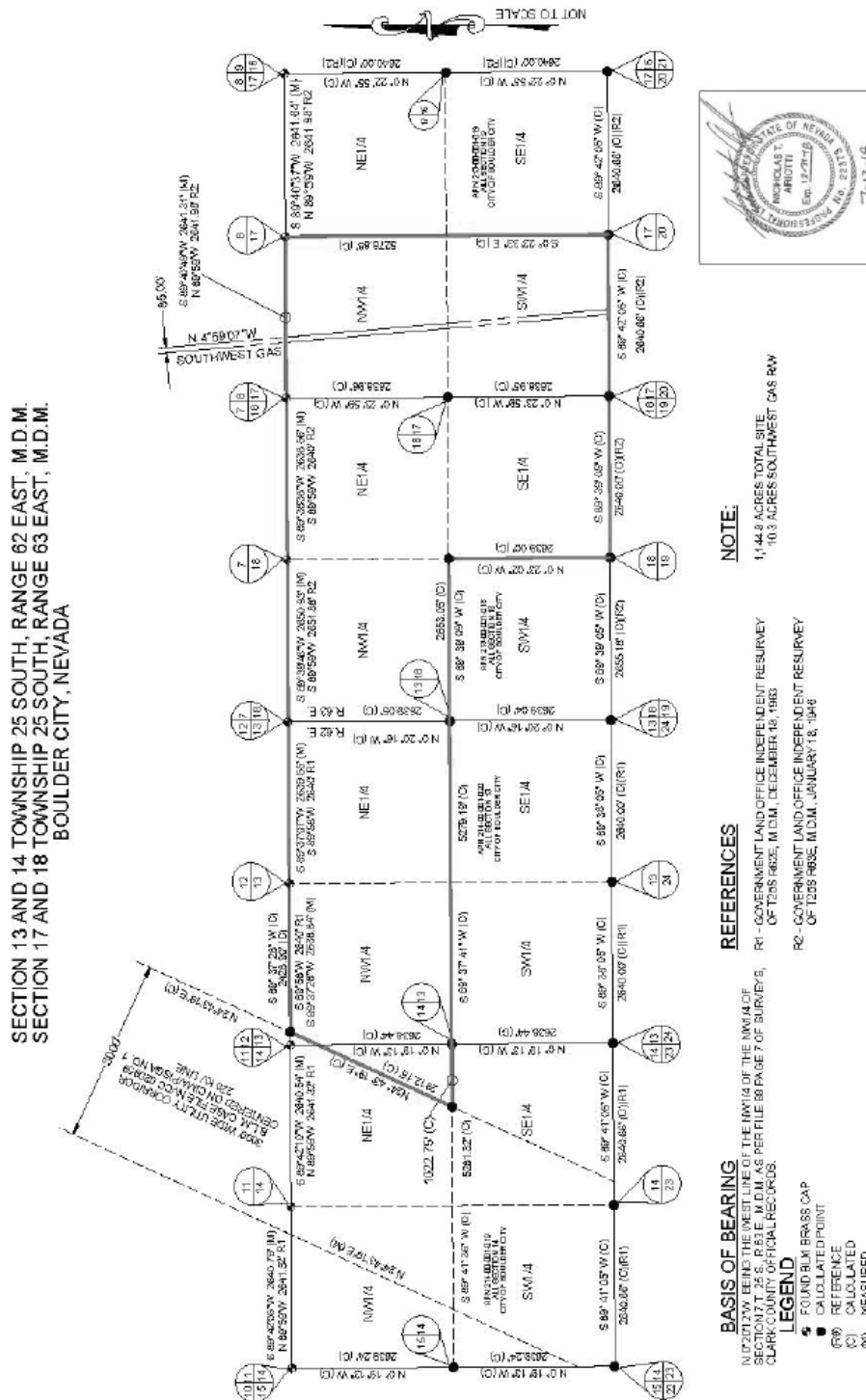
LEASE AREA LOCATED IN SECTION 13 AND SECTION 14, TOWNSHIP 25 SOUTH, RANGE 62 EAST, M.D.B.&M. AND IN SECTION 17 AND SECTION 18, TOWNSHIP 25 SOUTH, RANGE 63 EAST, M.D.B.&M., IN THE CITY OF BOULDER CITY, COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON QUARTER (1/4) CORNER FOR SECTION 8 AND SECTION 17, TOWNSHIP 25 SOUTH, RANGE 63 EAST, M.D.B.&M., A FOUND GOVERNMENT LAND OFFICE BRASS CAP; THENCE SOUTH  $0^{\circ}23'33''$  EAST 5,278.88 FEET ALONG THE CENTERLINE OF SAID SECTION 17 TO THE COMMON QUARTER (1/4) CORNER FOR SECTION 17 AND SECTION 20; THENCE SOUTH  $89^{\circ}42'05''$  WEST 2,640.66 FEET ALONG THE COMMON LINE BETWEEN SECTION 17 AND SECTION 20 TO THE COMMON CORNER OF SECTION 17, SECTION 18, SECTION 19 AND SECTION 20; THENCE SOUTH  $89^{\circ}39'05''$  WEST 2,640.00 FEET ALONG THE COMMON LINE BETWEEN SECTION 18 AND SECTION 19 TO THE COMMON QUARTER (1/4) CORNER OF SECTION 18 AND SECTION 19; THENCE NORTH  $0^{\circ}23'02''$  WEST 2,639.00 FEET ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 18 TO THE CENTER QUARTER (1/4) OF SECTION 18; THENCE SOUTH  $89^{\circ}39'09''$  WEST 2,653.05 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 18 TO THE COMMON QUARTER (1/4) CORNER OF SECTION 13, TOWNSHIP 25 SOUTH, RANGE 62 EAST, M.D.B.&M. AND SECTION 18, TOWNSHIP 25 SOUTH, RANGE 63 EAST, M.D.B.&M.; THENCE SOUTH  $89^{\circ}37'41''$  WEST 5,279.19 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 13 TO THE COMMON QUARTER (1/4) CORNER OF SECTION 13 AND SECTION 14; THENCE SOUTH  $89^{\circ}41'36''$  WEST 1,022.75 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 14 TO THE POINT OF INTERSECTION WITH THE SOUTHEASTERLY LINE OF A 3,000-FOOT WIDE BUREAU OF LAND MANAGEMENT UTILITY CORRIDOR CENTERED ON THE CIMA/PISGA NO.1 220KV TRANSMISSION LINE; THENCE NORTH  $24^{\circ}43'19''$  EAST 2,912.16 FEET ALONG SAID SOUTHEASTERLY LINE TO A POINT ON THE COMMON LINE BETWEEN SECTION 12 AND SECTION 13; THENCE NORTH  $89^{\circ}37'28''$  EAST 2,428.90 FEET ALONG THE COMMON LINE BETWEEN SECTION 12 AND SECTION 13 TO THE COMMON QUARTER (1/4) CORNER OF SECTION 12 AND SECTION 13, A FOUND GOVERNMENT LAND OFFICE BRASS CAP; THENCE NORTH  $89^{\circ}37'07''$  EAST 2,639.55 FEET ALONG THE COMMON LINE BETWEEN SECTION 12 AND SECTION 13 TO THE COMMON CORNER OF SECTION 12 AND SECTION 13, TOWNSHIP 25 SOUTH, RANGE 62 EAST, M.D.B.&M. AND SECTION 7 AND SECTION 18, TOWNSHIP 25 SOUTH, RANGE 63 EAST, M.D.B.&M., A FOUND GOVERNMENT LAND OFFICE BRASS CAP; THENCE NORTH  $89^{\circ}39'46''$  EAST 2,650.93 FEET ALONG THE COMMON LINE BETWEEN SECTION 7 AND SECTION 18 TO THE COMMON QUARTER (1/4) CORNER OF SECTION 7 AND SECTION 18. A FOUND GOVERNMENT LAND OFFICE BRASS CAP; THENCE NORTH  $89^{\circ}38'38''$  EAST 2,638.56 FEET ALONG THE COMMON LINE BETWEEN SECTION 7 AND SECTION 18 TO THE COMMON CORNER OF SECTION 7, SECTION 8, SECTION 17 AND SECTION 18, A FOUND GOVERNMENT LAND OFFICE BRASS CAP; THENCE NORTH  $89^{\circ}40'49''$  EAST 2,641.31 FEET ALONG THE COMMON LINE BETWEEN SECTION 8 AND SECTION 17 TO THE POINT OF BEGINNING.

CONTAINS 1,144.84 ACRES MORE OR LESS.



## MAP DEPICTING PROJECT SITE





## **EXHIBIT 4**

### **NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

#### **SUPPLIER:**

Copper Mountain Solar 5, LLC

<b>Contact</b>	<b>Mailing Address</b>	<b>Phone</b>	<b>E-mail</b>
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#### **CONTRACT REPRESENTATIVE:**

Prior to Commercial Operation Date:

Attn: Director – Asset Management	488 8 <sup>th</sup> Ave. HQ11S3 Sempra Renewables, LLC	619-696-4480
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From and after Commercial Operation Date:

Attn: Director – Asset Management	488 8 <sup>th</sup> Ave. HQ11S3 Sempra Renewables, LLC	619-696-4480
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#### **OPERATING REPRESENTATIVE:**

Prior to Commercial Operation Date:

Attn: Director – Asset Management	488 8 <sup>th</sup> Ave. HQ11S3 Sempra Renewables, LLC	619-696-4480
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Sempra Renewables Services, LLC

From and after Commercial Operation Date:

Attn: Director – Asset Management	488 8 <sup>th</sup> Ave. HQ11S3 San Diego, CA 92101	619-696-4480
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Sempra Renewables, LLC  
Sempra Renewables Services, LLC

## **EXHIBIT 4**

### **NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

#### **OPERATING NOTIFICATIONS:**

Prescheduling 619-696-2300

Sempra Renewables Services, LLC  
Control Room

Real-Time 619-696-2300  
Sempra Renewables Services, LLC  
Control Room

Monthly Checkout

Sempra Renewables Services, LLC 619-696-2300  
Control Room

#### **INVOICES:**

Operations Center Accounting 619-696-4807 generationbackoffice@sempraglobal.com

#### **PAYMENT INSTRUCTIONS:**

Operations Center Accounting 619-696-4807 generationbackoffice@sempraglobal.com

### **BUYER: NV ENERGY**

Nevada Power Company d/b/a NV Energy

<b>Contact</b>	<b>Phone</b>	<b>E-mail</b>
<b>CONTRACT REPRESENTATIVE:</b>		
Manager, Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com

#### **OPERATING REPRESENTATIVES**

##### **Scheduling**

- Portfolio Analytics-NPC (Normal Business Hours)	702/402-2882	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Portfolio Analytics-SPPC (Normal Business Hours)	702/402-2884	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Generation Dispatch (Control Area Operations)	702/402-7111	<a href="mailto:Sysopr@nvenergy.com">Sysopr@nvenergy.com</a>
- Daily Availability Notice-NPC (Spreadsheet)	702/402-2882	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Daily Availability Notice-SPPC (Spreadsheet)	702/402-2884	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>

##### **Emergencies (including Force Majeure)**

- Grid Reliability	775/834-4216	<a href="mailto:Grid_Reliability@nvenergy.com">Grid_Reliability@nvenergy.com</a>
- Portfolio Analytics	702/402-1954	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>

##### **Planned Outages-NPC**

##### **Planned Outages-SPPC**

702/402-6602	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>
775/834-4716	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>

##### **Metering-NPC**

##### **Metering-SPPC**

702/402-6110	<a href="mailto:NPCMeterOps@nvenergy.com">NPCMeterOps@nvenergy.com</a>
775/834-7156	<a href="mailto:Electric_Meter_Ops_North@nvenergy.com">Electric_Meter_Ops_North@nvenergy.com</a>

## **EXHIBIT 4**

### **NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

#### **INVOICES**

Energy Supply Contract Management  
6226 W Sahara Ave, M/S 26A  
Las Vegas, NV 89146

702/402-5667

[ContractManagement@nvenergy.com](mailto:ContractManagement@nvenergy.com)

#### **CC all invoices to:**

Fuel & Purchased Power Accounting  
6100 Neil Road, M/S S2A20  
Reno, NV 89511

775/834-6281

[cmcelwee@nvenergy.com](mailto:cmcelwee@nvenergy.com)

#### **“EVENT OF DEFAULT”, “COMMERCIAL OPERATION DATE” AND “FORCE MAJEURE”**

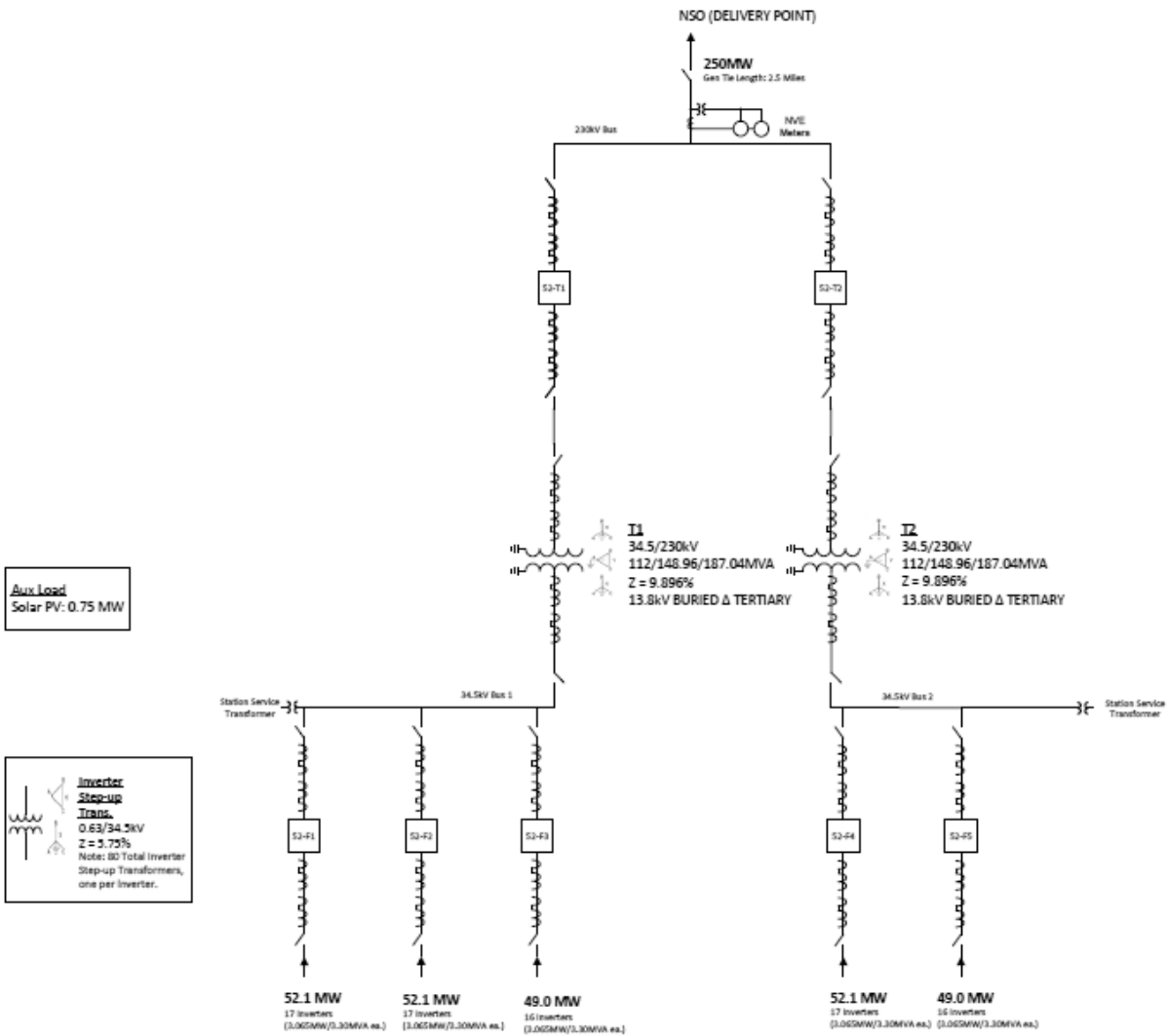
##### **CC all notices to:**

Office of General Counsel  
6226 W. Sahara Ave, M/S 3A  
Las Vegas, NV 89146

## EXHIBIT 5

### ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT

Attached is a one-line diagram of the Facility, which indicates the Delivery Point and the ownership and the location of Meters.



## **EXHIBIT 6**

### **PROJECT MILESTONE SCHEDULE**

All milestones may be completed earlier than stated times, at the sole option of Supplier.

- A) Project Milestone: Supplier shall obtain all Required Facility Documents to construct the Facility.

Completion Date: March 30, 2021.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that the Required Facility Documents to construct the Facility as listed in Exhibit 12 have been obtained, together with the metering system design for the Facility (submitted for Buyer's approval in accordance with Section 7.1) and a completed version of Exhibit 14.

- B) Project Milestone: Supplier's major equipment shall be delivered to the Project Site

Completion Date: July 31, 2021.

Documentation: Supplier shall provide Buyer with documentation that the major equipment (including step-up and medium voltage transformers and inverters) has been delivered to the Project Site.

- C) Project Milestone: Supplier shall obtain the Required Facility Documents to operate (but not achieve Commercial Operation) the Facility, including registration with PC Administrator.

Completion Date: August 31, 2021.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that Required Facility Documents to operate (but not achieve Commercial Operation) the Facility as listed in Exhibit 12 have been obtained, together with reasonable documentation evidencing registration with PC Administrator.

- D) Project Milestone: The Facility achieves the Operation Date.

Completion Date: August 31, 2021.

Documentation: Buyer's Meters shall record Energy being delivered from the Facility to Buyer and Supplier provides written notice to Buyer that the Facility satisfies the definition of Operation Date.

## **EXHIBIT 6**

### **PROJECT MILESTONE SCHEDULE**

#### **CRITICAL PROJECT MILESTONES**

- E) Project Milestone: Supplier shall demonstrate to Buyer that it has complete financing for construction of the Facility, which complete financing may consist of balance sheet financing by Supplier or any Affiliate thereof.

Completion Date: March 30, 2021.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized Representative of Supplier certifying that debt and equity financing arrangements have been executed for funding of 100% of the construction financing of the Facility.

- F) Project Milestone: Notice to Proceed has been issued to the Construction Contractor under the Construction Contract and construction of the Facility has commenced.

Completion Date: March 30, 2021.

Documentation: Supplier shall provide Buyer a copy of the executed Notice to Proceed acknowledged by the Construction Contractor and documentation from qualified professionals which indicates that physical work has begun at the Project Site regarding the construction of the Facility, as well as an ALTA Survey for the Project Site.

- G) Project Milestone: The Facility achieves the Commercial Operation Date.

Completion Date: the 1<sup>st</sup> day of the month following December 31, 2021 ("Commercial Operation Deadline").

Documentation: Supplier provides certifications required by Section 8.3.2 to Buyer.

## **EXHIBIT 7**

### **PERFORMANCE TESTS**

1. Performance tests required by the Construction Contract, which shall include a capacity test for each block of the Facility (as well as the Facility as a whole) sufficient to enable the Licensed Professional Engineer to determine the nameplate capacity rating of the Facility, as well as functional tests to demonstrate active and reactive power control capabilities of the Facility.
2. Such additional tests as may be required by Law or in accordance with the IA.

## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

Unit Name	Date	Measure	HE 01	HE 02	HE 03	HE 04	HE 05	HE 06	HE 07	HE 08	HE 09	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24
	Day 1	BaseMW																								
	Day 2	BaseMW																								
	Day 3	BaseMW																								
	Day 1	Max Capability																								
	Day 2	Max Capability																								
	Day 3	Max Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								

Note: Form of Availability Notice to be provided by Buyer to Supplier in Excel format. The format of the form may not be changed, except by Buyer.

Date For Notice:

---

Supplier:

---

Name of Suppliers Representative:

---



## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

Buyer: Nevada Power Company d/b/a NV Energy

Contact Info: Supplier Address here

City, State, Zip here

123-456-7890

Hour	Net Availability From Plant MWh	Total Derating MWh	Plant Total MWh	Cause and Time of Derating
1:00	0	0	0	
2:00	0	0	0	
3:00	0	0	0	
4:00	0	0	0	
5:00	0	0	0	
6:00	0	0	0	
7:00	0	0	0	
8:00	0	0	0	
9:00	0	0	0	
10:00	0	0	0	
11:00	0	0	0	
12:00	0	0	0	
13:00	0	0	0	
14:00	0	0	0	
15:00	0	0	0	
16:00	0	0	0	
17:00	0	0	0	
18:00	0	0	0	
19:00	0	0	0	
20:00	0	0	0	
21:00	0	0	0	
22:00	0	0	0	
23:00	0	0	0	
0:00	0	0	0	
Total	0	0	0	

Note: Supplier to submit Form of Availability Notice in Excel format to Balancing Authority Area Operator as identified in Exhibit 4 Notices. Form requires 7 days of availability.

## **EXHIBIT 9**

### **BUYER'S REQUIRED REGULATORY APPROVALS**

1. PUCN Approval of this Agreement.

## **EXHIBIT 10**

### **SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. Nevada Renewable Energy System certification.
2. PUCN Approval of this Agreement.
3. Although obtaining EWG status is not a Supplier Required Regulatory Approval, if Supplier elects to obtain EWG status for the Facility, Supplier shall obtain: (a) a Notice of Self Certification as an EWG, or (b) an order from FERC granting the Facility EWG status.
4. Based on Supplier's status as a "public utility" under the Federal Power Act, FERC authorization under section 205 of the Federal Power Act to make sales of electric energy, capacity, and ancillary services from the Facility.
5. Utility Environmental Protection Act (UEPA) Permit to Construct, to be issued by the Public Utilities Commission of Nevada.

## **EXHIBIT 11**

### **TECHNICAL SPECIFICATIONS**

In accordance with Section 8.1, Supplier shall provide, not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section (A) of Exhibit 6), a completed version of Exhibit 11.

## **EXHIBIT 12**

### **REQUIRED FACILITY DOCUMENTS**

1. Western Renewable Energy Generation Information System (WREGIS), registrations, if applicable.
2. U.S. Energy Information Administration, filing of Forms 860 and 923, if required.
3. Federal Energy Regulatory Commission, certification of exempt wholesale generator (EWG) status, if required.
4. Conditionally Exempt Small Quantity Generator or Small Quantity Generator identification number, if required.
5. Federal Energy Regulatory Commission market based rate authorization, if required.
6. This Agreement.
7. Construction Contract (in accordance with Section 8.1).
8. Operating and Maintenance Agreement (in accordance with Section 8.9).
9. IA.
10. Shared Facilities agreement(s), including easements for Shared Facilities and related consent and non-interference agreements.
11. Nevada Renewable Energy System certification.
12. PUCN Approval of this Agreement.
13. Boulder City Option Agreement No. 18-1769 to lease land to Supplier.
14. Boulder City Lease Agreement, and easements and waivers to be granted by Boulder City thereunder.
15. Boulder City Development Agreement.
16. Crossing consents for existing utility infrastructure.
17. Eldorado Valley Drive Road Use and Maintenance Agreement.
18. Project Administration Agreement with Sempra Renewables Services, Inc.
19. Renewable Energy Tax Abatement Agreement issued by Nevada Governor's Office of Energy.
20. Amendment to the boundaries of the Boulder City Conservation Easement.
21. City of Boulder City zoning change to Energy Resource Zone.
22. PUCN Permit to Construct pursuant to the Utility Environmental Protection Act.
23. Temporary Pond Permit or Waiver of Temporary Pond Permit from the Nevada Division of Water Resources.
24. Energy Review Project Payment to the Nevada Department of Wildlife.
25. Construction Stormwater General Permit or Exemption from Construction Stormwater General Permit from the Nevada Division of Environmental Protection and Bureau of Water Pollution Control.
26. Excavation Permit (water line) from the Boulder City Public Works Department.
27. Building Permits (all-inclusive grading, Generating Facility – All-Inclusive Building, Substation and Gen-Tie Line) from the Boulder City Community Development Department.
28. New Construction Permit (Fire/Fuel Tank Installation) from the Boulder City Fire Department.
29. Occupancy Permit (Construction and Bathroom Trailers) from the State of Nevada Manufactured Housing Division.
30. Permit to Construct Individual Sewage Disposal System from the Southern Nevada Health District.
31. Dust Control Permits from the Clark County Department of Air Quality.

## **EXHIBIT 12**

### **REQUIRED FACILITY DOCUMENTS**

32. Clark County Desert Conservation Program Land Disturbance Mitigation Fee to Clark County.
33. Hazardous Materials Permit from the Nevada State Fire Marshall.
34. Shared Facilities Agreement

**EXHIBIT 13****SUPPLY AMOUNT**

The Supply Amount(s) shall be the Energy amounts for each Delivery Hour that shall be delivered by Supplier to Buyer, pursuant to this Agreement, as specified by each value in the attached table below.<sup>2</sup>

Hour Ending		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Off-Peak	-	-	-	-	-	-	-	-	-	-	-	-
0200		-	-	-	-	-	-	-	-	-	-	-	-
0300		-	-	-	-	-	-	-	-	-	-	-	-
0400		-	-	-	-	-	-	-	-	-	-	-	-
0500		-	-	-	-	-	-	-	-	-	-	-	-
0600		-	-	-	-	0.3	2.2	0.2	-	-	-	-	-
0700	On Peak	-	4.4	4.9	15.2	55.8	73.8	50.0	20.2	4.3	0.1	8.4	0.3
0800		42.5	81.2	70.3	117.6	185.2	197.7	150.9	131.3	97.8	45.6	91.8	46.3
0900		135.3	175.9	187.6	206.8	233.5	236.1	201.1	217.1	216.1	158.5	173.2	140.4
1000		164.9	181.3	218.2	219.8	238.4	245.3	221.0	230.1	235.8	190.0	169.4	151.2
1100		161.6	190.2	218.1	226.4	239.6	248.3	216.8	227.1	237.5	187.4	159.6	147.2
1200		158.1	178.3	218.6	228.7	236.4	249.4	221.8	211.9	231.2	187.4	155.9	139.4
1300		163.0	179.7	212.1	232.4	238.4	239.6	216.4	205.6	216.3	189.3	166.5	141.4
1400		164.2	171.2	219.4	224.1	238.1	228.2	212.4	214.1	203.8	195.7	175.5	139.1
1500		162.3	177.3	212.3	222.5	238.8	225.7	206.5	207.3	203.8	195.3	172.3	133.0
1600		106.9	144.2	200.1	228.4	228.4	232.4	199.8	212.4	204.4	186.7	82.5	58.5
1700		18.5	59.1	180.0	216.4	218.7	236.8	205.7	193.7	197.5	139.8	12.2	1.2
1800		-	1.3	89.3	154.0	193.4	218.2	187.9	170.7	108.8	33.1	0.5	-
1900		-	-	12.3	39.6	76.1	120.6	107.5	62.5	12.8	0.1	-	-
2000		-	-	-	0.1	4.9	18.5	16.7	2.1	-	-	-	-
2100	-	-	-	-	-	-	-	-	-	-	-	-	
2200	-	-	-	-	-	-	-	-	-	-	-	-	
2300	Off-Peak	-	-	-	-	-	-	-	-	-	-	-	-
2400		-	-	-	-	-	-	-	-	-	-	-	-
Daily Supply Amount (MWh)		1,277	1,544	2,043	2,332	2,626	2,773	2,415	2,306	2,170	1,709	1,368	1,098
Daily On-Peak Supply Amount (MWh)		1,277	1,544	2,043	2,332	2,626	2,771	2,414	2,306	2,170	1,709	1,368	1,098
Monthly Supply Amount (MWh)		39,595	43,233	63,340	69,961	81,406	83,189	74,853	71,487	65,106	52,977	41,034	34,040
Annual Supply Amount (MWh)		720,222											
Maximum Amount (MW)		250											

<sup>2</sup> NTD: Table to be provided by Buyer in Excel format with hourly values rounded to a single decimal point. The Monthly Supply Amount and the Annual Supply Amount for February shown above represent a non-leap year.

## **EXHIBIT 14**

### **DIAGRAM OF FACILITY**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section (A) of Exhibit 6), a completed version of Exhibit 14; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as-built.

The diagram of the Facility to be attached as Exhibit 14 will include a detailed layout of the Facility, including size, type, location and electrical infrastructure.



## **EXHIBIT 15**

### **OPERATIONS AND MAINTENANCE AGREEMENT; OPERATOR GOOD STANDING CERTIFICATE**

In accordance with Section 8.9, Supplier shall provide Exhibit 15 no later than ninety (90) days prior to the Commercial Operation Date.

**EXHIBIT 16**

**RESERVED**

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name of Issuing Bank]  
[Address of Issuing Bank]  
[City, State of Issuing Bank]

Letter of Credit No. [\_\_\_\_\_]   
Irrevocable Standby Letter of Credit

Date of Issue: [\_\_\_\_\_] , 20\_\_

Stated Expiration Date: [\_\_\_\_\_]

Applicant:  
[Name and address]  
[\_\_\_\_\_]   
[\_\_\_\_\_]

Stated Amount: USD \$[\_\_\_\_\_]

Beneficiary:  
[Name and address]  
[\_\_\_\_\_]   
[\_\_\_\_\_]

Credit Available With: [\_\_\_\_\_]

## EXHIBIT 17

### FORM OF LETTER OF CREDIT

Ladies and Gentlemen:

At the request and for the account of [ ] (the "Applicant"), we hereby establish in favor of Nevada Power Company ("Beneficiary") for the aggregate amount not to exceed [ ] million United States Dollars (\$[ ]), in connection with the Long-Term Renewable Power Purchase Agreement dated as of [ ] (as amended, restated, amended and restated or otherwise modified, the "Agreement"), by and between the Applicant and Beneficiary this Irrevocable Standby Letter of Credit no. [ ] (this "Letter of Credit") expiring on [date not earlier than 364 days from issuance] (the "Stated Expiration Date").

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an "Automatic Reduction").

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the "Available Amount").

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [ ], referencing this Letter of Credit No. [ ]. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on the next Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made by the close of business two Business Days, New York City time, following the submission of a compliant Drawing Request. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as specified in the Drawing Request.

As used in this Letter of Credit, "Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by Law to remain closed in the State of New York.

## **EXHIBIT 17**

### **FORM OF LETTER OF CREDIT**

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the “Early Expiration Date”) specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of one (1) year each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least thirty (30) days prior to any such expiry date we have sent you written notice (the “Notice of Non-Renewal”) by certified mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary is authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by - Beneficiary’s authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of the same stating the reasons therefor and shall upon receipt of -Beneficiary’s instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998, International Chamber of Commerce, Publication No. 590” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the Laws of the State of New York.

This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant. All transfer fees are for the account of the Beneficiary.

All Drawing Requests under this Letter of Credit must bear the clause: "Drawn under [*Name of Issuing Bank*], Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]."

This Letter of Credit shall not be amended except with the written concurrence of [*Name of Issuing Bank*], the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by Law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Name of Issuing Bank*]

Authorized signature

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 1

[Letterhead of Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

**DRAWING REQUEST**

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable, and include in this Drawing Request]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the Agreement applicable to Beneficiary.

or

B-2) The Letter of Credit will expire within thirty (30) days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicant has failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;

; and

C) You are directed to make payment of the requested drawing to:

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on  
this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**ANNEX 2  
NOTICE OF EARLY EXPIRATION**

[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the "Letter of Credit") dated [ ] issued by [Issuing Bank] in favor of [ ] (the "Beneficiary"). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on \_\_\_\_\_, \_\_\_\_ [*insert a date which is thirty (30) or more days after the date of this notice of early expiration*] (the "Early Expiration Date").

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

By: \_\_\_\_\_  
Name:  
Title:

cc:

[Applicant name and address]

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],

Date: \_\_\_\_\_

[Address]

[City, State]

Attn: Trade Services Department

Re: [Name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE

\_\_\_\_\_  
ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[\_\_\_\_\_] and maximum of \$[\_\_\_\_\_].

**Select one of the following:**

\_\_\_\_ we enclose a cashier's/certified check

\_\_\_\_ we have wired funds to you through \_\_\_\_\_ bank

\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

We certify that this transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America [and the jurisdiction of Issuing Bank].

Very truly yours,

[BENEFICIARY NAME]

\_\_\_\_\_

Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

\_\_\_\_\_

(Signature of Authenticating Bank)

(Name of Bank)

\_\_\_\_\_

(Printed Name/Title)

(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 4  
VOLUNTARY REDUCTION REQUEST CERTIFICATE  
[Date]

[insert name of Issuing Bank]  
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [ ] (the “Letter of Credit”) dated [ ] issued by you in favor of [ ] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [ ] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by U.S.\$[ ] to U.S.\$[ ].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_  
Name:  
Title:

cc:

[Applicant name and address]

**EXHIBIT 18**

**YEARLY PC AMOUNT**

Yearly PC Amount	720,222 MWh*
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\* Subject to annual degradation in accordance with Section 3.8.

## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and among Nevada Power Company, a Nevada corporation, d/b/a NV Energy, acting in its merchant function capacity (together with its permitted successors and assigns, “NVE”), \_\_\_\_\_, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and \_\_\_\_\_, a \_\_\_\_\_ formed and existing under the Laws of the State of \_\_\_\_\_ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, and operate an approximately \_\_\_\_\_ MW solar-powered electric generating facility located near \_\_\_\_\_, known as the Copper Mountain Solar 5 solar project (the “Project”).

WHEREAS, In order to partially finance the development, construction, installation, testing, and operation of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

[WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.]

WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of [\_\_\_\_\_] (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”). Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.

WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

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

**FORM OF LENDERS CONSENT**

**SECTION 1. CONSENT TO ASSIGNMENT**

NVE acknowledges the collateral assignment by Borrower of, among other things, all of Borrower's right, title and interest in, to and under the PPA, to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents. NVE hereby consents to the assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA and herein. Upon receipt of notice from Administrative Agent, NVE agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, NVE agrees to make directly to Administrative Agent all payments to be made by NVE to Borrower under the PPA from and after NVE's receipt of such instructions, and Borrower consents to any such action.

(B) NVE will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof.

(C) NVE agrees to deliver duplicates or copies of all notices of default delivered by NVE under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. NVE may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to NVE which are due and payable by Borrower under the PPA, except that if NVE does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or thirty (30) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to NVE, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings but not to exceed [ninety (90)] days. NVE consents to the transfer of Borrower's interest under the PPA to a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, NVE shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). A "Qualified Transferee" means a Person that has, at a minimum, a tangible net worth of at least seven million five hundred thousand dollars (\$7,500,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer, provided that such approval shall not to be unreasonably withheld or delayed, and provided further that if

**FORM OF LENDERS CONSENT**

such Qualified Transferee provides Development Security or Operating Security (as applicable) in accordance with the requirements of the PPA such approval shall be deemed given, and has (or agrees to contract with an operator who has) at least three (3) years of experience operating a utility scale generating plant of similar technology to the Facility.

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, NVE will enter into a new contract with a Qualified Transferee. Such new contract shall be on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent NVE reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, NVE or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental bodies and all judicial orders, judgments and decrees (hereinafter “Applicable Law”) in effect at such time. Lenders or Administrative Agent shall cure or cause the cure of any payment defaults then existing under the original PPA prior to NVE entering into a new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower’s obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of NVE against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties’ interests in the Facility, the Development Security and Operating Security required under the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract. Nothing herein abrogates, and except as specifically provided for herein, any assignee hereunder shall be subject to, NVE’s rights under Article 6 of the PPA.

(F) In the event a Qualified Transferee succeeds to Borrower’s interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not capable of being cured and do not impair NVE’s rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign the PPA or the new contract entered into pursuant to subparagraph 1(d) above to any Qualified Transferee to whom Borrower’s interest in the Project is transferred, provided that such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Supplier) shall be released from any further liability thereunder accruing from and after the date of such assignment.

**SECTION 2. REPRESENTATIONS AND WARRANTIES**

NVE, acting in its merchant function capacity (and therefore specifically excluding the knowledge of NVE, acting in its transmission function capacity (“NVE Transmission”), as to any of the matters stated below, and without imputation to NVE of any knowledge whatsoever relating to the NVE Transmission, whether as a result of information publicly posted to the open access



## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

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

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

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

(F) neither NVE nor, to NVE's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder.

### **SECTION 3. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to NVE:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Telephone No.: [\_\_\_\_\_]

Telecopy No.: [\_\_\_\_\_]

Attn: [\_\_\_\_\_]

## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

If to Administrative Agent:

[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Telephone No.: [\_\_\_\_\_] ]  
Telecopy No.: [\_\_\_\_\_] ]  
Attn: [\_\_\_\_\_] ]

If to Borrower:

[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Telephone No.: [\_\_\_\_\_] ]  
Telecopy No.: [\_\_\_\_\_] ]  
Attn: [\_\_\_\_\_] ]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, any tax equity investor shall be entitled to receive notices from NVE by providing written notice to NVE of such tax equity investor's address for notices. NVE's failure to provide any notice to such tax equity investor shall not be a breach of this Consent.

#### **SECTION 4. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW**

NVE agrees to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

#### **SECTION 5. COUNTERPARTS**

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

#### **SECTION 6. SEVERABILITY**

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

#### **SECTION 7. ACKNOWLEDGMENTS BY BORROWER.**

Borrower, by its execution hereof, acknowledges and agrees that, notwithstanding any term to the contrary in the PPA, NVE may perform as set forth herein and that neither the execution of this Consent, the performance by NVE of any of the obligations of NVE hereunder, the exercise

**EXHIBIT 19**

**FORM OF LENDERS CONSENT**

of any of the rights of NVE hereunder, or the acceptance by NVE of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by NVE to, or impute knowledge to NVE of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by NVE of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of NVE that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against NVE on account of this Consent except as specifically provided herein.

**SECTION 8. JURY TRIAL WAIVER**

EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

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

Nevada Power Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Administrative Agent]\_\_\_\_\_,  
a \_\_\_\_\_  
as Administrative Agent for the Lenders

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Borrower]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

This GUARANTEE (this “Guarantee”), dated as of \_\_\_\_\_, 20\_\_, is issued by [\_\_\_\_\_] a [\_\_\_\_\_] organized and existing under the laws of [\_\_\_\_\_] (“Guarantor”) in favor of Nevada Power Company, a Nevada corporation doing business as NV Energy (“Company”).

Pursuant to that certain Long-Term Renewable Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified or supplemented from time to time, the “Agreement”), by and between Company and [\_\_\_\_\_] a [\_\_\_\_\_] [\_\_\_\_\_] of which Guarantor is the [direct][indirect] parent (“Subsidiary”), and pursuant to which Guarantor will indirectly benefit from the terms and conditions thereof, and the performance by Subsidiary of its obligations thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants, undertakes and agrees with Company as follows:

**Section 1. Definitions.** Capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Agreement.

**Section 2. Guarantee.**

(a) Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of Company, the full and prompt payment when due, subject to any applicable grace period, of each and every payment obligation of Subsidiary arising under the Agreement up to the limitations set forth in the Agreement, including, without limitation, the payment when due of all indemnities, refunds and liquidated damages payable at any time under the Agreement (the “Guaranteed Obligations”). The Guaranteed Obligations shall further include, without limitation, (i) interest accruing as part of the Guaranteed Obligations according to the terms thereof following the commencement by or against the Subsidiary of any case or proceeding under any Applicable Law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution or composition or adjustment of debt and (ii) all reasonable costs and expenses (including reasonable attorneys’ fees), if any, incurred in successfully enforcing Company’s rights under this Guarantee. Guarantor further agrees that if Subsidiary shall fail to pay in full when due all or any part of the Guaranteed Obligations, Guarantor will promptly pay (or promptly procure the payment of) the same in accordance with, and up to the limitations set forth in the Agreement. Notwithstanding any other provision of this Guarantee, Guarantor’s aggregate liability under this Guarantee is limited to \_\_\_\_\_ U.S. Dollars (US\$\_\_\_\_\_) <sup>3</sup> and any costs incurred by Company under 2(a)(ii).

(b) **Nature of Guarantee.** The Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, even if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must otherwise be returned by Company upon the occurrence of any action or event including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of the Subsidiary, Guarantor, any other Person or otherwise, all as though the payment had not been made.

(c) **Absolute Guarantee.** Guarantor agrees that its obligations under this Guarantee are irrevocable, absolute, independent, unconditional and continuing and shall not be affected by

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<sup>3</sup> NTD: insert applicable amount of Development Security/Operating Security

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to the other terms and conditions hereof, as follows:

(i) this Guarantee is a guarantee of payment when due and not of collectability;

(ii) Company may from time to time in accordance with the terms of the Agreement, without notice or demand and without affecting the validity or enforceability of this Guarantee or giving rise to any limitation, impairment or discharge of Guarantor's liability hereunder, (A) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment or performance of the Guaranteed Obligations, (B) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment or performance of the same to the payment or performance of any other obligations, (C) request and accept other guaranties of or security for the Guaranteed Obligations and take and hold security for the payment or performance of this Guarantee or the Guaranteed Obligations, (D) release, exchange, compromise, subordinate or modify, with or without consideration, any security for payment or performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any person with respect to the Guaranteed Obligations, (E) enforce and apply any security now or hereafter held by or for the benefit of Company in respect of this Guarantee or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Company may have against any such security, as Company in its discretion may determine consistent with the Agreement and any applicable security agreement, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Guarantor against Subsidiary or any other guarantor of the Guaranteed Obligations or any other guarantee of or security for the Guaranteed Obligations, and (F) exercise any other rights available to Company under the Agreement, at law or in equity; and

(iii) this Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full of the Guaranteed Obligations and otherwise as set forth in this Guarantee), including, without limitation, the occurrence of any of the following, whether or not Guarantor shall have had notice or knowledge of any of them: (A) any failure to assert or enforce, or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, or the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions of the Agreement or any agreement or instrument executed pursuant thereto or of any other guarantee or security for the Guaranteed Obligations; (C) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (D) the personal or corporate incapacity of any person; (E) any change in the financial condition, or the bankruptcy, administration, receivership or insolvency of Subsidiary or any other person, or any rejection, release, stay or discharge of Subsidiary's or any other person's obligations in connection with any bankruptcy, administration, receivership or similar proceeding or otherwise or any disallowance of all or any portion of any claim by Company, its successors or permitted assigns in connection with any such proceeding; (F) any

**FORM OF GUARANTEE**

change in the corporate existence of, or cessation of existence of, Guarantor or the Subsidiary (whether by way of merger, amalgamation, transfer, sale, lease or otherwise); (G) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any person; (H) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guaranty of any of the Guaranteed Obligations or failure to apply such security or collateral or failure to enforce such guaranty; (I) the existence of any claim, set-off, or other rights which Guarantor or any affiliate thereof may have at any time against Company or any affiliate thereof in connection with any matter unrelated to the Agreement; and (J) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

(d) **Currency.** All payments made by Guarantor hereunder shall be made in U.S. dollars in immediately available funds.

(e) **Defenses.** Notwithstanding anything herein to the contrary, Guarantor specifically reserves to itself all rights, counterclaims and other defenses that the Subsidiary is or may be entitled to arising from or out of the Agreement, except for any defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Subsidiary, the lack of power or authority of the Subsidiary to enter into the Agreement and to perform its obligations thereunder, or the lack of validity or enforceability of the Subsidiary's obligations under the Agreement or any transaction thereunder.

**Section 3. Other Provisions of the Guarantee.**

(a) **Waivers by Guarantor.** Guarantor hereby waives for the benefit of Company, to the maximum extent permitted by Applicable Law:

- (i) notice of acceptance hereof;
- (ii) notice of any action taken or omitted to be taken by Company in reliance hereon;
- (iii) any right to require Company, as a condition of payment by Guarantor, to (A) proceed against or exhaust its remedies against Subsidiary or any person, including any other guarantor of the Guaranteed Obligations, or (B) proceed against or exhaust any security held from Subsidiary or any person, including any other guarantor of the Guaranteed Obligations;
- (iv) subject to Clause 2(e), any defense arising by reason of the incapacity, lack of authority or any disability of Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Subsidiary from any cause other than payment in full of the Guaranteed Obligations or termination of this Guarantee in accordance with its terms;
- (v) any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (vi) any requirement that Company be diligent or prompt in making demands hereunder or give notices of default under the Agreement, notices of any renewal, extension or

**FORM OF GUARANTEE**

modification of the Guaranteed Obligations or any agreement related thereto, and any right to consent to any thereof; and

(vii) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety, including promptness, diligence, notice of acceptance and notice of any default under the Agreement, notice of presentment, demand, protest, and notice of dishonor or nonpayment, notice of acceleration or other demand and any other notice with respect to this Guarantee.

**(b) Deferral of Subrogation.** Until such time as the Guaranteed Obligations have been paid or performed in full, notwithstanding any payment made by Guarantor hereunder or the receipt of any amounts by Company with respect to the Guaranteed Obligations, (i) Guarantor (on behalf of itself, its successors and assigns, including any surety) hereby expressly agrees not to exercise any right, nor assert the impairment of such rights, it may have to be subrogated to any of the rights of Company against Subsidiary or against any other collateral security held by Company for the payment or performance of the Guaranteed Obligations, (ii) Guarantor agrees that it will not seek any reimbursement from Company in respect of payments or performance made by Guarantor in connection with the Guaranteed Obligations, or amounts realized by Company in connection with the Guaranteed Obligations and (iii) Guarantor shall not claim or prove in a liquidation or other insolvency proceeding of the Subsidiary in competition with the Company. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full or otherwise fully satisfied, such amount shall be held in trust by Guarantor for the benefit of Company and shall forthwith be paid to Company, to be credited and applied to the Guaranteed Obligations.

**Section 4. Representations and Warranties of Guarantor.** Guarantor hereby represents, warrants, and undertakes to Company as follows:

**(a)** Guarantor is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and has the corporate power, authority and legal right to own its property and assets and to transact the business in which it is engaged.

**(b)** Guarantor has full power, authority and legal right to execute and deliver this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor, and to perform its obligations hereunder and thereunder.

**(c)** The execution, delivery and performance of this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly authorized by all necessary company action on the part of Guarantor and do not contravene or conflict with Guarantor's memorandum and articles of association.

**(d)** This Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly executed and delivered by Guarantor and constitute the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by the effect of any applicable bankruptcy, insolvency,

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reorganization, debtor relief or similar laws affecting creditors' rights generally and by general principles of equity.

(e) There are no actions, suits, investigations, proceedings, condemnations, or audits by or before any court or other governmental or regulatory authority or any arbitration proceeding pending or, to its actual knowledge after due inquiry, threatened against or affecting Guarantor, its properties, or its assets, which would have a material adverse effect on Guarantor's ability to perform its obligations hereunder.

(f) All necessary action has been taken under Applicable Laws to authorize the execution, delivery and performance of this Guarantee. Neither the execution and delivery of this Guarantee nor the performance of the terms and conditions hereof by Guarantor shall result in (i) a violation or breach of, or a default under, or a right to accelerate, terminate or amend, any contract, commitment or other obligation to which Guarantor is a party or is subject or by which any of its assets are bound, or (ii) a violation by Guarantor of any Applicable Law.

(g) No governmental approvals or other consents, approvals, or notices of or to any person are required in connection with the execution, delivery, performance by Guarantor, or the validity or enforceability, of this Guarantee.

**Section 5. Notices.** All notices, demands, instructions, waivers, consents, or other communications required or permitted hereunder shall be in writing in the English language and shall be sent by personal delivery, courier, certified mail or facsimile, to the following addresses:

(a) If to Guarantor:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

(b) If to Company:

Nevada Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile No.: 702-402-2455  
Email: ContractManagement@nvenergy.com  
Attn: [\_\_\_\_\_]

With a copy to (which shall not constitute notice):

Nevada Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile: (702) 402-2069



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Attn: [\_\_\_\_\_]

The addresses and facsimile numbers of either party for notices given pursuant to this Guarantee may be changed by means of a written notice given to the other party at least three (3) Business Days (being a day on which clearing banks are generally open for business in the jurisdiction of the party to whom a notice is sent) prior to the effective date of such change. Any notice required or authorized to be given hereunder shall be in writing (unless otherwise provided) and shall be served (i) personally, (ii) by courier service or (iii) by facsimile transmission addressed to the relevant Person at the address stated below or at any other address notified by that Person as its address for service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the intended Person, and any notice so given by facsimile transmission shall be deemed to have been served on dispatch unless dispatched after the recipient's normal business hours on a Business Day or dispatched on any day other than a Business Day, in which case such notice shall be deemed to have been delivered on the next Business Day. As proof of such service it shall be sufficient to produce a receipt showing personal service, the receipt of a courier company showing the correct address of the addressee or an activity report of the sender's facsimile machine showing the correct facsimile number of the Person on whom notice is served and the correct number of pages transmitted.

#### **Section 6. Miscellaneous Provisions.**

(a) **Waiver; Remedies Cumulative.** No failure on the part of Company to exercise, and no delay on the part of Company in exercising, any right or remedy, in whole or in part hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by Company shall be effective unless it is in writing and such writing expressly states that it is intended to constitute such waiver. Any waiver given by Company of any right, power or remedy in any one instance shall be effective only in that specific instance and only for the purpose for which given, and will not be construed as a waiver of any right, power or remedy on any future occasion. The rights and remedies of Company herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) **Successors and Assigns.** This Guarantee shall be binding upon the successors of Guarantor and shall inure to the benefit of Company and its successors and permitted assigns. Guarantor shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of Company. Any purported assignment or delegation without such written consent shall be null and void. Company may assign its rights and obligations hereunder to any assignee of its rights under the Agreement permitted in accordance with the Agreement.

(c) **Amendment.** This Guarantee may not be modified, amended, terminated or revoked, in whole or in part, except by an agreement in writing signed by Company and Guarantor.

(d) **Termination and Release.** This Guarantee is irrevocable, unconditional and continuing in nature and is made with respect to all Guaranteed Obligations now existing or hereafter arising and shall remain in full force and effect until the earlier of (i) the time when in accordance with the terms of the Agreement all of the Guaranteed Obligations are fully satisfied and discharged, and (ii) then, and only then, this Guarantee shall automatically be released and shall be of no further force and effect; otherwise, it shall remain in full force and effect. Other

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than as set forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor.

**(e) Law and Jurisdiction.**

(i) THIS GUARANTEE IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, WITHOUT REGARD FOR ANY PRINCIPLES OF CONFLICTS OF LAW THAT WOULD DIRECT OR PERMIT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

(ii) GUARANTOR AND COMPANY IRREVOCABLY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN WASHOE COUNTY, NEVADA, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY SUIT, ACTION OR PROCEEDING, AND TO SETTLE ANY DISPUTE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS GUARANTEE, AND FOR SUCH PURPOSES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND GUARANTOR CONSENTS TO THE JURISDICTION OF, AND TO THE LAYING OF VENUE IN, SUCH COURTS FOR SUCH PURPOSES AND HEREBY WAIVES ANY DEFENSE BASED ON LACK OF VENUE OR PERSONAL JURISDICTION OR OF INCONVENIENT FORUM.

**(f) Survival.** All representations and warranties made in this Guarantee and by Guarantor in any other instrument, document, or agreement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Guarantee.

**(g) Severability.** Any provision of this Guarantee that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where provisions of law or regulation resulting in such prohibition or unenforceability may be waived they are hereby waived by Guarantor and Company to the full extent permitted by law so that this Guarantee shall be deemed a valid binding agreement in each case enforceable in accordance with its terms.

**(h) Third Party Rights.** The terms and provisions of this Guarantee are intended solely for the benefit of Company and Guarantor and their respective successors and permitted assigns, and it is not the intention of Company or Guarantor to confer upon any other persons any rights by reason of this Guarantee.

**(i) No Set-off, Deduction or Withholding.** Guarantor hereby guarantees that payments hereunder shall be made without set-off or counterclaim and free and clear of and without deduction or withholding for any taxes; provided, that if the Guarantor shall be required under Applicable Law to deduct or withhold any taxes from such payments, then (i) the sum payable by Guarantor shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable pursuant to this sentence) the Company receives an amount equal to the sum it would have received had no such deduction or withholding been required, (ii) Guarantor shall make such deduction or withholding, and (iii) Guarantor shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law.

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(j) **Waiver of Right to Trial by Jury.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF GUARANTOR AND COMPANY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTEE. EACH OF GUARANTOR AND COMPANY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(k) **Counterparts; Facsimile Signatures.** This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile shall be deemed to be original signatures.

[Signature page follows.]

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IN WITNESS WHEREOF, Guarantor has duly executed this Guarantee on the day and year first before written.

**[GUARANTOR]**

---

Name:

Title:

Acknowledged and Accepted:

**NEVADA POWER COMPANY D/B/A NV  
ENERGY, A NEVADA CORPORATION**

---

Name:

Title:

## **EXHIBIT 21**

### **WORK SITE AGREEMENT**

#### **WORK SITE AGREEMENT Copper Mountain Solar**

##### **1. INITIAL PROVISIONS**

- 1.1. This Work Site Agreement ("Agreement") is entered into by Copper Mountain Solar 5, LLC ("Owner"), IBEW Local Unions 357 and 396 (IBEW) and the Laborer's Union Local 872 ("Laborer's"), ("the Unions")
- 1.2. This Agreement concerns the construction of an up to 250 megawatt alternating current solar array to be constructed on that certain real property more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Project" and "Project Site" respectively). It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project pursuant to the 2018 Renewable Energy Request for Proposals issued by NV Energy on January 5, 2018 and that this Agreement applies to the Project as it is finally approved by such entities and agencies. Once a final physical address is secured for this Project Site, they will be incorporated into this Agreement.
- 1.3. Owner is responsible for the construction of the Project and intends to hire a construction contractor(s) to complete construction. Owner shall assign this Agreement to such contractor(s) as part of its agreement with such contractor(s) for construction of Project, and shall require that such contractor(s) require any subcontractor(s) to abide by its terms. Such contractor shall be referred to herein as ("EPC"). Owner shall give written notice to IBEW of such assignment. Assignment does not require consent of the IBEW. Upon delivery of notice of assignment(s), Owner shall be irrevocably released from all of its obligations hereunder and the IBEW will look solely to such assignee(s) for performance of all obligations arising or continuing after the date of such assignment(s).
- 1.4. Except as provided below, all persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work, or performing Covered Work, including subcontractors (and all of whom are individually and collectively referred to as "Employer" or "Employers") will (except for the EPC) become subject to this Agreement by executing Attachment A (the "Agreement To Be Bound").
- 1.5. The Unions are labor organizations whose members are construction industry employees. The Unions are party to a multi-employer collective bargaining agreement ("Master Agreement") that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement in effect on the date hereof.
- 1.6. Owner wishes, and it is the purpose of this Agreement to ensure, that a sufficient

supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project proceed continuously, without interruption, in a safe, efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. The parties also expressly recognize that the Project may be located in extreme weather conditions subject to high or low temperatures. Employers will provide a safe work site and comply with all state and federal requirements related to protection from heat. The Unions will not seek to restrict productivity based on these conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish the adequate and fair wage levels and working conditions .

- 1.7. A central purpose of the parties in executing this Agreement is to guarantee labor peace on the Project by minimizing the jobsite friction that could arise at a common-situs jobsite when union employees are required to work alongside non-union employees in those other crafts with which they generally work in close proximity performing work that is closely related and coordinated, and by ensuring there will be no disruption of the work should any non-union workers be present to perform work outside the scope of the Agreement. This Agreement accomplishes these objectives by requiring that all Covered Work be performed by workers who are members of the Unions. For work that falls outside the scope of this Agreement or that is excluded from Covered Work, the Primary Employer further protects itself from the potential effects of jobsite friction by prohibiting all strikes, picketing or other concerted activity for any reason whatsoever, including payment of liquidated damages for any violation of such prohibition.
- 1.8. In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with EPC and the Employers to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source labor local to the Project Site and to minimize per diem expenses. In addition, the Unions shall not afford preferential status to other jobs in the jurisdiction; to the extent such preference will inhibit the availability of qualified workers for the Project.

## 2. SCOPE OF AGREEMENT

- 2.1. All work to construct Project covered by this Agreement is referred to as "Covered Work." This Agreement also covers work done in temporary yards or facilities adjacent to or near the Project that is otherwise Covered Work described below. The scope of Covered Work set forth in this Agreement for this Project shall not be considered precedential.
- 2.2. IBEW Inside Work Includes:
  - 2.2.1. This Agreement covers the following on-site electrical construction work

within the scope of the Union's Master Agreement: handling and installation of electrical and electronic equipment, installation and connection of any electrical wires and cables, connections to power conversion stations, electrical fixtures, electrical appliances, electrical apparatus, electrical raceways or trays, electrical conduits, electrical instrumentation and controls. All of the foregoing work within the scope of this Agreement is referred to as "Covered Work."

2.2.2. IBEW Inside Wire Covered Work also includes all work performed by electrical craft labor that is part of startup and commissioning, including, but not limited to, loop checks and rework and modifications during start-up and commissioning. Specialized commissioning work required to be performed by the original equipment manufacturer (OEM) on their respective equipment is excluded from the Covered Scope (i.e. Inverter, plant controller). The Primary Employer, manufacturer's representatives, vendor's representatives, and plant operating personnel may supervise and direct employees performing startup and commissioning, including loop checks and rework and modifications during start-up and commissioning. After a system or subsystem becomes operational and upon acceptance by the Primary Employer, Covered Work on that system or subsystem is completed. However, rework and modifications normally provided as a function of the initial construction effort, and other related initial construction work normally performed by members of the Unions, will be performed by members of the Unions. Nothing set forth in this Section 2.1.2 shall be construed as prohibiting or limiting permanent operating personnel, who are not members of the Unions, from operating systems prior to Covered Work being completed, or industry standard work performed by a manufacturer or vendor or its representatives to satisfy its guarantee or warranty prior to startup of a piece of equipment.

- 2.3. IBEW Outside Line Work includes all construction of transmission and distribution lines, outside substations, switchyards, and sub-station or switchyard related ground grids. To the extent there is additional work needed by Employer on the Project that is outside of the above language, but covered within the scope of work for the IBEW Outside Line Construction Agreement, [IBEW Local 357/396/401/1245 and the Employer agree to meet and confer to determine if that work can be covered by IBEW Local 357/396/401/1245].
- 2.4. Laborer's Work includes unloading, layout and stringing of all post and piles, all bolting and assembly of all rakes, trays, tables and tilt mechanisms including torque tubes for the Solar arrays. not including electrical components, electrical devices, PV panels, cartridges, or other pre-fabricated assemblies containing electrical or generating components of the system. Consolidation and removal of trash inside of the arrays, to a designated location within the Project site. All hand work associated with civil, excavation operations and stormdrainage features (riprap, gabion and rock baskets), pouring and vibrating concrete. This excludes the installation of electrical raceways (conduit, etc.) or direct buried cable, and all substation and transmission line work.

- 2.5. Covered Work shall not include any work performed by federal, state, county, city or other governmental bodies and/or agencies or their contractors, or work performed by employees of NV Energy.
- 2.6. Purchase of any manufactured item produced in a genuine manufacturing facility for the supply of products is not Covered Work and shall not be considered subcontracting under Article 3 below. Any offsite fabrication, kitting, preparation or other assembly of components for the Project is Covered Work and shall be performed on site. For the convenience of the Employer, such work may be performed offsite if performed in accordance with the union standards for the applicable Union established by this Agreement. Covered Work does not include creating inverter skids, if they are created, built, or assembled in a genuine manufacturing facility.
- 2.7. The initial delivery of materials to the Project site, to a drop off location within the site, or to a temporary yard at/or area near the Project is not Covered Work. The loading, unloading and distributing of electrical materials within the site after the initial delivery are Covered Work.
- 2.8. This Agreement applies to employees performing Covered Work. It does not apply to supervisors not covered by a collective bargaining agreement, assistant supervisors, technical or non-manual employees including, but not limited to executives, office and clerical personnel, drafters, engineers, timekeepers, messengers, or any other employees above the classification of general foreman who perform administrative/clerical functions.
- 2.9. Covered Work does not include operations or maintenance work.
3. SUBCONTRACTING
- 3.1. EPC and each Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing the Agreement to Be Bound.
- 3.2. EPC and each Employer agree that they will subcontract Covered Work only to a person, firm, or corporation who is or becomes signatory to this Work Site Agreement or who is or becomes signatory to the Union's Master Agreement. Any Employer performing Covered Work on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement and the Master Agreement (for purposes of this Project only). Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing an Agreement To Be Bound, which is provided as Attachment A to this Agreement. Every Employer shall notify the Unions in writing within three business days after it has subcontracted work, and shall at the same time provide to the Unions a copy of an Agreement To Be



Bound executed by the Employer.

- 3.3. Nothing in this Agreement shall in any manner whatsoever limit the rights of EPC, or any other Employer, to subcontract work or to select its contractors or subcontractors, provided, however, that all Employers, at all tiers, performing Covered Work shall be required to comply with the provisions of this Agreement. EPC and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the award of any construction contract or subcontract for Covered Work or allowing any subcontracted Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement. If any Employer fails to provide the Union with the Agreement To Be Bound executed by its subcontractor, that Employer shall be liable for any contributions to any trust funds that the subcontractor, or any subcontractor to that subcontractor, fails to make.

4. WAGES. BENEFITS. HOURS OF WORK. SHIFT WORK. HOLIDAYS

- 4.1. All employees covered by this Agreement (including foremen and general foremen if they are covered by a Master Agreement) shall be classified and paid wages, and contributions made on their behalf to multi-employer trust funds, all in accordance with the appropriate Master Agreement.
- 4.2. The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. Breaks will be allowed in accordance with Federal/State Law. The standard work week shall be five (5) consecutive days starting on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.
- 4.3. It is recognized by the parties to this Agreement that the standard work week may not be desirable or cost effective for the Project, and other arrangements for hours of work may be considered. Such proposed modifications to the standard work week will be established with the consent of the Employer and the Union.
- 4.4. Shifts may be established when considered necessary by the Employer. Shift hours will be as follows: First shift will be eight (8) hours pay for eight (8) hours worked, plus one-half hour unpaid lunch period, Second shift will be eight (8) hours pay for eight (8) hours worked, plus the shift differential set forth in the Master Agreement.
- 4.5. A four (4) day ten (10) hour per day work week may be established. Forty (40) hours per week constitutes the work week Monday through Thursday or Tuesday through Friday. Hours beyond ten (10) will be paid at the double time rate. Overtime beyond the Forty (40) hours per week will be paid at time and one-half for the first eight (8) hours; hours beyond eight (8) will be paid at the rate established in the Master Agreement, not to exceed double time. There shall be no make-up days.
- 4.6. The Employer may establish two four (4) day ten (10) hour per day shifts at the

considered a grievance. Any grievances involving interpretation and application of this Agreement will be governed by this Agreement's grievance procedure as set forth below. Any grievances involving interpretation and application of the Master Agreement will be governed by the Master Agreement's grievance procedure.

- 7.2. EPC and any Employer, as well as the Unions, may bring forth grievances under this Article.
- 7.3. A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.
- 7.4. Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by EPC and the Union, and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, commence at Step 4.
- 7.5. Step 1. The steward and the grievant shall attempt to resolve the grievance with the Employer's supervisor within five (5) working days after the grievance has been brought to the attention of the Employer.
- 7.6. Step 2. In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days after notice to the Union, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Labor Relations representative of the Employer for discussion and resolution. A copy of the written grievance shall also be mailed/e-mailed to EPC.
- 7.7. Step 3. In the event the matter remains unresolved in Step 2 above after five (5) working days, within five (5) working days, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Manager of Labor Relations of the Contractor or the Manager's designated representative and EPC as for discussion and resolution.
- 7.8. Step 4. If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to EPC. Should the parties be unable to mutually agree on the selection of an arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. EPC shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to

contingencies.

- 5.3. The Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified craft employees to fulfill the requirements of each Employer. The Unions and the Employers agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, age, pregnancy, any genetic information or any other protected classification protected by law or regulation. Each Employer, EPC and the Unions agree that they will not require any employee or applicant to submit to genetic testing or non-job related medical inquiries.
- 5.4. NV Energy has always stressed the importance of local hiring on any construction project. Local hiring brings a sense of community to the initiative and supports the local economy in which it is doing business. In continuance of that initiative, the parties agree that hiring will be from the Unions' books for the geographic area.
- 5.5. In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and Holidays excepted), the Employer may employ applicants from any source.
- 5.6. Employers performing work under Section 2.2 (IBEW Inside Work) may utilize the workmen dispatched from the Helper Books described in Attachment C. These workmen may be used for all work involving installation of Generating Panels including material distribution and removal of waste from within the arrays. Installation Crews shall be setup in teams of 1 Foreman, 3 Apprentices, and 3 Helpers. Material Distribution Crews shall have at least 1 (JW) foreman and any combination of Apprentices, Helpers, and Material Expeditors not exceeding a crew size of 16 workmen. Once the Generating Panels are installed, any further work downstream of this identified work will be performed by either Apprentices or Journeymen as per the Master Agreement. In accordance with Section 4.28 of the Master Agreement, a foreman is required on any job with (3) or more workmen and may supervise up to (15) workmen including himself/herself.
- 5.6.1. If there are insufficient apprentices available, an Employer performing work under Section 2.2 (IBEW Inside Work) may utilize the workmen dispatched from the Helper Books with the consent of the IBEW.

## **6. STRIKES AND LOCKOUTS**

- 6.1. During the term of this Agreement, the Unions, agree that they shall not (and that it shall not cause its agents, representatives and employees) to incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay in, boycott, sympathy strike, picketing or other work stoppage for any cause whatsoever with respect to this Project; and it is expressly agreed that any such action is in violation of this Agreement. In the event of a violation of this provision, any Employer shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any

such action on the part of the Unions, and/or any of their agents, representatives or employees, in addition to the Liquidated Damages for violation of Section 1.5 and/or 6.1 of this Agreement.

- 6.2. Upon written notice of a violation to the Union and its' officers, and their agents, representatives, employees and persons acting in concert with it, the Union shall take immediate action and will use its best efforts to prevent, end or avert any such activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 6.
- 6.3. The parties agree that to the extent the Master Agreement provisions of the Unions current labor agreement apply to this Project, they shall continue to apply throughout the duration of this Project notwithstanding the expiration of that agreement for all affected Employers on this Project.
- 6.4. In the absence of a violation of this Article 6 by Unions, neither EPC nor any other Employer shall incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term "lockout" does not refer to the discharge, termination or layoff of employees by any Employer for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does "lockout" include a decision by EPC or any Employer to terminate or suspend work on the Project Site or any portion thereof for any reason other than a labor dispute.
- 6.5. Notwithstanding the provisions of Section 6.1, it is agreed that the Unions retain the right to withhold the services of its members from a particular Employer who fails to make timely payments to the Unions benefit plans, or fails to timely pay its weekly payroll, in accordance with the Master Agreement; provided, in the event the Unions or any of its members withholds their services from such Employer, EPC or the applicable Employer shall have the right to replace such Employer with any other Employer who executes the Agreement To Be Bound. The Unions shall not withhold the services of its members under this provision without first giving EPC and the individual Employer alleged to be delinquent in its payments at least five (5) business days' notice, in the case of payroll delinquencies, and ten (10) business days' notice, in the case of benefit fund delinquencies, and an opportunity to cure the delinquency by tendering payment to the relevant employees or trust funds.

## 7. GRIEVANCE PROCEDURE

- 7.1. It is mutually agreed that any question arising out of and during the term of this Agreement involving interpretation and application of this Agreement shall be

considered a grievance. Any grievances involving interpretation and application of this Agreement will be governed by this Agreement's grievance procedure as set forth below. Any grievances involving interpretation and application of the Master Agreement will be governed by the Master Agreement's grievance procedure.

- 7.2. EPC and any Employer, as well as the Unions, may bring forth grievances under this Article.
- 7.3. A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term "working days" as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.
- 7.4. Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by EPC and the Union, and then, if not resolved within five (5) working days of written notice unless extended by mutual consent, commence at Step 4.
- 7.5. Step 1. The steward and the grievant shall attempt to resolve the grievance with the Employer's supervisor within five (5) working days after the grievance has been brought to the attention of the Employer.
- 7.6. Step 2. In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days after notice to the Union, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Labor Relations representative of the Employer for discussion and resolution. A copy of the written grievance shall also be mailed/e-mailed to EPC.
- 7.7. Step 3. In the event the matter remains unresolved in Step 2 above after five (5) working days, within five (5) working days, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Manager of Labor Relations of the Contractor or the Manager's designated representative and EPC as for discussion and resolution.
- 7.8. Step 4. If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to EPC. Should the parties be unable to mutually agree on the selection of an arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. EPC shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to

strike a name first.

- 7.9. The selected arbitrator ("Arbitrator") shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.
- 7.10. Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on EPC. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement. No arbitration decision or award under this Article may provide retroactive relief of any kind exceeding fifteen (15) calendar days prior to the date the grievance was first initiated at Step 1.
- 7.11. The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.
- 7.12. The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.
- 7.13. Any party to a grievance may invite EPC to participate in resolution of a grievance. EPC may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.
- 7.14. In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or e-mailed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or e-mailed during the extended time period.
- 7.15. For purposes of e-mailed copies of grievances to EPC, they can be sent to the following e-mail address: [ \_\_\_\_\_@\_\_\_\_\_ ]

#### 8. MANAGEMENT RIGHTS

- 8.1. Except as expressly limited by the specific provisions of this Agreement, the Employers retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefore; the number assigned to any specific work, the promotion, transfer, layoff of employees; the discipline or discharge of employees; the type of equipment to be used, the

assignment and schedule of work; the promulgation of reasonable Project work rules; safety rules, drug and alcohol policies pursuant to Section 10.9 and the requirement, timing and number of employees to be utilized for Covered Work. Except as provided in the Master Agreement, no rules, customs, or practices which limit or restrict productivity or efficiency of the individual, and/or joint working efforts with other employees shall be permitted or observed. The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically covered by this Agreement.

- 8.2. There shall be no limitations or restriction upon EPC's choice of materials, techniques, methods, technology or design, or, regardless of source (including but not limited to country source of origin) or location, upon the use and installation of equipment, machinery, package units, pre-cast, prefabricated, prefinished, or preassembled materials of any kind, tools, or other labor-saving devices. The Union agrees that such material and equipment is to be installed without incident.
- 8.3. In recognition of the dynamic nature of the power industry, the parties agree that EPC may apply new technologies to the Project as they are developed, (including technological advances in the construction of power plants) even if such application results in a reduction of the amount of labor on the Project.
- 8.4. All construction equipment assigned by an Employer to the Project shall be under the control of EPC. EPC shall have the right to determine how many pieces of construction equipment an individual shall operate.
- 8.5. EPC retains the right to deny access to the Project to any employee on the basis of violating EPC safety processes and procedures.

#### 9. SUCCESSORSHIP AND SURVIVABILITY

- 9.1. The subcontracting obligations described in Article 3 are independent obligations of EPC which shall survive any full or partial termination of EPC's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of EPC's right to control and coordinate construction work on the Project (ii) any full or partial termination or transfer of a contract, if any, between EPC and any Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Owner; or (iv) any other event that results in the replacement of EPC with another contractor.
- 9.2. The parties agree that: (i) if EPC's involvement in the Project is terminated and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then EPC shall pay liquidated damages, as set forth on Attachment B.
- 9.3. Upon execution and delivery of an agreement assuming all the obligations of this Agreement and determination by the Unions that the successor is financially responsible, EPC shall be released from liability for the payment of liquidated



damages under this Article 9 and shall have no liability for any breach of this Agreement by a successor employer or contractor. A successor shall be considered financially responsible if the Unions, in the exercise of its' reasonable judgment, determine that the successor is financially capable of completing the Project and complying with the obligations and undertakings of EPC under this Agreement, including any obligation to pay liquidated damages under this Article 9.

- 9.4. This Article shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure.

#### 10. GENERAL PROVISIONS

- 10.1. If any article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive legislative, judicial or administrative branch of the federal or state government, the Employers and the Union shall suspend the operation of such article or provisions during the period of its invalidity and shall substitute by mutual consent, in its place and stead, an article or provision which will satisfy the objections to its validity and which, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question.
- 10.2. If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.
- 10.3. Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreements that are in effect shall apply.
- 10.4. The provisions of this Agreement shall take precedence over conflicting provisions of the Master Agreement of the Unions.
- 10.5. The parties agree that all covered employees will be required to be at his or her work station and ready to begin work at the designated starting times. The parties support a pay arrangement that provides for the covered employee to be at his or her work station and ready to work at the start of this shift without compensation for the time traveled to his or her workstation however the parties further agree that employees will be compensated at the appropriate hourly rate of pay for travel time back to their vehicles from the workstation.
- 10.6. Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.
- 10.7. Rights of Owner. Nothing in this Agreement shall be construed as limiting the



Owner, in its sole discretion at any time to terminate, delay, cease, or suspend construction activities, in whole or part, on this Project and/or shut down the Project Site or any part thereof for reason other than a labor dispute without any liability whatsoever, except for liability incurred prior to such action.

- 10.8. This Agreement may be executed in counterparts.
- 10.9. The parties recognize that EPC strongly supports a drug free work environment on each of its projects. To that end, the parties agree that Owner's drug testing policies shall be applied to the Project by each Employer on the site. Specifically, that policy includes pre-employment drug testing prior to starting work on the site, random drug testing on the worksite once employed and drug testing following any industrial accident resulting in an injury or any damage to Employer or EPC property. Should EPC require a pre-employment drug test of the employee(s) of the signatory Employer as noted above, and the employee(s) (through the signatory Employer) will be paid (1) hour show up pay if he successfully passes the pre-employment drug test. Should an employee(s) initial test be deemed inconclusive and require further testing that employee(s) shall be paid (2) hour waiting time per day upon successfully passing the pre-employment drug testing. This pay provision shall only apply to pre-employment drug tests.
- 10.10. Zone Pay -- the parties reiterate their agreement that the provisions of the Inside Construction Master Agreement, Section 4.38 and 4.39 shall not apply throughout the term of the Project and that no zone pay shall be payable when workers are ordered to report directly to a jobsite. Any other references to Zone Pay in the Inside Construction Master Agreement shall not apply.
- 10.11. Any notices required under this Agreement shall be given as follows. Either party may notify the other in writing if its person designated to receive notice is changed.

To Owner:

[Name]  
[Title]  
[Company]  
[Address]  
[City, State, Zip]  
[Email]  
[Phone]

To the Unions:

[Name]  
[Title]  
[Company]  
[Address]  
[City, State, Zip]  
[Email]  
[Phone]

With a copy to:

[Name]  
[Title]  
NV Energy  
[Address]  
[City, State, Zip]  
[Email]  
[Phone]

[Name]  
[Title]  
[IBEW Local 357/396/401/1245; Laborers 872]  
[Address]  
[City, State, Zip]  
[Email]  
[Phone]

#### 11. TERM OF AGREEMENT

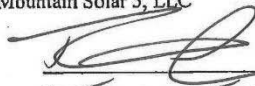
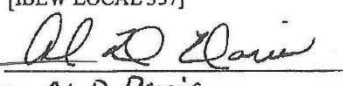
- 11.1. The term of this Agreement shall commence on the date an agreement is executed between EPC and Owner for the Project regarding this Project as identified in Section 1.2, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of May 11, 2018.

Copper Mountain Solar 5, LLC

[IBEW LOCAL 357]

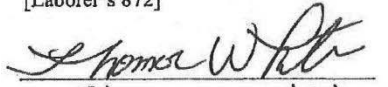
By: TIMOTHY J. ALLEN By: AL D. DAVIS  
Its: VICE PRESIDENT Its: BMFS

[IBEW LOCAL 396]

By:

Its:

[Laborer's 872]



By: THOMAS WHITE  
Its: BM/ST

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed  
and effective as of May 11, 2018.

Copper Mountain Solar 5, LLC

By:  
Its:

[IBEW LOCAL 357]

Al D. Davis  
By: AL D. Davis  
Its: BMFS

[IBEW LOCAL 396]

Jesse Newman  
By: JESSE NEWMAN  
Its: BM/FS

[Laborer's 872]

Thomas White  
By: THOMAS WHITE  
Its: BM/ST

**ATTACHMENT A  
AGREEMENT TO BE BOUND**

**[PROJECT NAME]**

The undersigned hereby certifies and agrees that:

1.) It is an Employer as that term is defined in Section 1.4 of the NV ENERGY RENEWABLE ENERGY PROJECT Work Site Agreement ("Agreement") because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and Article 2 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.

3.) If it performs Covered Work, it will *be* bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorize the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.

4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.

5.) It will secure a duly executed Agreement ToBe Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)

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**ATTACHMENT B**  
**SCHEDULE OF LIQUIDATED DAMAGES FOR BOTH PARTIES**

**WORK SITE AGREEMENT**  
**[PROJECT NAME]**

1. Strikes: In the event the Union violates the terms of Section 6.1 of the Work Site Agreement, including without limitation, by interfering with the Project or by supporting a strike at the work site, then the Union shall be jointly and severally liable for an amount equal to twenty thousand dollars (\$20,000) for each day in which the Union is in violation of the terms of Sections 1.5 and/or 6.1.
2. Failure of Successor to Assume. In the event EPC fails to cause its successor to assume the Work Site Agreement,

EPC shall pay an amount equal to the journeyman electrician's or journeyman lineman's total compensation, as applicable, for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signatory to this Agreement as follows:

Fifty Percent (50%) per hour to the qualified pension plan and  
Fifty Percent (50%) per hour to the qualified health and welfare plan

of the Union(s) performed by the contractor(s) or subcontractor(s) not signatory to this Agreement. The parties agree that the Union shall enforce, collect and receive the liquidated damages described herein on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to independently enforce the provisions of this Agreement:

3. The liability of the Owner, EPC, any Employer and/or the Union under this Agreement shall be several and not joint. Neither the Owner, nor any Contractor shall be liable for any violations of this Agreement by any other Contractor or party; and the Union shall not be liable for any violations of this Agreement by any other Union or party.
4. In no event shall Owner, EPC's or Unions' liability for violation of this Agreement exceed \$1,000,000 (one million dollars).

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# ATTACHMENT C

## IBEW 357 NV Energy Copper Mountain Solar 5 Project Helper Rates

	Check	H&W	DFW	B-Plan	JATC	LMCC	NLMCC	NEBF 3%	CAF 0.2%	Total
Helper										
9/1/17	\$21.00	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.63	\$0.04	\$29.15
1/1/19	\$21.60	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	\$29.77
1/1/20	\$21.60 **	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	TBD
1/1/21	\$21.60 **	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	TBD

\*\* Starting on each of 1/1/20 and 1/1/21, the Parties agree to increase the Wage rate from the rate of the previous contract year (which is \$21.60 in 2019) at the same percentage increase as the percentage increase for the Wage rate of the Union's lowest rate apprentice classification for the previous contract year, up to a cap of 3%.

## ATTACHMENT D

### Laborer's 872 [Project Name] Project Rates

#### Local 872 Apprenticeship and Training Hourly Wage and Fringe Benefit Rates Rates Effective July 1, 2017 – June 30, 2018

##### Pre-Apprentice

Group I Wage Rate @ 45%.....	\$11.97
Health & Welfare @ 100%.....	\$ 6.35
DC Pension Plan.....	\$ 1.00
Training .....	\$ 1.80
Vacation @ 45%.....	\$ 1.35*
Supplemental Dues @ 100%..	\$ 1.96*
<b>Total Fringes.....</b>	<b>\$12.46</b>
<b>Total Package.....</b>	<b>\$24.43</b>

<sup>st</sup>

##### 1 500 Hours (50% Apprentice)

Group I Wage Rate @ 50%.....	\$13.30
Health & Welfare @100%.....	\$ 6.35
Vacation @ 50%.....	\$ 3.46*
Pension A @ 50% .....	\$ 6.29
DC Pension Plan.....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
<b>Total Fringes.....</b>	<b>\$18.55</b>
<b>Total Package.....</b>	<b>\$31.85</b>

<sup>nd</sup>

##### 2 500 Hours (60% Apprentice)

Group I Wage Rate @ 60%.....	\$15.96
<i>other</i>	
Health & Welfare @100%.....	\$ 6.35
Vacation @ 60% .....	\$ 3.76*
Pension A @ 60% .....	\$ 7.55
DC Pension Plan .....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
<b>Total Fringes.....</b>	<b>\$20.11</b>
<b>Total Package.....</b>	<b>\$36.07</b>

##### 2nd 1000 Hours (70% Apprentice)

Group I Wage Rate @70% .....	\$18.62
Health & Welfare @ 100%.....	\$ 6.35
Vacation @ 70%.....	\$ 4.06*
Pension A @ 70% .....	\$ 8.81
DC Pension Plan.....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF .....	\$ 0.15
<b>Total Fringes.....</b>	<b>\$21.67</b>
<b>Total Package.....</b>	<b>\$40.29</b>

##### 3rd 1000 Hours (80% Apprentice)

Group I Wage Rate @80% .....	\$ 21.28
Health & Welfare @ 100%.....	\$ 6.35
Vacation @ 80%.....	\$ 4.36*
Pension A @ 80% .....	\$10.06
DC Pension Plan .....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF .....	\$ 0.15
<b>Total Fringes.....</b>	<b>\$ 23.22</b>
<b>Total Package.....</b>	<b>\$44.50</b>

##### 4<sup>th</sup> 1000 Hours (90% Apprentice)

Group I Wage Rate @ 90%.....	\$ 23.94
Health & Welfare @ 100%.....	\$ 6.35
Vacation @ 90%.....	\$ 4.66*
Pension A @ %.....	\$11.32
DC Pension Plan .....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
<b>Total Fringes.....</b>	<b>\$ 24.78</b>
<b>Total Package.....</b>	<b>\$ 48.72</b>

*Note: This is a summary sheet only. For all*

*rates, premiums and benefits, see the Laborers  
Local #872 Collective Bargaining Agreement,  
which shall govern in the event of a conflict.*

*Contributions marked with (\*) shall be applied  
toward the vacation fund, taxed and then  
deducted accordingly.*

*Zone Pay: 0-50 miles = Free  
Over 50 miles at \$3.75 per hour, including Laughlin, NV*

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**Local 872, Hourly Wage and Fringe Benefit Rates**  
**Rates Effective July 1, 2017 – June 30, 2018**

<u>Classification</u>	<u>Base Rate</u>	<u>Classification</u>	<u>Base Rate</u>
Group I	\$26.60	Group V	\$27.10
Group IA	\$25.10	Group VII	\$26.91*
Group II	\$26.81	Flagperson	\$25.10
Group III	\$26.91	Watchmen/Shop Maintenance	\$23.60
Group III-A	\$27.41	Certified Welder	\$27.60
Group IV	\$27.00		

\* \$ 0.50 per hour above Group III wage rate when wearing protective suit or respirator.

Contribution Rates for the above Classifications:

Pension Plan A.....	\$12.58
DC Pension Plan.....	\$ 1.00
Health Welfare.....	\$ 6.35
Vacation.....	\$ 4.96**
Training .....	\$ .85
GAF/CAF/IA.....	\$ .15
Total Fringes.....	\$25.89

A Foreman shall be paid at a rate of \$2.00 per hour more than the highest laborers' wage classification supervised.  
A General Foreman shall be paid at the rate of \$3.00 per hour more than the highest laborers' wage classification supervised.

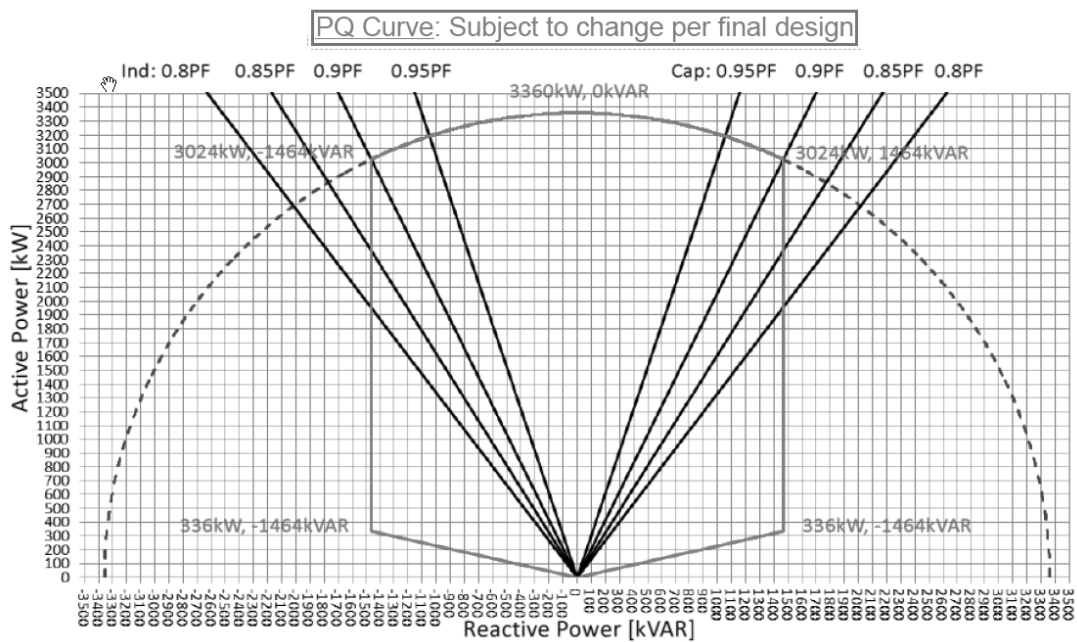
The above (\*\*) contributions shall be applied toward the vacation fund, taxed and then deducted accordingly.

Zone Pay: 0-50 miles = free Over 50 miles at \$3.75 per hour, including Laughlin, NV.

## EXHIBIT 22

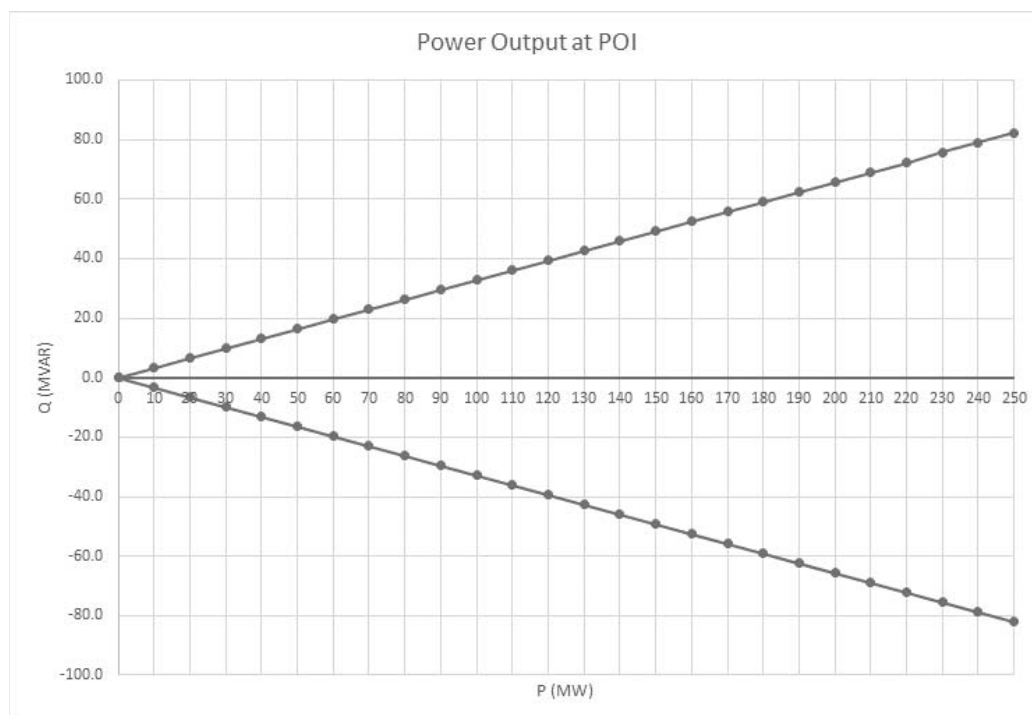
### REACTIVE CAPABILITY CURVES

Inverter:



\* Operation area will be curtailed by input DC voltage, output AC voltage and temperature condition.

Facility:



**EXHIBIT 23**

**APPROVED VENDORS LIST**

[To be provided by Buyer]

**EXHIBIT 24**

**FORM OF LEGAL OPINION**

[Date]

NV Energy  
6226 W. Sahara  
Las Vegas, NV 89146  
[Attention: \_\_\_\_\_]

Re: Long-Term Renewable Power Purchase Agreement Between  
Nevada Power Company and \_\_\_\_\_ (the “PPA”)

Ladies and Gentlemen:

We have acted as Nevada counsel to \_\_\_\_\_ in connection with this “PPA”, \_\_\_\_\_ has requested that we provide this opinion letter to you pursuant to Section \_\_\_\_\_ of the PPA. We are not employees of \_\_\_\_\_ (or any Affiliate, parent or subsidiary) and have no financial interest in the Generation Facility.

Unless otherwise expressly provided herein, capitalized terms used but not defined herein have the meaning given them in the PPA.

**1. Documents Reviewed.**

For the purposes of these opinions we have examined executed copies of the following documents:<sup>4</sup>

- 1.1 Renewable Energy System Certification.<sup>5</sup>
- 1.2 Public Utilities Commission of Nevada Approval of PPA.
- 1.3 Notice of Self Certification as an EWG.
- 1.4 Federal Energy Regulatory Commission authorization under section 205 of the Federal Power Act to make sales from the Generating Facility.
- 1.5 The PPA.
- 1.6 The Large Generation Interconnection Agreement entered between NV Energy and \_\_\_\_\_.
- 1.7 Environmental Assessment Decision Record, National Environmental Policy Act.
- 1.8 Right of Way, Federal Land Policy and Management Act.

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<sup>4</sup> NTD: List to be conformed to permits and agreements ultimately obtained by the project.

<sup>5</sup> See Schedule B.

## **EXHIBIT 24**

### **FORM OF LEGAL OPINION**

- 1.9 Endangered Species Act Compliance/Section 7 Biological Opinion.
- 1.10 Section 404 Jurisdictional Determination.
- 1.11 Section 106 National Historic Preservation Act Finding of Eligibility.
- 1.12 Utilities Environmental Protection Act Permit to Construct.
- 1.13 Fugitive Dust Control Permit.
- 1.14 Other Construction/Operation Permits (*See* Schedule A.)
- 1.15 Bureau of Land Management Solar Facility Right of Way.
- 1.16 Bureau of Land Management Desert Tortoise Fence Right of Way.
- 1.17 Bureau of Land Management Temporary Water Pipeline Right of Way.

The documents referenced in Sections 1.1 to 1.4 are individually referred to herein as a “Supplier Required Regulatory Approval” and, collectively, as the “Supplier Required Regulatory Approval”. The documents referenced in Sections 1.5 to 1.14 are individually referred to herein as a “Required Facility Document” and, collectively, as the “Required Facility Documents”. The documents referenced in Sections 1.14 to 1.17 are individually referred to herein as a “Real Property Right” and, collectively, as the “Real Property Rights”. The documents referenced in Sections 1.1 to 1.17 are individually referred to herein as a “Reviewed Document” and, collectively, as the “Reviewed Documents”.<sup>6</sup>

We have further made such inquiries and investigations of law as we have deemed necessary or appropriate for the purpose of rendering these opinions. We have made no other independent investigation or inquiry except as stated below.

## **2. Assumptions, Exceptions and Qualifications.**

2.1 In rendering the opinions set forth below, we have, without any independent investigation or inquiry, assumed:

2.1.1 \_\_\_\_\_ is duly formed, validly existing and in good standing under the laws of the State of \_\_\_\_\_ and has all requisite limited liability company power and authority to execute and deliver the Reviewed Documents and to perform its obligations thereunder;

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<sup>6</sup> NTD: Section references and defined terms to be conformed to regulatory approvals, facility documents, and real property rights actually obtained by the project.

## **EXHIBIT 24**

### **FORM OF LEGAL OPINION**

2.1.2 the execution, delivery, and performance by \_\_\_\_\_ of the Reviewed Documents have been duly authorized by all necessary limited liability company action on the part of \_\_\_\_\_;

2.1.3 the Reviewed Documents have been duly and validly authorized, executed and delivered by \_\_\_\_\_ and have been properly acknowledged;

2.1.4 the genuineness of signatures not witnessed by us the authenticity of any documents submitted to use as originals and the conformity to originals of documents submitted to us as copies or drafts;

2.1.5 the necessary legal capacity of all natural persons signing the Reviewed Documents;

2.1.6 the certifications, representations and warranties as to matters of fact made by \_\_\_\_\_ in the Reviewed Documents are accurate and may be relied upon by us;

2.1.7 \_\_\_\_\_ is not named or is acting in, engaging in, instigating or facilitating the Transaction, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person”, or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

[2.1.8 the Federal Permitting Documents have been duly approved by the Secretary of the Interior or an authorized designated official with related approval authority to the extent such approval is required.]<sup>7</sup>

2.2 The opinions set forth below are subject to the following exceptions and qualifications:

2.2.1 we are expressing no opinion as to any consents, approvals, authorizations or other action by, or filing with, any governmental agencies that are required pursuant to the terms of any agreements to which such agencies and \_\_\_\_\_ are parties and that are applicable to \_\_\_\_\_ or any such agreements but that are not generally applicable to other parties or agreements;

2.2.2 we do not purport to express any opinion concerning any law other than the Federal laws identified in the Reviewed Documents and the laws of the State of Nevada.

2.2.3 the opinions in this letter are limited in all respects to the Federal law and the laws of Nevada now in effect, to the matters set forth herein as of the date hereof, and

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<sup>7</sup> NTD: Federal approvals are not likely to be required for this project.

## EXHIBIT 24

### FORM OF LEGAL OPINION

we assume no obligation to review or supplement those opinions should any such law be changed by legislative action, judicial decision or otherwise.

2.2.4 we have relied on the representations set forth in the Fact Certificate attached hereto as Exhibit A; nonetheless, we have no knowledge that any of the representations set forth in the Fact Certificate are incorrect.

### **3. Opinions.**

Based on the foregoing and relying thereon and the subject to the assumptions, exceptions and qualifications set forth above, it is our opinion that:

3.1 \_\_\_\_\_ has received the Supplier Required Regulatory Approvals listed in Exhibit 10 in the PPA.

3.2 \_\_\_\_\_ has entered into or obtained all Required Facility Documents listed in Exhibit 12 in the PPA.

3.3 The Real Property Rights obtained by Supplier with respect to the Project Site are adequate in all respects for the ownership, operation, access to and maintenance of the Generating Facility as of the date of this Opinion.

3.4 Copies of the Supplier Required Regulatory Approvals and Required Facility Documents are available at SFTP site: \_\_\_\_\_ - \_\_\_\_\_.

3.5 As of the date of this Opinion and Reviewed Document has been duly obtained by or on behalf of the \_\_\_\_\_, was validly issued, and is in full force and effect with the exception of those set forth in Schedule B. Each Reviewed Document is not, to our knowledge, subject to any appeals or further proceedings, is final, and all applicable periods to seek administrative or judicial review have expired except for those set forth in Schedule C. To our knowledge, there are no unsatisfied conditions that would allow for material modifications, revocation or suspension of any Reviewed Document. To our knowledge, there is no proceeding pending or threatened which seeks to, or which may rescind, terminate, modify, condition, suspend, or otherwise alter any Reviewed Document.

Very truly yours,

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**EXHIBIT 24**

**FORM OF LEGAL OPINION**

**SCHEDULE A**

**PPA OPINION LETTER**

**Section 1.14 OTHER CONSTRUCTION/OPERATION PERMITS**



**EXHIBIT 24**

**FORM OF LEGAL OPINION**

**SCHEDULE B**

**REVIEWED DOCUMENTS NOT DULY OBTAINED BY OR ON BEHALF OF THE \_\_\_\_\_,  
VALIDLY ISSUED, OR IN FULL FORCE AND EFFECT**

**EXHIBIT 24**

**FORM OF LEGAL OPINION**

**SCHEDULE C**

**GOVERNMENT APPROVALS FOR WHICH ADMINISTRATIVE OR JUDICIAL  
REVIEW PERIODS HAVE NOT EXPIRED**

**EXHIBIT 24**

**FORM OF LEGAL OPINION**

**EXHIBIT A**

**FACT CERTIFICATE**

The undersigned, \_\_\_\_\_, duly authorized officer of \_\_\_\_\_ (or the “Company”), does hereby, with respect to the Company, certify as follows:

1. We understand that the law firm of \_\_\_\_\_ will rely upon this Certificate in rendering its opinion (“Opinion”) of even date herewith pursuant to the Power Purchase Agreement to be entered into by and between the Company, as Supplier, and Nevada Power Company, d/b/a NV Energy Inc. (“PPA”). Capitalized terms used and not otherwise defined in this certificate shall have the meanings set forth in such Opinion of \_\_\_\_\_ or the PPA. The undersigned has received and reviewed the PPA and the Opinion.

2. This Certificate pertains to a \_\_\_\_\_ (“MW”) photovoltaic (“PV”) power plant to be constructed on approximately \_\_\_\_ acers of land owned \_\_\_\_\_.

[Statements as to other appropriate facts for the issuance of the opinion will be included.]

**REN-6-CMS5 (b)**

## Technical Appendix REN-6-CMS5 (b)

Summary of Nevada Administrative Codes applicable to Copper Mountain Solar 5.

NAC § 704.8885 (New renewable energy contracts: Review by Commission; criteria for approval) and NAC 704.8887 (New renewable energy contracts: Determination of whether price for electricity is reasonable) requires that the Company provide specific information regarding new renewable energy contracts for which it is seeking approval. For Copper Mountain 5, this information is set forth below:

NAC § 704.8885(2)(a) requires the Commission to determine the reasonableness of the price of electricity based on the factors set forth in NAC 704.8887, detailed in pertinent part as follows:

NAC § 704.8887(1) instructs the utility to calculate the price for electricity acquired or saved pursuant to a new renewable energy contract or energy efficiency contract by calculating the levelized market price for the electricity.

*The LCOE for the contract is \$27.57/MWh, including network upgrade costs. The rate is for the purchase of energy and PCs at a blended rate.*

NAC § 704.8887(2)(a) requires the Commission to address whether the new renewable energy contract or energy efficiency contract comports with the utility provider's most recently approved plan to increase its supply of or decrease the demand for electricity.

*This project is being proposed as part of the utilities' triennial integrated resource plan to increase its supply of electricity. The contract will contribute towards fulfillment of the Nevada Power Renewable Portfolio Standard ("RPS") compliance.*

NAC § 704.8887(2)(b) addresses the reasonableness of any price indexing provisions set forth in the new renewable energy contract or energy efficiency contract.

*The price for renewable energy and PCs set forth in this contract is \$21.55/MWh escalating at 2.5% per year for the term of the contract.*

NAC § 704.8887(2)(c) address whether the new renewable energy systems will reduce environmental costs in this State as compared to competing facilities or energy systems that use fossil fuels.

*The technology that the Copper Mountain 5 project utilizes creates zero air emissions. When compared to a modern gas-fired combined cycle unit, the emissions avoided are shown in the table below.*

#### **AVOIDED AIR EMISSIONS**

<b>AVOIDED AIR EMISSIONS<sup>1</sup></b>					
	<b>S02</b>	<b>CO</b>	<b>VOC</b>	<b>NOX</b>	<b>PM</b>
<b>Project</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>
<b>Copper Mountain 5</b>	<b>1.35</b>	<b>3.15</b>	<b>0.07</b>	<b>14.46</b>	<b>4.93</b>

<sup>1</sup> Avoided Emissions derived from average heat rate for a state of the art combined cycle unit. This is a conservative assumption as avoided emissions are likely to be from higher heat rate market purchases or from older, less efficient units.

*The project uses de minimis amounts of water, creates no waste streams in its energy production, efficiently utilizes land for solar energy generation, and has minimal impacts on wildlife, including applicable tortoise protection measures.*

NAC § 704.8887(2)(d) addresses the net economic impact and all environmental benefits and environmental costs to this State in accordance with NAC 704.9005 to 704.9525, inclusive, and section 7 of this regulation (measurement and verification protocol for all energy efficiency measures).

*The net economic impact of the project includes:*

- *A temporary increase in workforce during the construction phase of the facility of an estimated 375 positions;*
- *A permanent long-term increase in the workforce for the operation and maintenance of the facility of an estimated 5 positions at an estimated average salary of \$58,240 annually, and a total payroll of \$17 million over 25 years; and,*
- *The environmental benefit will be a reduction in air emissions as shown in the table above.*

NAC § 704.8887(2)(e) addresses any economic benefits that might inure to any sector of the economy of this State.

*The economic benefits of the project include increased property tax in Boulder City and Clark County, and sales taxes from the purchase of local goods. Other benefits include an increase in short term construction employment and long term operations employment.*

NAC § 704.8887(2)(f) addresses the diversity of energy sources being used to generate electricity that is consumed in this State.

*Commission approval of the PPA will increase the diversity of energy sources used to generate electricity that is consumed in Nevada. Nevada Power's portfolio of renewable energy will increase with a commensurate decrease in its reliance on fossil fuel generation.*

NAC § 704.8887(2)(g) addresses the diversity of energy suppliers generating or selling electricity in this State.

*Sempra Renewables is a leading developer of solar and wind energy throughout the United States. It is a subsidiary of Sempra Energy, a Fortune 300 company energy services holding company based in San Diego, California. As a renewable energy leader, Sempra Renewables has over 3,000 MW of solar, wind, and battery energy storage in operation and under development and construction. Sempra's more than \$2 billion investment in clean energy has created about 4,000 jobs, while providing an economic boost to communities and landowners. The Sempra PPA project will be the first PPA between Sempra and NV Energy, thus introducing a new energy supplier for the State.*

NAC § 704.8887(2)(h) addresses the value of any price hedging or energy price stability associated with the new renewable energy contract or energy efficiency contract.

*The agreement has a low starting price escalating at a fixed percentage each year over the term of the contract. The price is therefore known through the term of the contract and is not subject to fuel risk. As a result of the exceptional pricing in this agreement, it represents one of the lowest LCOE values of any renewable agreement the Company has under contract.*

NAC § 704.8887(2)(i) addresses the date on which each renewable energy system is projected to begin commercial operation.

*The project's commercial operation date is estimated to be December 31, 2021.*

NAC § 704.8887(2)(j) addresses whether the utility provider has any flexibility concerning the quantity of electricity that the utility provider must acquire or save pursuant to the new renewable energy contract or energy efficiency contract.

*The agreement calls for Nevada Power to take all net energy, including any excess energy, and PCs generated by the facility. Curtailment or re-dispatch of up to 100 percent of the expected output can be ordered by the transmission provider, electric system authority, or market operator. Nevada Power has no obligation to pay for such curtailed product or for generation in excess of the maximum amount. Excess energy is paid for at the lesser of: (i) fifty percent (50%) of the applicable product rate, or (ii) the Mead for each delivery hour.*

NAC § 704.8887(2)(k) addresses whether the new renewable energy contract or energy efficiency contract will result in any benefits to the transmission system of the utility provider.

*The System Impact Study and Facilities Study for this solar facility have been completed. The System Impact Study did not identify any negative impacts on Nevada Power's transmission grid that could not be mitigated by the transmission system additions proposed in the study. The project generates electricity which will provide benefits to the transmission grid by providing real and reactive power at the point of interconnection. See Technical Appendix TRAN-6 for information on the interconnection.*

NAC § 704.8887(2)(l) addresses whether the electricity acquired or saved pursuant to the new renewable energy contract or energy efficiency contract is priced at or below the utility provider's long-term avoided cost rate.

*When compared to the long-term avoided costs approved by the Commission Docket No. 17-11004, the blended rate for energy and PCs is lower in all years than the long-term avoided costs over the life of the agreement.*

NAC § 704.8887(3) addresses the price of electricity acquired or saved in a renewable energy contract or energy efficiency contract for the solar energy requirement of its portfolio standard to be evaluated separately.

*The cost of power and PCs delivered from the project are competitive to both the prices Nevada Power pays for its current portfolio of renewable projects and the other compliant bids submitted in the 2018 Renewable RFP. In addition, the price received in this PPA represents one of the best prices that the Companies have ever received for a renewable energy agreement.*

NAC § 704.8885(2)(b) addresses the term of the contract.



*The term of the PPA is 25 years.*

NAC § 704.8885(2)(c) addresses the location of the portfolio [renewable] energy system or efficiency measure that is subject to the contract.

*The project is located in Boulder City, Nevada*

NAC § 704.8885(2)(d) addresses the use of natural resources by each renewable energy system that is subject to the contract.

*The project utilizes irradiance from the sun gathered by solar panels. No water is consumed during the operation of the project other than the occasional cleaning of the panels.*

NAC § 704.8885(2)(e) addresses the firmness of the electricity to be delivered and the delivery schedule.

*The project generates non-firm energy that will be delivered into the utility's grid which will be delivered through firm transmission pursuant to the designation of the facility as a network resource.*

NAC § 704.8885(2)(f) addresses the delivery point for the electricity.

*The generating facility will be interconnected to the existing Nevada Solar One 230 kV Substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-CMS5 (a).*

NAC § 704.8885(2)(g) addresses the characteristics of similar renewable energy systems.

*The characteristics of the project are similar to that of Nevada Power's other large scale PV systems, Boulder Solar I, Switch Station I, Switch Station II, Apex Solar, Mountain View Solar, Searchlight Solar, and Spectrum Solar. The plant design is proven technology.*

NAC § 704.8885(2)(h) addresses the requirements for ancillary services.

*Requirements for ancillary services are not affected by the PPA.*

NAC § 704.8885(2)(i) addresses the unit contingent provisions.

*The energy from the facility is contingent upon the availability of the unit. If the unit is not producing within the performance specifications of the PPA, then the energy will be replaced from other sources.*

NAC § 704.8885(2)(j) addresses the system peak capacity requirements of the utility provider.

*The power purchase agreement will provide benefits to the system peak capacity requirements of the Companies.*

NAC § 704.8885(2)(k) addresses the requirements for scheduling.

*All net energy from the facility will be delivered directly to the Company's electric grid. The facility will be considered a network resource within the Company's system and output produced by the facility will be used to meet the Company's native load.*

NAC § 704.8885(2)(l) addresses conditions and limitations on the transmission system.

*The System Impact Study for this project has been completed. Network Upgrades identified for this project are a new terminal at the Nevada Solar One – McCullough 230 kV line. This project will require transmission provider interconnection facilities, which includes associated protection, communications, and metering, that are directly paid for by the interconnection customer. The estimated cost for the Network Upgrades is \$7,440,000, under an interconnection cluster of two companies.*

NAC § 704.8885(2)(m) addresses project insurance.

*The PPA requires the supplier to provide workers compensation insurance of not less than \$1 million per occurrence, general liability of not less than \$5 million annual aggregate, and automobile liability insurance of at least \$2 million aggregate.*

NAC § 704.8885(2)(n) addresses the costs for procuring replacement power in the event of non-delivery.

*In the event the project does not meet certain performance requirements, the supplier is obligated to compensate Nevada Power for shortfalls in energy and PCs. Compensation for an energy shortfall is based upon the difference between the cost of replacement power, as specified in the PPA, and the PPA price. However, should the cost of replacement power be less than the contract price of power from supplier, the replacement cost will be \$0.00. Compensation for a PC shortfall is determined by Nevada Power exercising its reasonable discretion based on the estimated cost of purchasing PCs.*

NAC § 704.885(2)(o) addresses information verifying that each renewable energy system transmits or distributes or will transmit or distribute the electricity that it generates in accordance with the requirements of NRS 704.7815, as amended.

*The generating facility uses renewable solar energy to generate electricity and transmits that energy to the Company. Therefore the generating facility comports with NRS 704.7815(1)(a) and 704.7815 (1)(b).*

NAC § 704.8885(2)(p) addresses the total number of renewable energy systems that the owner of the renewable energy system is or has been associated with as an owner or operator.

*Sempra's experience includes seven (7) utility-scale solar projects developed, constructed, and in operation with one (1) currently under construction, and eight (8) utility-scale wind projects including one (1) wind project with an 11 MW battery storage. Sempra Renewables is a leading developer of solar and wind energy throughout the United States. As a renewable energy leader, Sempra Renewables has over 3,000 MW of solar, wind, and battery energy storage in operation and under development and construction.*

NAC § 704.8885(2)(q) addresses the points of interconnection with the electric system of the utility.

*The generating facility will be interconnected to the existing Nevada Solar One 230 kV Substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-CMS5 (a).*

NAC § 704.8885(2)(r) addresses the interconnection priority which has been established for the available transmission capacity of the utility provider for all proposed renewable energy systems that will interconnect and begin commercial operation within the three-year period immediately following the date on which the new renewable energy contract or energy efficiency contract is submitted for approval.

*Commission approval of the project will not affect any pending FERC interconnection priorities. Pursuant to the provisions of the Companies' FERC approved OATT, interconnection priority of a generator is determined based on the date the requesting customer submits a valid interconnection request.*

NAC § 704.8885(2)(s) addresses any requests for transmission service that have been filed with the utility provider.

*Sempra's Copper Mountain Solar 5 has followed the requirements and completed the study process for a large generator as outlined by the OATT. This project has been issued a final Facilities Study.*

NAC § 704.8885(2)(t) addresses any evidence that an environmental assessment, an environmental impact statement or an environmental impact report is being completed or has been completed with regard to the renewable energy system, or any evidence that a contract has been executed with an environmental contractor who will prepare such an assessment, statement or report within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*The Copper Mountain Solar 5 project as proposed by Sempra is sited on land owned by the City of Boulder City. The project's gen-tie line and access to the site will be routed through a Bureau of Land Management (BLM) utility corridor. NextEra anticipates submitting an application to BLM for the gen-tie and access road in June 2018. Once the application is accepted and deemed complete by BLM it is expected that they will conduct an Environmental Assessment to fulfill the regulatory environmental review requirement of the National Environmental Policy Act (NEPA).*

NAC § 704.8885(2)(u) addresses permits required for the renewable energy systems within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*Permits necessary for the construction and operation of the Copper Mountain Solar 5 project are listed in Exhibit 12 of the PPA, Technical Appendix – REN-6-CMS5 (a).*

NAC § 704.8885(2)(v) addresses applications for development rights with the appropriate Federal agencies (including BLM), where the granting of such developmental rights is not contingent upon a competitive bidding process.

*Applications required from Federal agencies for the development of Copper Mountain Solar 5 are listed in Exhibit 12 of the PPA, Technical Appendix – REN-6-CMS5 (a).*

NAC § 704.8885(2)(w) addresses any evidence that establishes rights of ownership, possession or use concerning land or natural resources, including, without limitation, deeds, land patents, leases, contracts, licenses or permits concerning land, geothermal drilling rights or other rights to natural resources.

*Sempra's solar site is located on land owned by the City of Boulder City. A Lease and Lease Option are in place with the City and discussions are ongoing for easements to NV Energy.*

*The project's generation-intertie and site access road will be located on federal land, within the existing utility corridor. Sempra has provided a list of permits required to develop the project and a schedule including a reasonable timeline for securing the necessary permits.*

NAC § 704.8885(2)(x) addresses whether the utility provider has any economical dispatch rights.

*The Company does not have economic dispatch rights, but curtailment or re-dispatch of up to 100 percent of the net energy can be ordered by the transmission provider, electric system authority, or market operator. The Company has no obligation to pay for such curtailed product or for generation in excess of the maximum amount.*

**REN-6-DFS (a)**

**LONG-TERM RENEWABLE  
POWER PURCHASE AGREEMENT**

**BETWEEN**

**SIERRA PACIFIC POWER COMPANY D/B/A NV ENERGY**

**AND**

**DODGE FLAT SOLAR, LLC**

**Dodge Flat Solar Energy Center  
Washoe County, Nevada**

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## LONG-TERM RENEWABLE POWER PURCHASE AGREEMENT

This Long-Term Renewable Power Purchase Agreement (this “Agreement”) is made and entered into as of May 14, 2018 (the “Effective Date”) by and between **SIERRA PACIFIC POWER COMPANY**, a Nevada corporation, d/b/a NV Energy acting in its merchant function capacity (“Buyer”), and **DODGE FLAT SOLAR, LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are sometimes referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the PUCN and FERC (as such terms are defined below);

**WHEREAS**, Buyer intends to construct or cause to be constructed the Facility (as such term is defined below) upon the terms and conditions set forth herein; and

**WHEREAS**, Supplier desires to sell to Buyer, and Buyer desires to purchase from Supplier, Product (as such term is defined below) from the Facility upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “Accepted Compliance Costs” is defined in Section 3.5.
- 1.2 “Adjusted Annual Supply Amount” means, with respect to a Contract Year, the Annual Supply Amount less the total amount of Net Energy associated with Excused Product, if any, for such Contract Year.
- 1.3 “Adjusted Stub Period Supply Amount” means, with respect to the Stub Period, the Stub Period Supply Amount less the total amount of Net Energy associated with Excused Product, if any, for the Stub Period.
- 1.4 “Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations, or policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, (a) with respect to Buyer, Affiliate shall only include Berkshire Hathaway Energy Company and its direct and

wholly owned subsidiaries, and (b) with respect to Supplier, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

- 1.5 “Agreement” means this Long-Term Renewable Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.6 “ALTA Survey” means a land survey prepared and certified in accordance with the standards jointly promulgated by the American Land Title Association and the American Congress on Surveying and Mapping.
- 1.7 “Annual Supply Amount” means, with respect to each Contract Year, the sum of the twelve (12) Monthly Supply Amounts for that Contract Year.
- 1.8 “ASC” is defined in Section 12.7.
- 1.9 “Availability Liquidated Damages” is defined in Exhibit 26.
- 1.10 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Section 14.2 notifying Buyer of the availability of the Facility.
- 1.11 “Availability Test” means the test described in Exhibit 26.
- 1.12 “Average On-Peak COB” means the simple average of the COB for the On-Peak hours of the Summer Months or the Non-Summer Months, as applicable.
- 1.13 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.14 “Balancing Authority Area Operator” means a Person, and its agents and any successors thereto, that is responsible for the operation of the electric transmission system and for maintaining reliability of the electric transmission system, including the Transmission System, within the Balancing Authority Area where the Facility is located. As of the Effective Date, the Balancing Authority Area Operator is the Transmission Provider.
- 1.15 “Billing Period” is defined in Section 7.2.1.
- 1.16 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.
- 1.17 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.18 “Buyer ROFO Notice” is defined in Section 6.1.1.

- 1.19 “Buyer’s PC Account” means the account maintained by the PC Administrator for the purpose of tracking the production, sale, transfer, purchase and retirement of PCs by Buyer, or such other account, including a WREGIS account, as Buyer may designate from time to time.
- 1.20 “Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on Exhibit 9, and such others as are deemed by Buyer to be necessary or desirable from time to time.
- 1.21 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any Governmental Authority given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.22 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Facility.
- 1.23 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.24 “Change of Control” means the occurrence, whether in a single transaction or in a series of related transactions at any time during the Term, of (i) a transfer of a Controlling Interest in Supplier or such owner; or (ii) any consolidation or merger of Supplier or such owner in which Supplier or such owner, as the case may be, is not the continuing or surviving entity, or (iii) a sale or conveyance of any direct or indirect ownership interest in Supplier following which NextEra Energy, Inc. is no longer the direct or indirect owner of at least 50% of the ownership interests of Supplier, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.
- 1.25 “Charging Energy” means all Energy and capacity produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility Metering Point in accordance with a Charging Notice from Buyer pursuant to Section 3.4. All Charging Energy shall be used solely to charge the Storage Facility. Buyer’s payment for Charging Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Storage Facility Metering Point and, in any event, not greater than the amount of Charging Energy included in the applicable Charging Notice.
- 1.26 “Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction

shall be in accordance with the Operating Procedures. Charging Notices may be communicated electronically, via facsimile, telephonically or other verbal means, provided that telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing), and such recordings shall be made available to both Buyer and Supplier upon request for settlement purposes. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.

- 1.27 “COB” means the Hourly California Oregon Border Index published by Powerdex.
- 1.28 “Commercial Operation” means that: (a) the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System, and that the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) which occurs when all of the requirements set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6 and 7 (i) have occurred, and (ii) remain simultaneously true and accurate: (A) as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred; and (B) for the period Buyer has to review Supplier’s notice of Commercial Operation pursuant to Section 8.2.1.
- 1.29 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.30 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date may be extended if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure.
- 1.31 “Compliance Cost Cap” is defined in Section 3.5.
- 1.32 “Construction Contract” means one or more construction and equipment supply agreements, in each case, between a Construction Contractor and Supplier (or one of its Affiliates), pursuant to which, in the aggregate, the Facility will be designed, engineered, constructed, tested and commissioned.
- 1.33 “Construction Contractor” with respect to a Construction Contract, means the construction contractor and/or equipment supplier that is party to such Construction Contract.
- 1.34 “Contract Representative” of a Party, means the individual designated by that Party in Exhibit 4 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 29.1.
- 1.35 “Contract Year” means each year during the Term beginning on January 1 and ending on December 31 of the year following the Commercial Operation Date (or

commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).

- 1.36 “Controlling Interest” with respect to a Person, means fifty percent (50%) or more of the outstanding ownership interest of such Person, or the power to vote such percentage of ownership interest.
- 1.37 “Covered Facility” is defined in Section 24.5.1.
- 1.38 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.
- 1.39 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.40 “Cure Period” is defined in Section 24.3.
- 1.41 “Curtailed Product” is defined in Section 10.3.
- 1.42 “Daily Delay Damages” means an amount equal to: (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Commercial Operation Deadline, one hundred ninety-four dollars and forty-four cents (\$194.44) per MW of Expected Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61st) through and including the one-hundred-twentieth (120th) day subsequent to the Commercial Operation Deadline, three hundred eighty-eight dollars and eighty-nine cents (\$388.89) per MW of Expected Nameplate Capacity Rating per day; and (c) with respect to the one-hundred-twenty-first (121st) through and including the one hundred and eighty ((180th) day subsequent to the Commercial Operation Deadline, five hundred eight-three dollars and thirty-three cents (\$583.33) per MW of Expected Nameplate Capacity Rating per day.
- 1.43 “Daily On-Peak Supply Amount” means, with respect to a month, the sum of the Supply Amounts for the Delivery Hours ending 07:00 through 22:00 PPT for each day in that month.
- 1.44 “Daily Supply Amount” means, with respect to each day of a month, the sum of the Supply Amounts for the Delivery Hours ending 01:00 through 24:00 PPT for that month.
- 1.45 “Defaulting Party” is defined in Section 24.1.
- 1.46 “Deficit Damages” is defined in Section 8.6.1.
- 1.47 “Deficit Damages Rate” means \$200,000.00 per MW.
- 1.48 “Delivered Amount” means, with respect to any Delivery Hour, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point

during such Delivery Hour, including Charging Energy delivered by Supplier at the Storage Facility Metering Point during such Delivery Hour.

- 1.49 “Delivered PCs” means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.50 “Delivery Hour” means each hour.
- 1.51 “Delivery Point” means, with respect to Net Energy and Discharging Energy, the delivery point on the Transmission System set forth in Exhibit 5.
- 1.52 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the Supply Amount during a Delivery Hour.
- 1.53 “Development Security” is defined in Section 17.1.
- 1.54 “Discharging Energy” means all Energy and capacity discharged by the Storage Facility, less transformation and transmission losses, if any, delivered to the Delivery Point.
- 1.55 “Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Operating Procedures. Discharging Notices may be communicated electronically, via facsimile, telephonically or other verbal means, provided that telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing), and such recordings shall be made available to both Buyer and Supplier upon request for settlement purposes.
- 1.56 “Dispute” is defined in Section 21.1.
- 1.57 “Early Purchase Option” is defined in Section 6.2.
- 1.58 “Economic Curtailment” is defined in Section 10.4.1.
- 1.59 “Economic Curtailed Product” is defined in Section 10.4.2.
- 1.60 “Effective Date” is defined in the preamble of this Agreement.
- 1.61 “Electric System Authority” means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, a Regional Transmission Organization, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.

- 1.62 “Emergency” means any circumstance or combination of circumstances or any condition of the Facility, the Transmission System or the transmission system of other transmission operators, which is determined or reported by Buyer, the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.
- 1.63 “Energy” means all energy that is generated by the Generating Facility.
- 1.64 “Energy Choice Initiative” means the initiated constitutional amendment that: (a) appeared as ballot question 3 in the State of Nevada general election held on November 8, 2016 (titled Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment); (b) was approved by a majority of the Nevada voters in the State of Nevada general election on November 8, 2016; and (c) will appear on the ballot of the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 1.65 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.66 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or location, or of such form or character, as to constitute a violation of Laws and present a material risk under Laws that the Project Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.67 “Environmental Law” shall mean any Law relating to the protection, preservation or restoration of human health, the environment, or natural resources, including any Law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.
- 1.68 “Event of Default” is defined in Section 24.1.
- 1.69 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.70 “Excess Charging Energy” is defined in Section 3.4.6.3.
- 1.71 “Excess Energy” means, (a) with respect to the Stub Period, the portion of the Delivered Amount for the Stub Period, if any, that exceeds one hundred percent (100%) of the Adjusted Stub Period Supply Amount, and (b) with respect to a Contract Year, the portion of the Delivered Amount for such Contract Year, if any, that exceeds one hundred percent (100%) of the Adjusted Annual Supply Amount



for such Contract Year; provided, however, that Delivered Amount in excess of the Maximum Amount for any Delivery Hour shall be excluded for purposes of determining Excess Energy.

- 1.72 “Excused Product” is defined in Section 3.6.4.
- 1.73 “Expected Nameplate Capacity Rating” is defined in Exhibit 1.
- 1.74 “Facility” means the Generating Facility and the Storage Facility.
- 1.75 “Fair Market Value” means the price which a willing buyer would pay for the Facility in an arm’s-length transaction to a willing seller under no compulsion to sell, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Article 21.
- 1.76 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.77 “Final Purchase Option” is defined in Section 6.3.
- 1.78 “Fitch” means Fitch Ratings Ltd. and any successor.
- 1.79 “Force Majeure” is defined in Section 20.2.
- 1.80 “Generating Facility” means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Net Energy to the Delivery Point and Storage Facility Metering Point, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such generating power plant may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.81 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Good Utility Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and

the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

- 1.82 “Governmental Approval” means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing, notification, or registration of, by, with or to any Governmental Authority.
- 1.83 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the PUCN, NERC, WECC and WREGIS.
- 1.84 “Guaranteed Storage Availability” is defined in Section 3.4.8.1.
- 1.85 “Guaranty” means a guaranty substantially in the form of Exhibit 20.
- 1.86 “Hazardous Substance” means: (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq., or any similar state statute.
- 1.87 “IA” means the Standard Large Generator Interconnection Agreement (Service Agreement #16-00053) executed on November 10, 2016, as amended from time to time, between Supplier and the Transmission Provider for the Facility.
- 1.88 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.89 “Indemnified Party” is defined in Section 18.1.
- 1.90 “Indemnifying Party” is defined in Section 18.1.

- 1.91 “Initial Storage Rate” means, for any period, the applicable charge set forth in Exhibit 2A.
- 1.92 “Invoice” means the statements described in Section 7.2 setting forth the information required therein, as well as the associated payment due for the Billing Period, the Measurement Period or the Contract Year, as the case may be, in accordance with Exhibits 2B and 2C.
- 1.93 “ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- 1.94 “Law” means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party or any of its property.
- 1.95 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses (including lost Tax Credits) or expenses imposed by a third party upon such Person or incurred in connection with a claim by a third party against such Person.
- 1.96 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who: (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion; (c) has no economic relationship, association, or nexus with Supplier for services currently being rendered to Supplier or its members or Affiliates, and is not an employee of its members or Affiliates; and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility.
- 1.97 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for the Energy Imbalance Market.
- 1.98 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on: (a) the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate; (b) the validity or enforceability of this Agreement or the transaction contemplated hereby; or (c) on the business, assets, operations, property or condition (financial or otherwise) of such Party.
- 1.99 “Maximum Amount” means, with respect to a Delivery Hour, 200 MWh.

- 1.100 “Measurement Period” means each two (2) consecutive Contract Years commencing with the first two (2) Contract Years of the Term.
- 1.101 “Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for: (a) accurate determination of the: quantities of Delivered Amounts and Station Usage from the Facility, the quantities of Charging Energy delivered to the Storage Facility Metering Point, the amount of Discharging Energy delivered to the Delivery Point, and for recording other related parameters required for the reporting of data to Supplier; (b) the computation of the payments due from one Party to another under this Agreement; and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Supplier may elect to install as contemplated by Section 7.1.1.
- 1.102 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person meets at least two (2) of the following, unless a Person is only rated by two credit agencies then Credit Rating means that the Credit Rating of that Person meets at least one (1) of the two (2): (i) “Baa3” or higher by Moody’s, (ii) “BBB-” or higher by S&P, or (iii) “BBB-” or higher by Fitch.
- 1.103 “Monthly Supply Amount” means, with respect to a month, the sum of the Daily Supply Amount for each day in such month.
- 1.104 “Monthly On-Peak Supply Amount” means, with respect to a month, the sum of the Daily On-Peak Supply Amount for each day in such month.
- 1.105 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.106 “MW” means megawatts of electrical power in AC.
- 1.107 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.108 “NAC” means the Nevada Administrative Code.
- 1.109 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.110 “Net Energy” means all Energy and capacity produced by the Generating Facility (including Charging Energy, but not Discharging Energy), less Station Usage and transformation and transmission losses and other adjustments (e.g., Supplier’s load other than Station Usage), if any, delivered to and received by Buyer at the Delivery Point and delivered to the Storage Facility Metering Point. Buyer’s payment for Net Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Delivery Point and Storage Facility Metering Point.

- 1.111 “Network Resource” is defined in the OATT.
- 1.112 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.113 “Non-Summer Months” means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.114 “Notice” is defined in Section 29.1.1.
- 1.115 “Notice to Proceed” means the initial notification by Supplier to its Construction Contractor to commence work under the Construction Contract.
- 1.116 “NRS” means the Nevada Revised Statutes.
- 1.117 “OATT” means Transmission Provider’s or the Balancing Authority Area Operator’s then-effective Open Access Transmission Tariff, which has been accepted for filing by FERC.
- 1.118 “Offered Interests” is defined in Section 6.1.1.
- 1.119 “Off-Peak” means hours ending 01:00 through 06:00 PPT and hours ending 23:00 through 24:00 PPT of each day.
- 1.120 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.121 “Operating Procedures” is defined in Section 8.8.
- 1.122 “Operating Representative” of a Party means any of the individuals designated by that Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 29.1.
- 1.123 “Operating Security” is defined in Section 17.2.
- 1.124 “Operation Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Net Energy to and at the Delivery Point and Storage Facility Metering Point and the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity and receiving instructions to charge, store and discharge energy.
- 1.125 “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.126 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.

- 1.127 “PC” or “Portfolio Energy Credit” means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Facility, all as calculated by the PUCN operations staff and certified by the PC Administrator pursuant to the Renewable Energy Law (or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.
- 1.128 “PC Administrator” means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Portfolio Standard or a successor Governmental Authority pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada.
- 1.129 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.130 “PC Shortfall” is defined in Section 3.7.1.
- 1.131 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.132 “Penalties” means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.133 “Permitted Transfer” means any of the following:
- (a) transactions among Affiliates of Supplier, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Supplier or its Affiliates; *provided* (i) NextEra Energy, Inc. retains the authority, directly or indirectly, to control Supplier, or (ii) a wholly-owned, indirect subsidiary of NextEra Energy, Inc. operates the Facility;
  - (b) any foreclosure by Supplier’s Lenders pursuant to any financing, including tax equity financing, or other financial arrangements for the Facility;
  - (c) a Change of Control of NextEra Energy, Inc.;
  - (d) any change of economic and voting rights triggered in Supplier’s organizational documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;
  - (e) the direct or indirect transfer of share of, or equity interests in Supplier to Supplier’s Lenders as part of a tax equity financing;
  - (f) a transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NextEra Energy Resources, LLC or NextEra

Energy, Inc.; (ii) all or substantially all of NextEra Energy Resources, LLC's or NextEra Energy, Inc.'s solar generation or energy storage portfolio; or (iii) all or substantially all of NextEra Energy Resources, LLC's or NextEra Energy, Inc.'s renewable energy generation portfolio; provided, that in the case of each of (i), (ii) and (iii), the entity that operates the Facility following such transfer has (or contracts with that has) sufficient experience to operate the Facility successfully, including a minimum of three (3) years' experience in the renewable energy generation and operation business, and ownership, control or operation of a minimum of 300 MWs of solar energy generation capacity.

- 1.134 "Person" or "Persons" means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.135 "Planned Outage" is defined in Article 11.1.
- 1.136 "Portfolio Standard" means the amount of electricity that Buyer must generate, acquire, or save from renewable energy systems or efficiency measures specified by the percentage of the total amount of electricity sold by Buyer to its retail customers in the State of Nevada pursuant to the Renewable Energy Law, as established pursuant to NRS 704.7821, and the regulations, guidance and requirements promulgated thereunder, as may be amended, preempted or superseded from time to time (or pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada).
- 1.137 "Power Quality Standards" means the power quality standards established by NERC, WECC, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, or their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.138 "Product" means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits, and (d) Capacity Rights, in each case, arising from or relating to the Facility, including Storage Product.
- 1.139 "Product Rate" means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.140 "Project Milestone" means each of the milestones listed in Exhibit 6.
- 1.141 "Project Site" means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.142 "Provisional Energy" means Net Energy (but not Test Energy) that is delivered by Supplier to Buyer prior to the Commercial Operation Date at the request of Buyer in increments of no less than five (5) MW up to an aggregate maximum of two hundred (200) MW.

- 1.143 “Provisional Rate” is defined in Section 4.1.1.2.
- 1.144 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.145 “PUCN Approval” is defined in Section 16.2.
- 1.146 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.147 “PUCN Approval Deadline” means December 28, 2018.
- 1.148 “QF” means a cogeneration or small power production facility that meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207.
- 1.149 “Qualified Financial Institution” means a financial institution having an office in the United States, with a total tangible net worth of at least ten billion dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least “A-” by S&P and “A3” by Moody’s.
- 1.150 “Qualified Guarantor” means an entity, which at the time it provides a Guaranty, meets the Minimum Credit Rating.
- 1.151 “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Supplier as of the Effective Date and, at a minimum, (a) has a tangible net worth of at least thirty million dollars (\$30,000,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer, and (b) has (or agrees to contract with an operator who has) at least three (3) years of experience operating a generating facility of similar technology and similar size to the Generating Facility and at least two (2) years of experience operating a storage facility of similar technology and similar size to the Storage Facility.
- 1.152 “Relevant Rating Agency” means Moody’s, S&P, or Fitch.
- 1.153 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions attributes, Portfolio Energy Credits (and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all: (a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Facility or the generation, transmission or use of the Product, including those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; (b) associated with the production of Energy or based in whole or part on the Facility’s use of renewable resources for generation or because the Generating Facility constitutes a Renewable Energy System or the like or because the Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether



any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable; (c) credits, offsets, allowances or benefits attributable to Energy generated and consumed by the Facility, such as Station Usage (parasitic load); (d) claims, credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or generation of the Product, and include : (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include: (i) any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; (ii) matters designated by Buyer as sources of liability; and (iii) adverse wildlife or environmental impacts.

- 1.154 “Renewable Energy Benefits Reporting Rights” means the exclusive right of a purchaser of Renewable Energy Benefits to report ownership of Renewable Energy Benefits in compliance with any applicable Law, and to Governmental Authorities or other Persons at such purchaser's discretion, and include reporting under: (a) Section 1605(b) of the Energy Policy Act of 1992; (b) the Environmental Protection Agency; (c) the Clean Air Act Amendments Section 111(d) and regulations thereunder; and (d) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
  
- 1.155 “Renewable Energy Law” means an act of the Nevada Legislature relating to energy that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS §§ 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case, as such Laws, rules, regulations, guidance and other requirements may be amended, preempted or superseded from time to time.
  
- 1.156 “Renewable Energy System” means a generation facility that is both (a) a “renewable energy system” as defined in the Renewable Energy Law and (b) a “renewable Generating Unit” under WREGIS.
  
- 1.157 “Replacement Costs” is defined in Section 3.6.1.3 with respect to the Summer Months and Section 3.6.2.3 with respect to Non-Summer Months.
  
- 1.158 “Required Facility Documents” means the Governmental Approvals, rights and agreements now or hereafter necessary for construction, operation and maintenance of the Facility set forth in Exhibit 12. Nothing set forth in Exhibit 12 limits

Supplier's obligation to obtain the Governmental Approvals set forth in Exhibit 12 or otherwise required hereunder or with respect to the Facility.

- 1.159 "Restricted Period" is defined in Section 24.5.1.
- 1.160 "Restricted Transaction" is defined in Section 6.1.1.
- 1.161 "ROFO" is defined in Section 6.1.
- 1.162 "ROFO Period" is defined in Section 6.1.1.
- 1.163 "ROFO Seller" is defined in Section 6.1.1.
- 1.164 "Seller ROFO Notice" is defined in Section 6.1.1.
- 1.165 "Shared Facilities" means the gen-tie lines, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case as necessary to enable delivery of Energy from Supplier's Facility (which is excluded from Shared Facilities) to the Delivery Point.
- 1.166 "Shared Facilities Agreement" is defined in Section 8.1.
- 1.167 "Shortfall" is defined in Section 3.6.1.1 with respect to the Summer Months and Section 3.6.2.1 with respect to Non-Summer Months.
- 1.168 "Shortfall Amount" is defined in Section 3.6.1.2 for the Summer Months and Section 3.6.2.2 for Non-Summer Months.
- 1.169 "Shortfall Threshold" is defined in Section 3.6.1.1 for the Summer Months and Section 3.6.2.1 for the Non-Summer Months.
- 1.170 "Standard and Poor's" or "S&P" means Standard and Poor's Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.171 "Standby Service" means the electric service supplied by Sierra Pacific Power Company for Station Usage pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.172 "Station Usage" means all Energy used by the Facility.
- 1.173 "Storage Availability" is defined in Exhibit 26.
- 1.174 "Storage Capacity" means the maximum dependable operating capability of the Storage Facility to discharge electric energy, and any other products that may be developed or evolve from time to time during the Term that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

- 1.175 “Storage Capacity Test” means the testing procedures, requirements and protocols set forth in Section 3.4.7 and Exhibit 25.
- 1.176 “Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility determined in accordance with Section 3.4.7 and Exhibit 25, as the same may be adjusted from time to time pursuant to Section 3.4.7 and Exhibit 25.
- 1.177 “Storage Facility” means Supplier’s energy storage facility as described in Exhibit 1 (including the operational requirements of the energy storage facility), located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Storage Product, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.178 “Storage Facility Metering Point” means, with respect to Charging Energy, the point at the Storage Facility set forth in Exhibit 5.
- 1.179 “Storage Product” means (a) Discharging Energy, (b) PCs (and any equivalent rights in any other jurisdiction), if any, (c) Renewable Energy Benefits, if any, (d) Storage Capacity, and (e) Ancillary Services, in each case arising from or relating to the Storage Facility.
- 1.180 “Storage Rate” means, for any period, the applicable charge set forth in Exhibit 2A.
- 1.181 “Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility, expressed in MWh.
- 1.182 “Stub Period” means the period of time commencing on the Commercial Operation Date and ending on December 31 of the year in which the Commercial Operation Date occurs (provided, however, that if the Commercial Operation Date occurs on January 1, then the term “Stub Period” will have no application to this Agreement).
- 1.183 “Stub Period Supply Amount” means the sum of the Daily Supply Amount for each day of the Stub Period.
- 1.184 “Summer Months” means the months of June, July, August and September occurring during the Stub Period or a Contract Year.
- 1.185 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.186 “Supplier’s Lenders” means any Person, other than an Affiliate of Supplier, and its permitted successors and assigns, providing money or credit in connection with any development, bridge, construction, takeout, permanent debt or tax equity financing or refinancing for the Facility, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.

- 1.187 “Supplier’s Required Regulatory Approvals” means the Governmental Approvals listed on Exhibit 10.
- 1.188 “Supply Amount” means, with respect to any Delivery Hour, the amount of Net Energy stated in Exhibit 13.
- 1.189 “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.190 “Tax Credits” means the ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit (including any cash grants in lieu of any of the foregoing items) specific to the production of renewable energy and/or investments in renewable energy facilities.
- 1.191 “Term” is defined in Section 2.2.
- 1.192 “Test Energy” is defined in Section 4.1.1.1.
- 1.193 “Test Product Rate” is defined in Section 4.1.1.1.
- 1.194 “Transmission Provider” means Sierra Pacific Power Company or any successor operator or owner of the Transmission System.
- 1.195 “Transmission System” means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
- 1.196 “Weather Meter” is defined in Section 7.1.8.
- 1.197 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.198 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.
- 1.199 “Yearly PC Amount” means the amount of PCs for a Contract Year as stated in Exhibit 18.

## 2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

- 2.1 Effective Date. Subject to Article 16, this Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier's obligation to deliver Product, and Buyer's obligation to accept and pay for Product, shall commence on the Operation Date and shall continue for a period of 25 Contract Years, subject to earlier termination of this Agreement pursuant to the terms hereof (the "Term"); provided, however, that Buyer's obligations to pay for or accept any Product are conditioned on the receipt of the PUCN Approval in form and substance acceptable to Buyer in its sole discretion. Buyer shall not be obligated to accept or pay for any Product, unless the PUCN Approval is received in form and substance acceptable to Buyer in its sole discretion or Buyer waives its right to terminate this Agreement pursuant to Article 16. Notwithstanding the preceding sentence, all of the provisions in this Agreement related to the Storage Facility and the Storage Product, including the operation, maintenance, performance of the Storage Facility and the scheduling and payment for Storage Product shall automatically terminate, be null and void and of no force and effect effective as of the last day of the fifteenth (15<sup>th</sup>) Contract Year, unless prior thereto the Parties agree in writing to continue such provisions on such terms and conditions as the Parties may agree in their sole discretion, including a later date on which such provisions shall automatically terminate. Effective as of the date such provisions shall automatically terminate, this Agreement shall be amended to reflect the termination of such provisions, and the Parties shall execute an amendment to this Agreement consistent with the terms of this Section 2.2.
- 2.3 Termination.
- 2.3.1 For Cause. Except as provided below in this Section 2.3.1, this Agreement may be terminated at any time by the Non-Defaulting Party upon two (2) Business Days' prior notice to the Defaulting Party if an Event of Default has occurred and is continuing (after the applicable Cure Period (if any) in Section 24.3 has expired); provided, however, that any purported termination by a Party shall first require that Supplier deliver Notice to the other Party stating prominently therein in type font no smaller than 14 point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions.
- 2.3.2 Failed Conditions Precedent. This Agreement may be terminated by Buyer in accordance with Article 16 without payment or penalty or liability of any kind.
- 2.3.3 Force Majeure. This Agreement may be terminated by Buyer if the Supplier's obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than twelve (12) consecutive months or three hundred sixty (360) days in any five hundred forty (540) day period.

- 2.4 Effect of Termination - Survival of Obligations. The termination or expiration of this Agreement shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;
  - 2.4.2 Indemnity obligations contained in this Agreement, including Article 18, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;
  - 2.4.3 Limitation of liability provisions contained in Article 19;
  - 2.4.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21; or
  - 2.4.5 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination.

### **3. SUPPLY SERVICE OBLIGATIONS**

- 3.1 Dedication. One hundred percent (100%) of the Product from the Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Subject to Section 24.2, Supplier shall not: (a) sell, divert, grant, transfer or assign Product to any Person other than Buyer; (b) provide Buyer with any Product from any source other than the Facility; or (c) divert, redirect or make available the Facility or any resource therefrom to another generating facility or storage facility or any third party. The Parties agree that remedies at Law may be inadequate in the event of a breach of this Section 3.1, and Supplier agrees that Buyer shall be entitled, without proof of actual damages and without necessity of posting bond or other security, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 3.1.
- 3.2 Purchase and Sale. For and in consideration of Buyer's payment for the Product, Supplier sells to Buyer, and Buyer accepts from Supplier, any right, title and interest that Supplier may have in and to the Product, including Capacity Rights and Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term.
- 3.3 No Double Sales. Supplier represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other Person, the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term, other than as provided in Section 24.2. During the Term, Supplier shall not report to any person or entity that the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term, belong

to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.

### 3.4 Delivery Responsibilities.

3.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Supplier shall supply and deliver the Product to Buyer at the Delivery Point other than the Charging Energy which shall be delivered at the Storage Facility Metering Point).

3.4.2 Delivered Amount. Buyer shall take delivery of the Net Energy, including any Excess Energy, and Discharging Energy at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Energy and Discharging Energy up to the Delivery Point, including transmission costs, transmission line losses, any costs or charges imposed in connection with scheduling and delivery of the Charging Energy to the Storage Facility Metering Point and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Energy and Discharging Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. Without limiting the generality of the foregoing, Buyer, in its merchant capacity, shall not bear costs associated with the modifications to the Transmission System (including system upgrades) caused by or related to: (a) the interconnection of the Facility with the Transmission System; and (b) any increase in generating capacity of the Generating Facility. The Parties agree that the terms of the IA shall govern the allocation of costs associated with any modifications or upgrades to the Transmission System. To the extent any terms of this Agreement conflict with the IA, the terms of the IA shall prevail.

3.4.3 Title and Risk of Loss. Title and risk of loss with respect to Net Energy and Discharging Energy delivered by Supplier shall pass from Supplier to Buyer at the Delivery Point. Supplier shall be deemed in exclusive control of the Net Energy and Discharging Energy and shall be responsible for any damage or injury caused prior to the Delivery Point. Buyer shall be deemed in exclusive control of the Net Energy and Discharging Energy and shall be responsible for any damage or injury caused at and after the Delivery Point. Supplier warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

- 3.4.4 Provisional Energy Delivery. Buyer may request by written notice to Supplier to deliver Provisional Energy prior to the Commercial Operation Date, in increments as defined in Section 1.141 and on and after a specified date. Supplier may, in its sole discretion, elect to deliver such Provisional Energy to Buyer by delivering written notice thereof to Buyer. Notwithstanding the foregoing, Buyer and Supplier shall mutually agree on the amounts of Provisional Energy to be supplied and the date and time when such Provisional Energy shall be supplied. Monthly delivered Test Energy and Provisional Energy will be billed in accordance with Section 7.2.1.
- 3.4.5 Voltage Support. The IA requires the Facility to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to the Facility and all generators in the control area on a comparable basis. In addition to the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection within the range of 0.90 leading to 0.90 lagging at full rated real-power output, as available, within the capabilities of the Facility. The Facility shall provide dynamic reactive power as required for voltage regulation twenty-four (24) hours per day, if the Facility is capable of providing reactive power, regardless of real power output. The performance of reactive power output to provide voltage support shall be according to unit real/reactive capability curves provided in Exhibit 22.
- 3.4.6 Charging Energy Management.
- 3.4.6.1 Supplier shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Supplier's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.
- 3.4.6.2 Subject to the requirements and limitations set forth in this Agreement and the Operating Procedures, for the first five (5) years and ninety (90) days following the Commercial Operation Date, Buyer shall charge the Storage Facility exclusively using Energy generated by the Generating Facility by providing a Charging Notice. Thereafter, the Buyer will have the right to charge the Storage Facility (including holidays) using Energy from any other source by providing a Charging Notice to Supplier, subject to the requirements and limitations set forth in this Agreement and the Operating Procedures. Each Charging Notice will be effective unless and until



Buyer modifies such Charging Notice by providing Supplier with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Supplier's personnel designated in Exhibit 4 to receive such communications.

- 3.4.6.3 Supplier shall not charge the Storage Facility during the Term other than pursuant to a Charging Notice, the Operating Procedures, or in connection with a Storage Capacity Test. If during the Term, Supplier (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage Facility without Buyer providing a Charging Notice or in accordance with the Operating Procedures (“Excess Charging Energy”), then (x) Supplier shall be responsible for all costs associated with such Excess Charging Energy, (y) Buyer shall not be required to pay for such Excess Charging Energy, and (z) Buyer shall be entitled to discharge such Excess Charging Energy and to all of the benefits (including Storage Product) associated with discharging such Excess Charging Energy.

3.4.7 Storage Capacity Tests.

- 3.4.7.1 Prior to the Commercial Operation Date, Supplier shall schedule and complete one or more Storage Capacity Tests in accordance with Exhibit 25. Thereafter, at least once per Contract Year, Supplier shall schedule and complete a Storage Capacity Test in accordance with Exhibit 25. Buyer shall have the right to run a retest of the Storage Capacity Test in accordance with Exhibit 25.
- 3.4.7.2 Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Supplier (other than any third party costs incurred by Supplier for any retest required by Buyer pursuant to Section 3.4.7, unless such retest shall result in the Storage Contract Capacity being reduced from the Storage Contract Capacity established by the immediately preceding

Storage Capacity Test, in which case Supplier shall be responsible for such costs).

- 3.4.7.3 Following each Storage Capacity Test, Supplier shall submit a testing report to Buyer in accordance with Exhibit 25 and reasonable support data requested by Buyer. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Storage Contract Capacity set forth on Exhibit 1, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

3.4.8 Storage Availability.

- 3.4.8.1 During the Term, the Storage Facility shall maintain a Storage Availability during the On-Peak hours of the Summer Months of no less than ninety-eight percent (98%) (the “Guaranteed Storage Availability”), which Storage Availability shall be calculated in accordance with Exhibit 26.

If the Storage Availability during the On-Peak hours of the Summer Months is less than the Guaranteed Storage Availability, then Supplier shall cure such failure by paying to Buyer Availability Liquidated Damages calculated in accordance with Exhibit 26. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such Availability Liquidated Damages in accordance with Exhibit 26.

- 3.4.8.2 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.4.8 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.4.8 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

- 3.5 Renewable Energy System. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if

the Generating Facility: (a) is not at the time of delivery qualified as a Renewable Energy System; or (b) is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy and Discharging Energy being delivered; provided that if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy and Discharging Energy from the Generating Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Supplier shall use commercially reasonable efforts to comply with such Renewable Energy Law. For purposes hereof, commercially reasonable efforts shall include the expenditure of amounts up to two-hundred thousand dollars (\$200,000.00) (the “Compliance Cost Cap”) in any Contract Year. If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate such notice and either: (i) agree to reimburse Supplier for such excess costs (the “Accepted Compliance Costs”); or (ii) waive Supplier’s obligation to comply with the Renewable Energy Law to the extent such inability results from failing to expend amounts in excess of the Compliance Cost Cap. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law, and Buyer shall reimburse Supplier for Supplier’s actual and reasonable out-of-pocket compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Supplier’s inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute an Event of Default.

- 3.6 Shortfall; Replacement Costs. Supplier shall pay Buyer Replacement Costs and any Penalties incurred as a result of any Shortfall in any Measurement Period in accordance with the following provisions:

3.6.1 Summer Months – On-Peak.

- 3.6.1.1 If, for the Summer Months of any Measurement Period, the sum of all Delivered Amounts during the On-Peak hours of such Summer Months is less than the Shortfall Threshold for such Summer Months, then a shortfall of Net Energy (a “Shortfall”) will be deemed to exist for such Summer Months. “Shortfall Threshold” means, with respect to the Summer Months in any Measurement Period, the product of (a) 0.90 multiplied by (b) the difference between (i) the sum of the Monthly On-Peak Supply Amount for such Summer Months minus (ii) the total amount of Net Energy associated with Excused Product (if any) during the On-Peak hours of such Summer Months.
- 3.6.1.2 If a Shortfall exists with respect to the Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. “Shortfall Amount” means, with respect to the Summer Months in any Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such

Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Summer Months, provided that if the calculation of Shortfall Amount yields an amount of zero or less for the Summer Months in any Measurement Period, then no Shortfall Amount will be deemed to exist with respect to such Summer Months.

3.6.1.3 Buyer's "Replacement Costs" with respect to any Summer Months in any Measurement Period shall equal (a) the Shortfall Amount for such Summer Months multiplied by (b) the greater of (i) ten-percent (10%) of the applicable Product Rate or (ii) an amount equal to Average On-Peak COB for the Summer Months minus the applicable Product Rate, provided that if the calculation of Replacement Costs yields an amount of zero or less for such Summer Months, then no Replacement Costs will be payable with respect to such Summer Months.

3.6.1.4 Within ten (10) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

### 3.6.2 Non-Summer Months – On-Peak.

3.6.2.1 If, for the Non-Summer Months of any Measurement Period, the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months is less than the Shortfall Threshold for such Non-Summer Months, then a shortfall of Net Energy (a "Shortfall") will be deemed to exist for such Non-Summer Months. "Shortfall Threshold" means, with respect to the Non-Summer Months in any Measurement Period, the product of (a) 0.90 multiplied by (b) the difference between (i) the sum of Monthly On-Peak Supply Amount for such Non-Summer Months minus (ii) the total amount of Net Energy associated with Excused Product (if any) during the On-Peak hours of such Non-Summer Months.

3.6.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. "Shortfall Amount" means, with respect to the Non-Summer Months in any Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Non-Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months, provided that if the calculation of Shortfall Amount yields an amount of zero

or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to such Non-Summer Months.

3.6.2.3 Buyer's "Replacement Costs" with respect to any Non-Summer Months in any Measurement Period shall equal (a) the Shortfall Amount for such Non-Summer Months multiplied by (b) an amount equal to Average On-Peak COB for the Non-Summer Months minus the applicable Product Rate, provided that if the calculation of Replacement Costs yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will be payable with respect to such Non-Summer Months.

3.6.2.4 Within ten (10) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Non-Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

3.6.3 Not a Penalty. The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.6 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the damages for the failure of Supplier to supply and deliver Net Energy are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

3.6.4 Calculations. As soon as practicable following any period of: (a) Force Majeure; (b) Buyer's failure to accept Net Energy or PCs in breach of this Agreement; (c) Emergency (except for an Emergency with respect to the Facility that is not also a Force Majeure); (d) Planned Outage; (e) Curtailed Product; or (f) Economic Curtailed Product, in each case as a result of which Supplier has failed to deliver Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor may be excused, Supplier shall calculate the amount of Net Energy that Supplier was unable to generate and deliver to the Storage Facility Metering Point and to Buyer at the Delivery Point solely as a result of such event, by summing for each hour of the period the difference between (i) the Net Energy that Supplier would have been capable of delivering if not for such event during each hour (not to exceed the Supply Amount) and (ii) the Delivered Amount during each hour (the "Excused Product"); provided that the amount of Curtailed Product shall be determined in accordance with Section 10.3 and the amount of Economic Curtailed Product shall be determined in accordance with Section 10.4. Supplier shall provide Buyer its calculations and include all relevant back-

up data and other information reasonably requested by Buyer. If Buyer disagrees with the calculation of Excused Product, then the Excused Product will be determined through the Dispute resolution provisions of Article 21; provided, however, that any undisputed amounts shall be settled in accordance with Section 7.2.

### 3.7 PC Shortfall; PC Replacement Costs.

- 3.7.1 If after the PC Administrator issues all the PC statements or certificates for any Measurement Period there is a PC Shortfall, then Supplier shall pay Buyer for the replacement costs and any Penalties associated with such PC Shortfall (collectively, the “PC Replacement Costs”). Subject to the last sentence of this Section 3.7.1, for purposes of this Agreement a “PC Shortfall” shall occur in any Measurement Period if the sum of all Delivered PCs is less than the product of (a) 0..90 multiplied by (b) an amount equal to (i) the sum of the Yearly PC Amount for the Contract Years in such Measurement Period minus (ii) the total amount of PCs associated with Excused Product during such Measurement Period. For purposes of this Agreement, a “PC Shortfall Amount” with respect to any Measurement Period means: (A) the sum of the Yearly PC Amount for the Contract Years in such Measurement Period; minus (B) the total amount of PCs associated with Excused Product during such Measurement Period; minus (C) the Delivered PCs during such Measurement Period. If the calculation of the PC Shortfall Amount set forth in this Section 3.7.1 yields an amount of zero or less for any Measurement Period, then no PC Shortfall will be deemed to exist with respect to such Measurement Period.
- 3.7.2 The PC Replacement Costs shall be determined by Buyer exercising its reasonable discretion based on the estimated cost of purchasing PCs to replace the PC Shortfall Amount from the same resource type with a comparable expiration date or the cost of replacing the PC Shortfall Amount with PCs of Buyer’s choice already in Buyer’s PC Account; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Penalties allocable to Supplier’s proportionate amount of Buyer’s aggregate shortfall under the applicable Portfolio Standard (factoring in Supplier’s shortfall in prior years carried forward as a deficit or reducing the surplus in such prior years).
- 3.7.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.7 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.7 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

- 3.7.4 All information used by Buyer to establish PC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide reasonable access to all such information supporting calculations within ten (10) Business Days of Supplier's request for such information. Supplier agrees to execute a confidentiality agreement regarding the review of this information upon request by Buyer.
- 3.7.5 For any Measurement Period, Buyer, at its sole option, may allow Supplier to meet its PC Replacement Cost obligation by transferring a quantity of PCs to Buyer in the amount of no less than the PC Shortfall Amount. Such PCs shall be from the same resource type with a comparable expiration date as the PCs that should have been delivered to Buyer under this Agreement.
- 3.8 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by one-half of one percent (0.5%). No later than January 1 of each Contract Year Buyer shall deliver to Supplier revised Exhibits 13 and 18 which shall reflect such reductions, and effective as of January 1 of each Contract Year this Agreement shall automatically be amended to substitute such revised Exhibits 13 and 18 for the then existing Exhibits 13 and 18.

#### 4. PRICE OF PRODUCT

- 4.1 Product Payments. Supplier shall be paid for the Product as follows:

4.1.1 Prior to the Commercial Operation Date.

- 4.1.1.1 On and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than (a) Excess Energy (which shall not be compensable) and (b) Provisional Energy ("Test Energy") shall be paid for by Buyer at the lesser of: (i) fifty percent (50%) of the applicable Product Rate, or (ii) the COB for each Delivery Hour of Test Energy ("Test Product Rate").
- 4.1.1.2 Notwithstanding the above, if Buyer requests Supplier to deliver Provisional Energy and Supplier elects to deliver Provisional Energy and delivers written notice to Buyer that it is delivering Provisional Energy in accordance with Section 3.4.4, Buyer shall pay Supplier seventy-five percent (75%) of the applicable Product Rate ("Provisional Rate") for such Provisional Energy.
- 4.1.1.3 Five (5) Business Days prior to the start of each month Supplier shall provide notice to Buyer with an estimate

of the forecasted amounts of Test Energy and Provisional Energy for that month with correlated meter data for actual amounts of Test Energy and Provisional Energy amounts to be provided with invoicing. Such determination shall be subject to verification by Buyer in the exercise of its reasonable discretion.

4.1.2 Subsequent to the Commercial Operation Date.

4.1.2.1 All Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than Excess Energy, shall be paid for by Buyer at the applicable Product Rate set forth in Exhibit 2A and based on the quantity of Net Energy; provided, however, that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Product associated with Delivered Amounts of Net Energy; provided further that Supplier shall be paid at the Test Product Rate for the month in which the Commercial Operation Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16<sup>th</sup>) day of such month.

4.1.2.2 All Product associated with Economic Curtailed Product shall be paid for at the Product Rate.

4.1.2.3 All Product associated with Excess Energy shall be paid for at the Test Product Rate.

4.1.2.4 All Storage Product shall be paid at the Storage Rate based on the Storage Contract Capacity of the Storage Facility, as such Storage Contract Capacity may be adjusted from time to time in accordance with Section 3.4.7 and Exhibit 25; provided, however, that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Storage Product associated with Discharging Energy.

4.1.3 No payment shall be owing to Supplier for any Product associated with Energy that is for any reason not Net Energy except as otherwise provided in Section 4.1.2.3.

4.1.4 Buyer shall not be required to accept from Supplier any Product associated with Delivered Amounts of Net Energy from the Generating Facility delivered during any Delivery Hour in excess of the Maximum Amount, and no payment shall be owing to Supplier for any Product associated with Delivered Amounts of Net Energy from the Generating Facility accepted by Buyer during any Delivery Hour in excess of the Maximum Amount.

4.2 Excused Product. Buyer shall not pay for Product comprising Excused Product except as otherwise provided in Section 4.1.2.3.



- 4.3 Tax Credits. The Parties agree that neither the Product Rate, the Storage Rate nor the Test Product Rate are subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Supplier or the Facility in whole or in part, or Supplier or its investors are unable to benefit from any Tax Credits. Supplier shall bear all risks, financial and otherwise, throughout the Term, associated with Supplier's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Supplier's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Supplier's obligation to deliver Net Energy and Discharging Energy and Product, shall be effective regardless of whether the sale of Energy or Net Energy from the Facility is eligible for, or receives Tax Credits during the Term.

## **5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS**

### **5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.**

- 5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Facility, including Renewable Energy Benefits associated with Energy for Station Usage. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or other applicable certifying entity to cause the Renewable Energy Benefits to vest in Buyer, without further compensation, including: (a) taking all actions necessary to register or certify any Renewable Energy Benefits or the Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise) and WREGIS; (b) causing the automatic transfer of the Renewable Energy Benefits derived from the Facility to Buyer (pursuant to NAC 704.8927 or otherwise); (c) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable; and (d) reasonably cooperating in any registration by Buyer of the Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Facility, including providing copies of all such information as Buyer reasonably requires for such registration. Without limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to reasonably cooperate with Buyer to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer (or its designee) will be entitled to claim Renewable Energy Benefits in any jurisdiction in connection with the Facility. All representations and warranties made by Supplier with respect to Renewable Energy Benefits are freely transferrable by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof.

- 5.1.2 On or before January 31 of each year following the Operation Date, Supplier, as owner or operator of the Renewable Energy System, shall deliver to Buyer a written attestation for the prior year that no part of the Renewable Energy Benefits: have been or will be (a) used for or by any Person to obtain renewable energy credit in any state or jurisdiction, except for Buyer pursuant to this Agreement; (b) sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and (c) included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction, pursuant to Chapter 704 of the NAC. No Person other than Buyer (or its designee) will be entitled to claim Portfolio Energy Credits, Renewable Energy Benefits (or equivalents in any jurisdiction) in connection with the Facility.
- 5.2 Injunction. If any Person other than Buyer (or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and Supplier hereby in advance agrees: (a) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 5.2; and (b) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such Renewable Energy Benefits (including joining with or otherwise assisting Buyer in seeking the relief described in clause (a)).
- 5.3 Transfers. Buyer shall be entitled to PC Replacement Costs for Renewable Energy Benefits associated with any Energy for which WREGIS Certificates, PCs or any part of the Renewable Energy Benefits that are not delivered to Buyer. Supplier shall promptly give Buyer copies of all documentation it submits to WREGIS or PUCN or otherwise with respect to Renewable Energy Benefits. Further, in the event of the promulgation of a scheme involving any part of the Renewable Energy Benefits administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Supplier shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Renewable Energy Benefits belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the Renewable Energy Benefit Reporting Rights, Buyer may report under such program that all Renewable Energy Benefits purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

## **6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; EARLY PURCHASE OPTION; END OF TERM PURCHASE OPTION**

- 6.1 Right of First Offer ("ROFO").

- 6.1.1 Except in accordance with this Section 6.1.1, Supplier: (a) shall not sell, transfer or offer or negotiate to sell or transfer, the Facility; and (b) shall cause its immediately upstream owner(s) (together with Supplier, each a “ROFO Seller”) not to sell, transfer or offer or negotiate to sell or transfer, any ownership interest in Supplier (the Facility and ownership interests in Supplier, each the “Offered Interests”) other than to an Affiliate in accordance with the provisions of Section 23.2 or in connection with the collateral assignment of this Agreement pursuant to Section 23.8 (each a “Restricted Transaction”). If a ROFO Seller intends to enter into a Restricted Transaction, Supplier shall provide Buyer with written notice of same (a “Seller ROFO Notice”), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within thirty (30) days after receipt of the Seller ROFO Notice, Buyer shall notify Supplier in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the “Buyer ROFO Notice”). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Supplier shall cause ROFO Seller to negotiate in good faith and exclusively with Buyer, for a period of not less than one hundred twenty (120) days following ROFO Seller’s receipt of the Buyer ROFO Notice, the terms of a purchase by Buyer or its designee of the Offered Interests (such fifteen (15)-day period as extended, if applicable, by such one hundred twenty (120)-day period, the “ROFO Period”).
- 6.1.2 In the event that Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 6.1.1, or if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, ROFO Seller may negotiate a Restricted Transaction with any other Person, subject, in all cases, to the terms and conditions of this Agreement, including Section 6.1.3 and the provisions of Article 23. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on terms less favorable to ROFO Seller than such terms, if any, as were offered by Buyer during the ROFO Period.
- 6.1.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests within one hundred eighty (180) days following the expiration of the ROFO Period, ROFO Seller and any Offered Interests shall again be subject to this Section 6.1 with respect to any Restricted Transaction.
- 6.2 Early Purchase Option. Supplier hereby grants to Buyer options to purchase (“Early Purchase Option”) on a date chosen by Buyer during the six (6) months after the Facility’s 6<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> anniversaries of the Commercial Operation Date at the greater of (i) Fair Market Value and (ii) the amount of any outstanding indebtedness owed to Supplier’s Lenders pursuant to any financing or refinancing of the Facility at the time of the closing of such transaction, which option may be

exercised by Buyer providing written notice to Supplier no less than one hundred and eighty (180) days before the applicable anniversary.

- 6.3 Purchase Option at the End of Term. Supplier hereby grants to Buyer the option to purchase the Facility at the end of the Term at the Fair Market Value (the “Final Purchase Option”), which option may be exercised by Buyer providing written notice to Supplier no less than one hundred and eighty (180) days prior to the end of the Term of Buyer’s election to exercise such option.
- 6.4 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises the Early Purchase Option, the Final Purchase Option or otherwise agrees to purchase the Facility pursuant to Section 6.1, then such purchase shall occur pursuant to a form of purchase and sale agreement, which form shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to the Parties. It shall be a condition of any such purchase that Buyer obtains all necessary Governmental Approvals and notwithstanding any language to the contrary in this Agreement Buyer shall be given sufficient time to obtain such approvals in accordance with applicable statutes and regulations. Pursuant to the purchase and sale agreement, Supplier will take all actions necessary to transfer by deed, bill of sale, or both, the Facility to Buyer, as well as all other improvements placed on the Project Site by Supplier that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance created by or on behalf of Supplier or its Affiliates. In addition, Supplier will assign to Buyer all transferrable Governmental Approvals applicable to the Facility and Required Facility Documents, and all transferrable warranties for the Facility. Supplier shall reasonably cooperate with Buyer to assign and enforce any and all warranties that apply to the Facility or any of its component parts, which obligation shall survive the termination of this Agreement.
- 6.5 Due Diligence; Cooperation; Governmental Approvals; Notice of Rights. Supplier will provide in a timely manner, information regarding the Offered Interests which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Offered Interests pursuant to this Article 6. Supplier shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer’s efforts to properly account for and obtain any necessary Governmental Approvals with respect to the purchase of the Offered Interests pursuant to this Article 6. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of any Offered Interests pursuant to this Article 6 if Buyer does not receive all necessary Governmental Approvals in connection with such transaction. Supplier shall put any Person with which it enters into discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in this Article 6. Buyer shall be permitted to file a notice of the rights contained in this Article 6 with respect to the Project Site.

- 6.6 Termination of Agreement. Upon the acquisition of the Facility by Buyer pursuant to Section 6.4, this Agreement shall terminate and neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

## **7. METERING, INVOICING AND PAYMENTS**

### **7.1 Metering.**

- 7.1.1 Meters. Buyer shall, at Supplier's cost, provide, install, own, operate and maintain all Meter(s) in good operating condition. The metering system design shall be subject to Buyer's approval and shall be submitted to Buyer not later than Supplier's completion of the Project Milestone in Section 2(A) of Exhibit 6. The meter system shall have Buyer specified equipment to connect with Buyer's automated meter database. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional, shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity and account for losses from the meter location to the Delivery Point or to the Storage Facility Metering Point. The Meters shall also be used for, among other things, metering Station Usage of the Facility. Supplier, at its expense, may install additional check meters. Supplier shall not install any check-metering equipment on or connected to Buyer-owned facilities including instrument transformers or metering circuitry wiring. Supplier shall, at its sole expense, install any additional or different Meters or related equipment necessary to comply with the requirements of Transmission Provider, any Electric System Authority or any Governmental Authority.
- 7.1.2 WREGIS Metering. Supplier shall cause, at its sole cost and expense, the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Supplier shall be responsible to obtain all qualified reporting entity services required by WREGIS at Supplier's expense should Buyer not in its sole and absolute discretion provide them.
- 7.1.3 Location. Meters shall be installed at the location(s) specified in Exhibit 5, or as otherwise may be reasonably determined by Buyer to effectuate this Agreement.
- 7.1.4 Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expense, and liability associated with any such interference with the Meters. Metering requirements shall apply such that there is no impact on the infrastructure and output associated with the Facility due to the presence of any other contiguous project.

- 7.1.5 Meter Testing. Meters shall be tested at least once every year by Buyer. Either Party may request a special test of Meters or check meters, but the requesting Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) Business Days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 7.1.1, Supplier shall test and calibrate each such meter at least once every year. Supplier's Operating Representative shall provide fifteen (15) Business Days prior notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other with as much advance notice as practicable.
- 7.1.6 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Supplier for the Delivered Amount for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; provided, however, that the adjustment period shall not exceed one hundred eighty (180) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Supplier within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section 7.1.6 shall accompany Supplier's next Billing Period statement.
- 7.1.7 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Delivered Amount calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, that the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best

estimate of the Delivered Amount. In such event, such payments made based upon the Parties' estimate of the Delivered Amount shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the Dispute shall be resolved in accordance with Article 21.

- 7.1.8 Weather Meter. Supplier shall, at Supplier's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a device for the measurement of weather conditions relevant to the generation of Energy at the Project Site (the "Weather Meter"), provided that Supplier shall not select the type of Weather Meter without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed. No later than twelve (12) months prior to the Commercial Operation Date, the Parties shall agree on the location of the Weather Meter and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Meter.

## 7.2 Invoices.

- 7.2.1 Monthly Invoicing and Payment. On or before the 10<sup>th</sup> day of each month, Supplier shall send to Buyer an Invoice for the prior month (a "Billing Period"). Supplier shall calculate the Invoice based upon Meter data available to Supplier and as set forth in Exhibit 2B. Any correction or Dispute with respect to an Invoice is waived unless Buyer is notified within twenty-four (24) months, or Supplier is notified within thirty-six (36) months, after the Invoice is rendered or any specific adjustment to the Invoice is made. If an Invoice is not delivered to Buyer within twelve (12) months after the close of the Billing Period, the right to payment for such Billing Period is waived.
- 7.2.2 Replacement PC Invoice Calculation. In addition to the requirements for monthly Invoices set forth in this Section 7.2, if after the PC Administrator issues its final PC statement covering any Measurement Period and a PC Shortfall (as determined in accordance with Section 3.7.1) exists, Buyer shall send to Supplier an Invoice for such Measurement Period, which shall include the calculations set forth in Exhibit 2C.
- 7.2.3 Amounts Owing to Buyer. The Invoice referred to in Section 7.2.1 shall offset any amounts owing to Buyer with amounts owing to Supplier, and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Buyer may prepare and send to Supplier an Invoice for amounts owing to Buyer under this Agreement, and any such amounts will be payable to Buyer within twenty (20) Business Days from Supplier's receipt of such Invoice, subject to the terms and provisions of Section 7.2.5.

- 7.2.4 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to the instructions stated in Exhibit 4. Payment will be made on or before the later of the twentieth (20<sup>th</sup>) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20<sup>th</sup>) day does not fall on a Business Day) or ten (10) Business Days from receipt of Invoice.
- 7.2.5 Examination and Correction of Invoices. As soon as practicable either Party shall notify the other Party in writing of any alleged error in an Invoice.
- 7.2.5.1 If a Party notifies the other Party of an alleged error in an Invoice, the Parties agree to use good faith efforts to reconcile the billing and mutually agree on the appropriate correction, if any.
- 7.2.5.2 If a correction is determined to be required, the invoicing Party shall provide an adjusted Invoice to the invoiced Party. If such error results in an additional payment to the invoicing Party, the invoiced Party shall pay such invoicing Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the adjusted Invoice. If such error resulted in a refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to the invoicing Party.
- 7.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a.
- 7.4 Access to Books and Records. Supplier agrees to make available for inspection, at its Juno Beach, Florida headquarters during normal business hours, upon five (5) Business Days' written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2.
- 7.5 Parties' Right to Offset. Either Party shall have the right to offset any amounts owed to the other Party under this Agreement including amounts owed by Supplier to Buyer for Standby Service.
- 7.6 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Net Energy or Discharging Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Net Energy or Discharging Energy or its delivery up to or at the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party



in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 18 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 7.6.

## **8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS**

8.1 Construction of Facility. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practices and the Project Milestones and to ensure that: (a) Supplier is capable of meeting its supply and delivery obligations with respect to Product over the Term; (b) the Facility is consistent with the technical specifications set forth in Exhibit 11; (c) the Generating Facility is at all times considered a Renewable Energy System; and (d) the Generating Facility is at all times in compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten (10) days of such survey becoming available to Supplier, but in no event later than the issuance of the Notice to Proceed in accordance with Exhibit 6. Supplier shall provide to Buyer in a form reasonably satisfactory to Buyer: (y) not later than the Project Milestone described in Section 2(A) of Exhibit 6, a completed version of Exhibit 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built. At Buyer's request, Supplier shall provide Buyer with copies of the Construction Contract and any documentation and drawings reasonably requested by Buyer, redacted of any pricing information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement, provided that Supplier shall use good faith efforts to obtain the permission from the applicable Construction Contractors to disclose the terms of the Construction Contract other than pricing information. Under no circumstances shall the Generating Facility share facilities with another facility, whether an affiliate of Supplier or not, other than as set forth in a common facilities agreement with a party having an interest in the Shared Facilities (the "Shared Facilities Agreement"). Supplier shall not enter into a Shared Facilities Agreement without the prior review and written consent of Buyer for the purpose of confirming that Buyers rights under this Agreement are not adversely affected by the terms and conditions of the Shared Facilities Agreement, which consent shall not be unreasonably withheld or delayed. The Generating Facility and its mechanical components, buildings and infrastructure shall be used solely for the purpose of generating Energy under this Agreement other than to the extent set forth in the Shared Facilities Agreement with Buyer. The Shared Facilities agreed upon between the parties and other facilities specified in the Shared Facilities Agreement may be used as common facilities with third parties.

8.2 Performance of Project Milestones. Supplier shall complete each Project Milestone specified in Exhibit 6 on or before 16:00 hours PPT on the date specified for each Project Milestone listed in Exhibit 6.

8.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing, pursuant to

Section 29.1, documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion. Such documentation shall be provided within thirty (30) days of such completion but not later than the date specified for such Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation provided under this Section 8.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) Business Days of receipt of the documentation. If Buyer does not acknowledge receipt or provide written acceptance or denial of any Project Milestone within fifteen (15) Business Days, then such Project Milestone will be deemed to occur on the date that such documentation was provided to Buyer. Failure of Supplier to achieve a Critical Project Milestone on or before the scheduled date (or, in the case of the Commercial Operation Deadline, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1) will constitute an Event of Default as provided in Article 24. If any Project Milestone (other than a Critical Project Milestone) is not completed on or before the date specified in Exhibit 6, Supplier will (i) inform Buyer of a revised projected date for the occurrence or completion of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone), and (ii) provide Buyer with a written report containing Supplier's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Supplier intends to undertake to ensure the timely achievement of the Commercial Operation Date. Provided that Supplier complies with the preceding sentence, no failure of Supplier to achieve a Project Milestone (other than a Critical Project Milestone) on or before the scheduled date will constitute an Event of Default.

8.2.2 Progress Towards Completion. Supplier shall notify Buyer's Contract Representatives promptly (and in any event within ten (10) Business Days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with Buyer to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information.

### 8.3 Commercial Operation Date.

8.3.1 Notice of Testing. Supplier shall notify Buyer's Contract Representatives at least ten (10) Business Days prior to the commencement of any performance tests required by the Construction Contract, including any performance tests required by Exhibit 7. Buyer shall have the right to witness all tests or have Buyer's representatives witness all tests. The presence of Buyer or a Buyer representative shall not be construed as an obligation on Buyer's part to design, conduct, monitor or endorse any test results or as a ratification or acceptance thereof. Buyer shall be deemed to waive its right to be present

at the performance tests if Buyer fails to appear at the scheduled time for the performance tests.

8.3.2 Certifications. Within five (5) Business Days of the successful completion of the performance tests pursuant to Exhibit 7, Supplier shall provide Buyer with written notice stating when the Facility has achieved Commercial Operation, including the following written certifications.

8.3.2.1 A certification by a duly authorized officer of Supplier stating the following:

“I, [Name], in my capacity as the duly appointed [Title] of [Supplier] (“Supplier”) hereby certify, on behalf of Supplier that: (a) the Facility has been constructed in accordance with Good Utility Practice and the Generating Facility has delivered Net Energy to and at the Delivery Point and the Storage Facility Metering Point; (b) all of the requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6 and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [\_\_\_\_], (“Agreement”) have been satisfied; (c) I am authorized to act on behalf of and bind Supplier with respect to this certificate; (d) Supplier has received the Supplier Required Regulatory Approvals listed in Exhibit 10 and has entered into or obtained all Required Facility Documents as listed in Exhibit 12; true, correct, complete and, if applicable, updated copies of which have been provided to Buyer (other than confidential or commercial terms which have been redacted); and (e) Supplier acknowledges that Buyer is relying on this certification in connection with carrying out its obligations under the Agreement and Supplier will indemnify Buyer for any inaccuracy related to this certification; and (f) the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity.”

8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer confirming: (1) the nameplate capacity rating of the Generating Facility at the anticipated time of Commercial Operation in MW (“Certified Nameplate Capacity Rating”) and (2) that the Facility is able to generate and deliver electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Operating Procedures; and, (3) performance tests required by Exhibit 7 have been successfully completed; and (4) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Operating Procedures. The Certified Nameplate Capacity Rating must not be less than one-hundred and eighty (180) MW.

- 8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer stating that, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System and able to deliver Net Energy consistent with the terms of this Agreement.
- 8.3.2.4 An opinion from an attorney licensed in the state of Nevada that is not an employee of Supplier (or any Affiliate) and has no financial interest in the Facility addressed to Buyer with respect to such customary matters as Buyer may reasonably request and in form and substance reasonably satisfactory to Buyer.
- 8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to Dispute the Commercial Operation Date by written notice to Supplier. In the event of such a Dispute, Buyer and Supplier will attempt in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fifteen (15) Business Days' after Buyer's notice of Dispute, then either Party may seek resolution of the Dispute in accordance with Article 21. If Buyer fails to Dispute the Commercial Operation Date within the fifteen (15) Business Day period, Supplier's certification under Section 8.3.2 will be deemed accepted and the Commercial Operation date of the Facility will be the date set forth in Supplier's certification. Notwithstanding the foregoing, Buyer's failure to Dispute the certification will in no way affect its rights to indemnification for any inaccuracy related to the certification, including overpayments that may be paid by Buyer due to such inaccurate certification.
- 8.4 Failure to Achieve Commercial Operation.
- 8.4.1 Subject to extension of the Commercial Operation Deadline pursuant to Section 8.5 or due to Force Majeure, in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and Supplier fails to pay Daily Delay Damages within ten (10) days at the end of each calendar month in which such Daily Delay Damages are incurred, as provided in Section 8.5.1, Buyer may elect to terminate this Agreement and, Supplier shall pay to Buyer, and Buyer shall be entitled to collect or retain, as applicable, the full Development Security amount as liquidated damages for Supplier's failure to meet its obligations prior to the Commercial Operation Deadline. Upon Buyer's collection of the full Development Security amount from Supplier (or from security provided on Supplier's behalf), this Agreement will be terminated, and neither Party will have any further obligations hereunder including under Section 8.5, except those obligations expressly provided to survive termination pursuant to Section 2.4. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that

retention by Buyer of the full Development Security is reasonable as liquidated damages, and is not a penalty, and except as provided otherwise in this Agreement, shall constitute Buyer's sole and exclusive remedy in the event that the Agreement is terminated pursuant to this Section 8.4.1.

- 8.4.2 Subject to Section 19.2, the provisions of this Section 8.4 are in addition to, and not in lieu of, any of Buyer's rights or remedies under this Agreement, including Article 24 for Events of Default other than the failure to achieve Commercial Operation by the Commercial Operation Date.

8.5 Delay Damages.

- 8.5.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, then for each day up to, but not exceeding, one hundred and eighty (180) days, that Supplier fails to achieve Commercial Operation, Supplier shall be obligated to pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have been accumulated for one hundred and eighty (180) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Periods immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose.
- 8.5.2 In addition to amounts payable pursuant to Section 8.5.1, Supplier shall be liable, in accordance with Section 18.1, for any Penalties incurred or suffered by Buyer as a result of Supplier's failure to achieve Commercial Operation by the Commercial Operation Deadline.
- 8.5.3 Subject to Section 19.2, the provisions of this Section 8.5 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 24 for Events of Default other than the failure to achieve Commercial Operation by the Commercial Operation Deadline.
- 8.5.4 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that payment by Supplier of Daily Delay Damages is reasonable as liquidated damages, and is not a penalty.

8.6 Nameplate Damages.

- 8.6.1 If the Certified Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Supplier shall provide Buyer a onetime payment in an amount equal to (a) subtracting (i) Certified Nameplate Capacity Rating from (ii) the Expected Nameplate Capacity Rating in MW, multiplied by (b) Deficit Damages Rate per MW of difference ("Deficit Damages"), provided that in no event shall the Certified Nameplate

Capacity Rating be less than one-hundred and eighty (180) MW. Supplier's total liability for Deficit Damages shall not exceed four-million dollars (\$4,000,000.00). Deficit Damages, if any, shall be paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages: (i) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and (ii) the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly.

- 8.6.2 If the Certified Nameplate Capacity Rating is greater than the Expected Nameplate Capacity Rating by greater than two percent (2%), Supplier shall pay Buyer a onetime payment in an amount equal to one half of the Development Security, paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. If Supplier fails to make such payment in a timely manner, Buyer may retain such amount from the Development Security or Operational Security. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.

8.7 Modification.

Supplier shall not be permitted to make any modification to the Generating Facility that would increase the Expected Nameplate Capacity Rating or Certified Nameplate Capacity, generating capability, or the rate of production and delivery of Net Energy of the Generating Facility. Without the prior written consent of Buyer, which may be withheld in Buyer's sole discretion, Supplier shall not make any modification to the Facility that might: (a) expose Buyer to any additional liability or increase its obligations under this Agreement, or (b) adversely affect Supplier's or Buyer's ability to perform its obligations under this Agreement or any Law or to any third party. Notwithstanding the forgoing, Supplier shall seek the prior written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed, to make any change (i) in electrical inverters, subject to approval in the Interconnection Process, as set forth in Section 25.6; (ii) any change to the number, chemical composition, or efficiency of the photovoltaic modules; (iii) any change with respect to Storage Facility battery chemistry so long as the battery chemistry remains within the lithium-ion category; and (iv) any change with respect to equipment suppliers for the Facility; provided, however, that such changes may not increase the Expected Nameplate Capacity Rating, generating capability, or the rate of production and delivery of Net Energy of the Generating Facility or increase or decrease the Storage Capacity or the operating parameters of the Storage Facility by more than one percent (1%). Any permitted modifications shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time,

and the requirements of Article 11. If Supplier makes a modification to the Facility that is not approved by Buyer, Buyer shall be entitled to receive in addition to any other remedy available to Buyer as liquidated damages the full amount of the Development Security or Operating Security, as applicable. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if the Supplier does not meet its obligations hereunder, and, accordingly, the Parties agree that payment by Supplier of Development Security or Operating Security, as applicable, is reasonable as liquidated damages, and is not a penalty. Notwithstanding any provision of this Section 8.7 to the contrary, Supplier may make all repairs and related replacements of equipment it determines in its sole discretion to be necessary or appropriate, provided that such repairs and modifications do not violate this Section 8.7.

- 8.8 Operation and Maintenance. Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure: (a) Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law. Supplier shall (x) maintain records of all operations of the Facility in accordance with Good Utility Practice, and (y) follow all regulations, directions and procedures of Buyer, Transmission Provider, any Electric System Authority and any other Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Facility. In the event of an inconsistency between any applicable procedures, Buyer may direct which procedures shall govern (or barring direction from Buyer, the more stringent procedure shall govern). Supplier shall use all reasonable efforts to avoid any interference with Buyer's operations. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and shall operate the Facility consistent with WECC, NERC, Buyer, Electric System Authority, Governmental Authority and Transmission Provider requirements. Prior to the beginning of the Term, the Parties shall mutually develop written procedures governing operations of the Storage Facility, not in contravention or amendment of any right or obligation set forth herein, including (a) minimum and maximum operating parameters; (b) procedures for scheduling and dispatch, (c) methods of day-to-day communications, (d) key personnel lists, (e) recordkeeping and (f) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"); provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations under this Agreement. The Operating Procedures are provided in Exhibit 24.
- 8.9 Operation and Maintenance Agreement. No later than one hundred eighty (180) days prior to the Commercial Operation Date, if Supplier intends to subcontract any aspect of the operation of the Facility, Supplier shall provide a copy of any proposed agreement between Supplier and such sub-operator which requires the sub-operator

to operate the Facility in accordance with the terms hereof which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the sub-operator is a corporation, limited liability company or partnership in good standing with the State in which the Facility is located, which shall be attached to this Agreement as part of Exhibit 15. Buyer shall have fifteen (15) days in which to notify Supplier of its objection to any proposed sub-operator, in which case Supplier shall not subcontract with such proposed sub-operator. Notwithstanding the foregoing, Buyer hereby consents to Supplier's contracting with NextEra Energy Operating Services, LLC, an indirect wholly-owned subsidiary of NextEra Energy Resources, LLC, for the operation and maintenance of the Facility.

- 8.10 Right to Review. Buyer shall have the right to review during normal business hours, upon no less than five (5) Business Days' prior notice, the relevant books and records of Supplier to confirm the accuracy of anything relating to this Agreement. Buyer is under no obligation to exercise any of these review rights. Buyer shall have no liability to Supplier for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or this Agreement.
- 8.11 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professionals or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts, including engineers, attorneys or accountants, that Supplier may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Supplier. In entering into this Agreement and the undertaking by Supplier of the obligations set forth herein, Supplier has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Buyer in connection with the transactions contemplated by this Agreement.

## **9. EMERGENCY**

- 9.1 Compliance. Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, transmission operator or their successors, regarding the reduced or increased production of the Facility or otherwise in the event of any Emergency.
- 9.2 Notification. Supplier shall provide prompt oral and written notification to Buyer of any Emergency, including a description in reasonable detail of the Emergency and any actions undertaken to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service.
- 9.3 Due Care. In the event of an Emergency, Supplier shall take all reasonable actions to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service; provided, however, that Supplier shall give Buyer prior notice, if practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.



- 9.4 Not Excused Product. An Emergency declared by Supplier will not result in any Excused Product except to the extent the Emergency qualifies as an event of Force Majeure.
- 9.5 No Buyer Liability. Notwithstanding any provision to the contrary contained in this Agreement, Buyer shall have no obligation to pay Supplier in respect of any Product Supplier is unable to deliver or Buyer is unable to receive in accordance with the requirements of this Agreement due to an Emergency or Force Majeure.

## 10. CURTAILMENT

- 10.1 Compliance. Supplier shall obey all orders for curtailment of Energy by the Transmission Provider or any Electric System Authority.
- 10.2 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for or pay any damages associated with or impose any liability on Buyer with respect to, compliance or curtailment of Energy by Supplier made in response to any orders for curtailment provided for in Section 10.1, including in respect of Net Energy (or associated Renewable Energy Benefits) not delivered to the Delivery Point for any reason, other than an Economic Curtailment, including due to any of the following: (a) the interconnection between the Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part; (b) the Transmission Provider, Electric System Authority or Market Operator directs a general curtailment, reduction or re-dispatch of generation in the area (which would include the Net Energy), for any reason, even if such curtailment, reduction or re-dispatch directive is carried out by Buyer, which may fulfill such directive by acting in its sole discretion; (c) if Buyer curtails or otherwise reduces the Net Energy in order to meet its obligations to the Transmission Provider, Electric System Authority or Market Operator to operate within system limitations; (d) the Facility's Energy is not received because the Facility is not fully integrated or synchronized with the Transmission System; or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy at the Delivery Point.
- 10.3 Curtailed Product. The amount of Net Energy curtailed under Sections 10.1 or 10.2 ("Curtailed Product") shall be reasonably determined by Supplier after the curtailment has ended based upon the Net Energy that could have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of such curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Transmission Provider) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.3 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.

#### 10.4 Economic Curtailment.

- 10.4.1 Buyer shall be permitted to require curtailment of Energy for economic reasons or otherwise refuse to take Product for economic reasons in accordance with the provisions of this Section 10.4 (“Economic Curtailment”). Buyer shall provide notice to Supplier of any Economic Curtailment, including the Delivery Hours in which Energy is to be curtailed, in accordance with the requirements of the Operating Procedures.
- 10.4.2 Supplier shall obey all orders for Economic Curtailment issued by Buyer in accordance with Section 10.4.1. The amount of Net Energy curtailed under this Sections 10.4.2 (“Economic Curtailed Product”) shall be reasonably determined by Supplier after the Economic Curtailment has ended based upon the Net Energy that would have been generated and delivered to Buyer at the Delivery Point consistent with the provisions of this Agreement, but that was not generated and delivered solely as a result of the Economic Curtailment. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Economic Curtailed Product that was not generated as a result of the Economic Curtailment. During any period of Economic Curtailment, Supplier shall not produce Energy (to the extent curtailed by Buyer) or sell Product to any third party. Economic Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.4.2 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.
- 10.4.3 For the avoidance of doubt, in no event shall curtailment of Energy pursuant to Section 10.3 be treated as Economic Curtailed Product.

- 10.5 Network Resource Designation. Within sixty (60) days after the Effective Date, Buyer will submit an application to Transmission Provider to designate the Facility as a Network Resource. Supplier will provide all information related to the Facility required for such application within thirty (30) days after the Effective Date. Buyer will provide a copy of such application to Supplier.

#### 11. PLANNED OUTAGES

- 11.1 Approvals. Supplier shall request and obtain Buyer’s prior written approval, which approval shall not be unreasonably withheld, before conducting any non-forced outage of the Facility or reducing the capability of the Generating Facility to deliver the Supply Amount or the Storage Facility to receive Charging Energy or deliver Discharging Energy (each such reduction or outage, a “Planned Outage”) so as to minimize the impact on the availability of the Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, and as may be otherwise restricted by Law.

11.2 Schedules. Planned Outages will be scheduled and conducted in accordance with the following:

- 11.2.1 Within ninety (90) days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the remainder of the year or upcoming Contract Year, as applicable. The proposed schedule will designate the Delivery Hours and amount (in MW) in which the Energy will be reduced in whole or in part by the proposed Planned Outages. Each proposed schedule shall include all applicable information, including the following: the month, day and Delivery Hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information. The total combined Delivery Hours of Planned Outages in any Contract Year shall not exceed four percent (4%) of the MWs comprising the Annual Supply Amount (prorated for the Stub Period, if any) unless otherwise approved by Buyer.
- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either request modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requires modifications to the proposed schedule, then Supplier shall promptly circulate a revised schedule of Planned Outages to Buyer consistent with Buyer's requested modifications. Under no circumstances will Supplier schedule Planned Outages to occur during the Summer Months. Product not delivered to Buyer during periods of Planned Outages, up to the MW specified, (a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in accordance with this Article 11, and (b) will not comprise Excused Product to the extent any outage period or MW exceed that set forth in the Planned Outage schedule approved by Buyer in accordance with this Article 11, or is not approved by Buyer. Supplier shall make reasonable efforts to accommodate any proposed revisions by Buyer to the approved Planned Outage schedule.
- 11.2.3 Regardless of approval of a Planned Outage, Supplier shall not start a Planned Outage on the Facility without confirming the approved Planned Outage with Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.
- 11.2.4 If following a notice pursuant to Section 11.2.3, Buyer requests that Supplier not undertake an approved Planned Outage as scheduled, for reasons other than Force Majeure or Emergency, then Supplier may promptly deliver to Buyer a written reasonable estimate of the costs expected to be incurred as a result of Supplier not undertaking the Planned Outage as scheduled. If Buyer agrees to the estimated costs, then Supplier shall not undertake the Planned Outage, and Buyer shall reimburse Supplier for its documented out-of-pocket costs actually incurred by Supplier in connection with not undertaking such Planned Outage (not to exceed the

written estimated costs prepared by Supplier and delivered to Buyer). Any Planned Outage that is not instituted pursuant to this Section 11.2.4 will be rescheduled to occur in the same Contract Year in which it was originally scheduled, in accordance with Section 11.2.2.

## **12. REPORTS; OPERATIONAL LOG**

- 12.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating any violation of Laws which relate to Supplier or construction, operation or maintenance of the Facility. Supplier shall keep Buyer apprised of the status of any such matters.
- 12.2 Notification of Facility Regulatory Status. Supplier shall notify Buyer of the regulatory status of the Facility as an EWG or QF no later than ninety (90) days prior to the Operation Date, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such designation (as such approvals are set forth in Exhibit 10). Following the Operation Date, Supplier shall notify Buyer, as soon as practicable, of any changes in regulatory status of the Facility, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such changed regulatory status (as such approvals are set forth in Exhibit 10) and reasonable support data requested by Buyer.
- 12.3 Notices of Change in Facility. In addition to any consent required pursuant to Section 8.7, Supplier shall provide notice to Buyer as soon as practicable prior to any temporary or permanent change to the performance, operating characteristics, or major generation components (such as turbines, generators, inverters, solar panels or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Nameplate Capacity Rating, generating capability, the rate of production and delivery of Net Energy, Discharging Energy and other Product, interconnection and transmission issues, and any additional information requested by Buyer.
- 12.4 Project Reports and Project Review Meetings.
  - 12.4.1 Prior to the Commercial Operation Date. Prior to the Commercial Operation Date, Supplier shall provide to Buyer a quarterly project report, which shall include the following: status in obtaining Project Milestones, including level one schedule; progress in obtaining any Governmental Approvals in connection with achieving the Commercial Operation Date; and a discussion of any foreseeable disruptions or delays. The quarterly project reports will be provided to Buyer no later than ten (10) Business Days after expiration of the previous quarter. The Parties shall conduct meetings every six (6) months (or more frequently if requested by Buyer) to review this data and any information related to Supplier's completion of or progress toward the Project Milestone activities listed in Exhibit 6. In addition to any other requirements for Commercial Operation under this Agreement,

Supplier shall: (a) provide notice to Buyer of its best estimate of the projected Operation Date, Commercial Operation Date and the PUCN Approval Date; (b) notify Buyer as soon as Supplier becomes aware of any changes in such projected dates; and (c) coordinate with Buyer regarding the commencement of operation of the Facility. In addition to the foregoing, Supplier will provide Buyer with such other operational or technical data as Buyer may reasonably request and as may be reasonably necessary to determine Supplier's compliance with its obligations hereunder and its progress toward Commercial Operation.

12.4.2 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer (a) on or before the tenth (10<sup>th</sup>) day of each month with respect to the prior month, all data from the Weather Meter in a format then suitable to be uploaded directly to the then current version of SAM, and (b) no later than January 31 and July 15 each year throughout the Term, in electronic format, a report which shall include all pertinent information in connection with the Facility, including: (i) any available site condition reports; (ii) all reporting information maintained in the operational log and any other SCADA data from the Facility; and (iii) any reports pertaining to the Facility resource (e.g., such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology). In addition, Supplier shall provide remote access to Buyer for the Facility's operations and maintenance data for purposes of Buyer integrating such data into Buyer's Monitoring & Diagnostics center.

12.4.3 Operations Log. Supplier shall maintain in accordance with Good Utility Practice an operations log, which shall include: (a) all Planned Outages and unplanned outages, alarms, circuit breaker trip operations, partial deratings of equipment, mechanical impairments defects or unavailability with respect to generating equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); (c) the Delivered Amounts for the Stub Period and each Contract Year; and (d) any other significant event or information related to the operation of the Facility or the delivery of Net Energy or other Product. The operations logs shall be available for inspection by Buyer upon forty-eight (48) hours' notice together with all data maintained by Supplier as support for such logs. Supplier shall be responsible for maintaining sufficient evidentiary support in order to document the information contained in such operation logs.

12.5 Financial Information. Within thirty (30) days of Buyer's written request, Supplier shall provide Buyer with copies of Supplier's (or Supplier's ultimate parent's) most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles. If the financial statements of Supplier's ultimate parent are publicly available electronically on its website, Supplier is deemed to have met the requirements of this Section 12.5.

- 12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer and subject to any confidentiality obligation to which Supplier may be bound, provide Buyer with data collected by Supplier related to the construction, operation and maintenance of the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer or an Affiliate thereof. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge after due inquiry. Supplier shall use commercially reasonable efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting Governmental Authority.
- 12.7 Accounting Standards. If Buyer or one of its Affiliates determines that it may hold a variable interest in Supplier under the Accounting Standards Codification ("ASC") 810, Consolidation of Variable Interest Entities, or requirements of Law, but it lacks the information necessary to make a definitive conclusion, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under ASC 810 or requirements of Law. If Buyer or its Affiliate determines that, it holds such a variable interest in Supplier, Supplier hereby agrees to provide, upon Buyer's written request, sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 or applicable Law. Supplier shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 12.7 is subject to Buyer's rights to disclose such information pursuant to this Agreement and pursuant to any applicable requirements of Law.
- 12.8 Documents to Governmental Authorities. Supplier shall provide to Buyer a copy of any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility no later than ten (10) Business Days of receipt of such documents by Supplier.
- 12.9 Environmental Information. Supplier shall, no later than ten (10) Business Days after receipt of a written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under any Required Facility Document listed in Exhibit 12 or otherwise in effect with respect to the Facility. Supplier shall further provide Buyer with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. As soon as practicable after it is known to Supplier, Supplier shall disclose to Buyer, (a) the extent of any actual or alleged violation of any Environmental Laws arising out of the construction or operation of the Facility, or

(b) the actual or alleged presence of Environmental Contamination at the Facility or on the Project Site, or (c) occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

### **13. COMMUNICATIONS**

13.1 Supplier's Operating Representative. Supplier's Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol with Buyer's Operating Representative at Buyer's operations center and with Buyer's scheduling personnel, as listed on Exhibit 4, to maintain communications between personnel at the Facility and Buyer's Operating Representative, Buyer's schedulers and Electric System Authorities at all times.

13.2 Communications. In connection with meeting its obligations pursuant to this Article 13, Supplier shall provide at its expense:

13.2.1 For the purposes of telemetering, a telecommunications circuit from the Facility to Buyer's operations center, or other readily accessible real-time performance monitoring (e.g., a web-based performance monitoring system);

13.2.2 Two (2) dedicated T1 lines for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center; and

13.2.3 Equipment to transmit to and receive email from Buyer and the Balancing Authority Area Operator, including cellular telephones.

### **14. SCHEDULING NOTIFICATION**

14.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative notices containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount and the availability of Product otherwise, in accordance with the Availability Notice procedures in Section 14.2.

14.2 Availability Notice Procedures.

14.2.1 No later than 05:00 PPT each day or as otherwise specified by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice in the form set forth in Exhibit 8. The Availability Notice will cover WECC scheduling practices for day-ahead energy or such other period specified by Buyer consistent with Good Utility Practice. The Parties agree to modify the Availability Notice as may be required consistent with other scheduling practices which may be applicable to the Facility from time to time.

14.2.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as soon as practical after becoming aware of (a) an expected Derating; or (b) an expected increase of Delivered Amount.

14.2.3 The information in the Availability Notice, including the forecasted Delivered Amount, will be Supplier's good faith forecast and will indicate any Delivery Hour for which the Delivered Amount is expected to be less than or greater than the Supply Amount.

14.2.4 In the event of a Derating of the Facility, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; (b) the magnitude of the Derating; (c) the Delivery Hours during which the Derating is expected to apply; and (d) the cause of the Derating.

#### 14.3 Storage Facility Scheduling.

14.3.1 During the Term, Buyer has the exclusive right to schedule or designate the Storage Facility to deliver the Storage Product to Buyer and/or accept Charging Energy, in accordance with the Operating Procedures and the operational requirements specified in Exhibit 1. The operational requirements specified in Exhibit 1 will allow Buyer to schedule the Storage Facility for seven (7) days per week and twenty-four (24) hours per day (including holidays) for all available components of the Storage Product, unless the Storage Facility is, in whole or in part, incapable of operations due to Force Majeure, an Emergency or a Planned Outage. During the Term, Supplier shall operate the Storage Facility to charge or discharge the Storage Facility in accordance with Buyer's instruction pursuant to Section 3.4.6. During the Term, Supplier shall not dispatch and operate the Storage Facility other than pursuant to an instruction by Buyer pursuant to Section 3.4.6.

14.3.2 Storage Product will not serve Station Usage. Supplier shall obtain retail service from its load serving entity for Station Usage. Supplier shall separately meter Station Usage from the Storage Facility with a Meter for Station Usage. Supplier will design, construct and operate the Storage Facility such that (a) no Station Usage is measured and served via a Meter for the Delivered Amount and (b) Storage Product does not serve Station Usage.

### 15. COMPLIANCE

15.1 Laws. Each Party shall comply with all applicable Laws in connection with the performance of its obligations under this Agreement. Supplier shall comply with all Laws to ensure that, the Generating Facility is at all times a Renewable Energy System and Supplier is at all times in compliance with all requirements of a renewable energy generator as set forth in the Renewable Energy Law, and shall, at its sole expense, maintain in full force and effect all relevant material



Governmental Approvals required for the maintenance of the Facility and the performance of its obligations under this Agreement. Supplier shall be responsible for any costs associated with the Clean Power Plan, including for obtaining, at its sole cost, any allowances that may be required under applicable Law pertaining to the Clean Power Plan, in a quantity or amount sufficient to support Supplier's obligations set forth in this Agreement. Each Party and its representatives shall comply with all relevant requirements of each Electric System Authority, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.

- 15.2 Good Utility Practice. Each of Buyer and Supplier shall perform, or cause to be performed, its obligations under this Agreement in all material respects in accordance with Good Utility Practice.
- 15.3 Interconnection Agreement. Supplier shall operate the Facility in accordance with the IA and to the extent there is a conflict between this Agreement and the IA, the IA shall prevail.

## 16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Agreement is subject to: (a) Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion; and (b) the Energy Choice Initiative failing to pass a second consecutive vote by a majority of the Nevada voters in the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 16.2 PUCN Approval. Within one hundred twenty (120) days after the Effective Date and in accordance with the requirements of Law, Buyer shall submit this Agreement to the PUCN for approval ("PUCN Approval") consisting of:
  - 16.2.1 A determination that the terms and conditions of this Agreement are just and reasonable; and
  - 16.2.2 A determination that the costs of purchasing Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.
- 16.3 Failure to Obtain PUCN Approval; Conditions of PUCN Approval. If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline or grants the PUCN Approval on or before the PUCN Approval Deadline, but in form and substance not acceptable to Buyer in its sole discretion, then within thirty (30) days after the PUCN Approval Deadline or the date PUCN grants the PUCN Approval, as the case may be, Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall either Party have any liability to the other Party due to the

failure of the PUCN to grant PUCN Approval by the PUCN Approval Deadline or the inclusion of conditions to the PUCN Approval which are unacceptable to Buyer.

- 16.4 Energy Choice Initiative. If the Energy Choice Initiative should pass a second consecutive vote by a majority of the Nevada voters in the State of Nevada general election scheduled to be held on or about November 6, 2018, then within thirty (30) days after the date of the general election Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall either Party have any liability to the other Party due to the Energy Choice Initiative passing a second consecutive vote by a majority of the Nevada voters in the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 16.5 Cooperation. If requested by Buyer, Supplier shall cooperate with Buyer as Buyer may reasonably deem necessary in order to obtain any Governmental Approval (including the PUCN Approval and any FERC approval) in connection with this Agreement, including providing affidavits, providing timely responses to data requests of the relevant Governmental Authority, intervening in any relevant dockets, and requesting “commenter” or “intervener” status in any relevant docket. Each Party agrees to notify the other Party of any significant developments in obtaining any Governmental Approval in connection with achieving Commercial Operation of the Facility, including the PUCN Approval. Each Party shall use reasonable efforts to obtain such required Governmental Approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each Governmental Approval necessary to effectuate this Agreement.

## **17. SECURITY**

- 17.1 Development Security. As a condition of Buyer’s execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; (b) a cash deposit or (c) a Guaranty from a Qualified Guarantor in each case, in an amount equal to five million dollars (\$5,000,000.00) (the “Development Security”). The Development Security shall be posted within five (5) Business Days after the Effective Date. Upon the PUCN Approval Date, the Development Security shall increase to an amount equal to fourteen million dollars (\$14,000,000.00). The revised Development Security shall be posted within five (5) Business Days after the PUCN Approval Date and be maintained until fifteen (15) Business Days after the Commercial Operation Date. Buyer shall have the right to draw upon the Development Security, at Buyer’s sole discretion: (i) as a non-exclusive remedy available to Buyer under Article 24; (ii) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and fails to pay Daily Delay Damages as provided in Section 8.5.1; (iii) if Supplier fails to make any payments owing under this Agreement in accordance with Sections 7.2.3 and 7.2.4; or (iv) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties, that Buyer has incurred

or may incur as a result of Supplier's failure to perform its obligations under this Agreement in accordance to with Sections 7.2.2 and 7.2.4. Unless this Agreement is terminated, any such drawing on the Development Security by Buyer shall give rise to an obligation of Supplier to replenish the Development Security to its required amount within four (4) Business Days of the drawing. If this Agreement is terminated pursuant to Section 2.3.2, Buyer shall release the Development Security to Supplier no later than fifteen (15) Business Days after termination of this Agreement. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) on the fifteenth (15th) Business Day after the Facility achieves Commercial Operation. With the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 17.2.

- 17.2 Operating Security. As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17; or (b) a cash deposit, in each of (a) and (b), in an amount equal to fifteen million seven hundred ninety-nine thousand two hundred dollars (\$15,799,200); or (c) a Guaranty substantially in the form of Exhibit 20 if the guarantor (the "Operating Security"). The Operating Security shall be posted no later than five (5) Business Days prior to the Commercial Operation Date. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion: (1) as a non-exclusive remedy available to Buyer in the event this Agreement is terminated under Article 24; (2) in the event Supplier fails to make any payments owing under this Agreement in accordance with Sections 7.2.3 and 7.2.4; or (3) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Penalties that Buyer has incurred or may incur as a result of Supplier's failure to perform its obligations under this Agreement in accordance with Sections 7.2.2 and 7.2.4. Unless this Agreement is terminated, any such drawing on the Operating Security by Buyer shall give rise to an obligation of Supplier to replenish the Operating Security to its original amount within four (4) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the fifteenth (15<sup>th</sup>) Business Day after the earlier of (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.
- 17.3 Letters of Credit. With respect to any letter of credit posted by Supplier as Development Security or Operating Security: (a) no later than thirty (30) days prior to the expiration date of any such letter of credit, Supplier shall cause the letter of credit to be renewed or replaced with another letter of credit in an equal amount; (b) in addition to the conditions specified in Sections 17.1 and 17.2, Buyer shall have the right to draw on such letter of credit, at Buyer's sole discretion (i) if such letter of credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (ii) if the Credit Rating of the financial institution that issued

such letter of credit has been downgraded to below that required of a Qualified Financial Institution and Supplier has not caused a replacement letter of credit to be issued for the benefit of Buyer within five (5) Business Days of such downgrade pursuant to Section 17.4.

- 17.4 Maintaining Letter of Credit. If at any time after the Effective Date of this the Credit Rating of the financial institution issuing a letter of credit pursuant to this Agreement falls below that required of a Qualified Financial Institution, then Supplier shall: (a) provide Buyer with written notice of such downgrade within two (2) Business Days of Supplier being notified of any such downgrade; and (b) cause a replacement letter of credit satisfying the conditions of Section 17.3 or other acceptable Development Security or Operating Security, as applicable, to be issued in favor of Buyer within five (5) Business Days of such downgrade. In the event such a downgrade also constitutes an Event of Default pursuant to Article 24, then the requirements of this Section 17.4 are in addition to, and not in lieu of, the provisions of Article 24. Supplier shall take all necessary action and shall be in compliance with Section 17.1 and/or Section 17.2, as the case may be, within five (5) Business Days of the downgrade.
- 17.5 Guarantors. Supplier shall promptly notify Buyer regarding downgrade or other material change regarding the creditworthiness or financial condition of any guarantor providing a Guaranty pursuant to Sections 17.1 or 17.2. If at any time after the Effective Date, any guarantor providing a guaranty pursuant to Sections 17.1 or 17.2 fails to meet the Minimum Credit Rating, then Buyer shall notify Supplier in writing and Supplier shall cause a replacement Guaranty from a Qualified Guarantor, a letter of credit from a Qualified Financial Institution, or cash in the amount of the Development Security or Operating Security, as the case may be, to be delivered to Buyer within five (5) Business Days of such notice. Failure to provide the Development Security or Operating Security pursuant hereto in a timely manner shall constitute an Event of Default pursuant to Article 24.
- 17.6 No Interest on Supplier Security. Supplier shall not earn or be entitled to any interest on any security provided pursuant to this Article 17, including any cash amounts deposited.
- 17.7 Grant of Security Interest. To secure its obligations under this Agreement, Supplier hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Development Security or Operating Security, as the case may be, posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Supplier agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with

respect to all Development Security or Operating Security, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its right of setoff against any and all property of Supplier, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding letter of credit issued for its benefit; and (d) liquidate all Development Security or Operating Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever by Supplier, including any equity or right of purchase or redemption by Supplier. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Supplier's obligations under the Agreement (Supplier remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

- 17.8 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law or otherwise, to require Buyer to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.
- 17.9 Security is Not a Limit on Supplier's Liability. Subject to Section 8.4.1, the security contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Supplier's obligations hereunder; and (b) shall not be Buyer's exclusive remedy for Supplier's failure to perform in accordance with this Agreement.

## 18. INDEMNIFICATION

- 18.1 Indemnification for Losses. Each Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, on an after state and federal Tax basis, the other Party, its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an "Indemnified Party") from, for and against any and all Losses incurred by a third-party arising out of, relating to, or resulting from the Indemnifying Party's breach, or performance or non-performance of its obligations under this Agreement, including the Indemnifying Party's negligence and willful misconduct (including reasonable attorneys' fees and costs); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own gross negligence, fraud or willful misconduct. Supplier shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Supplier's acts that affect the Transmission System.
- 18.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers' compensation Laws.
- 18.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification

obligation under this Article 18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

18.2 No Negation of Existing Indemnities; Survival. Each Party's indemnity obligations under this Agreement shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive the termination or expiration of this Agreement to the extent that any third-party claim is commenced during the applicable statute of limitations period.

18.3 Indemnification Procedures.

18.3.1 Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly but in any event on or before thirty (30) days after the Indemnified Party's actual knowledge of such claim or action. Such notice shall describe the Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

18.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

18.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party;

18.3.2.2 May result in material liabilities which may not be fully indemnified hereunder; or

18.3.2.3 May have a Material Adverse Effect on the Indemnified Party (including a Material Adverse Effect on the Tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

18.3.3 Subject to Section 18.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior

written consent of the other Party; provided, however, that said consent shall not be unreasonably withheld, conditioned or delayed.

## **19. LIMITATION OF LIABILITY**

- 19.1 Responsibility for Damages. Except where caused by the other Party's or such Party's agents' and representatives' actions, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction.
- 19.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding any other provisions of this Agreement to the contrary, except for Replacement Costs in Section 3.6, PC Replacement Costs in Section 3.7 or payment made by either Party to satisfy Penalties or payments owing under Sections 3.4, 3.5, 7.5, 8.4, 8.5, 15.1, 17.1, 17.2, 18.1, 19.1, 27.1, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement (unless due to the willful or intentional breach of this Agreement by such Party, in which case the limitation shall not apply). In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.
- 19.3 Survival. The provisions of this Article 19 shall survive the termination or expiration of this Agreement.

## **20. FORCE MAJEURE**

- 20.1 Excuse. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.
- 20.2 Definition. "Force Majeure" or "an event of Force Majeure" means an event that: (a) is not reasonably anticipated as of the Effective Date; (b) is not within the reasonable control of the Party affected by the event; (c) is not the result of the affected Party's negligence or failure to act; and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements set forth in the preceding sentence): acts of God, such as storms, hail, hurricanes, floods, lightning, fire, explosion, earthquakes, or other natural disasters; civil disturbance; sabotage; strikes not attributable to Supplier's actions; lock-outs not attributable to Supplier's actions; work stoppages not attributable to Supplier's actions; action or restraint by court order or Governmental Authority (as long as

the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint ).

20.3 Exclusions. Notwithstanding the foregoing, none of the following shall constitute Force Majeure:

20.3.1 Economic hardship of either Party, including lack of money;

20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility, including due to weather, high or low temperatures or climate conditions, except to the extent caused by acts of God;

20.3.3 A Party's failure to obtain any Governmental Approval from a Governmental Authority;

20.3.4 A Party's failure to meet a Project Milestone, except to the extent it is caused by an event of Force Majeure;

20.3.5 The imposition of costs or Taxes on a Party;

20.3.6 Supplier's failure to obtain, or perform under, the IA, or its other contracts and obligations to Transmission Provider unless due to a Force Majeure event;

20.3.7 Supplier's ability to sell, or Buyer's ability to purchase energy, PCs (and equivalent rights in any other jurisdiction), Renewable Energy Benefits, or Capacity Rights at a more advantageous price than is provided hereunder;

20.3.8 Any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure;

20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event;

20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event;

20.3.11 Maintenance upgrade or repair of any facilities or right of way corridors whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); or

20.3.12 The increased cost of electricity, equipment, steel, labor, or transportation.

20.4 Conditions. In addition to the conditions set forth in Section 20.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:



- 20.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement (which notice, in the case of Supplier, shall be provided within forty-eight (48) hours following such Force Majeure event);
- 20.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- 20.4.3 Expeditiously takes action to correct or cure the Force Majeure event excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;
- 20.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the Force Majeure event; and
- 20.4.5 Provides prompt notice to the other Party of the cessation of the Force Majeure event giving rise to its excuse from performance.

## 21. DISPUTES

- 21.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other Party arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity hereof (“Dispute”) shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 21.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 21.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party. If the Parties fail to resolve any Dispute through informal negotiations within thirty (30) days after the Dispute is submitted in writing to the other Party in accordance with Section 21.1, then either Party may exercise their rights at equity or law to resolve such Dispute.
- 21.4 Jurisdiction, Venue. Each Party irrevocably: (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Washoe, State of Nevada; (b) waives any objection which it may have to the laying of jurisdiction

or venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.

- 21.5 Recovery of Costs and Attorneys' Fees. In the event of a Dispute arising from or relating to this Agreement, whether or not an action is commenced in any court to enforce any provision or for damages by reason of any alleged breach of this Agreement, the prevailing Party will be entitled to recover from the other Party all costs and attorneys' fees reasonably incurred in resolving the Dispute. For purposes hereof, the "prevailing" Party need not prevail on every issue involved in the Dispute, but only on the main issue giving rise to the Dispute.
- 21.6 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

## 22. NATURE OF OBLIGATIONS

- 22.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 22.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the services provided under this Agreement to the public.

## 23. ASSIGNMENT

Except as stated below, neither this Agreement nor any of the rights or obligations hereunder shall be assigned by either Party, including by operation of Law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

- 23.1 Buyer Assignment. Buyer may, without the consent of Supplier, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, if such assignment or delegation is made to: (a) Nevada Power Company; (b) any successor to Buyer, provided that such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704, where such assignment does not occur by operation of Law; (c) a Person (other than a natural person) providing retail electric service in Nevada which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the Minimum Credit Rating; (d) a wholesale electric provider which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the

Minimum Credit Rating; (e) a Person (other than a natural person) whose Credit Rating is equal or superior to the Minimum Credit Rating as of the time of assignment; or (f) a Person (other than a natural person) as otherwise required by Law which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the Minimum Credit Rating. Buyer shall provide Supplier with written notice of any assignment pursuant to this Section 23.1.

- 23.2 Supplier Assignment. Supplier may, without the consent of Buyer, transfer or assign a Controlling Interest in Supplier to any of Supplier's Affiliates or this Agreement to any of Supplier's Affiliates in connection with a transfer of the Facility to such Affiliate or a corporate reorganization between Supplier and its Affiliates so long as the purposes of the ROFO in Article 6 are not frustrated by such a transfer or assignment; provided that Supplier provides Buyer prior notice of any such transfer or assignment and (a) either (i) the Credit Rating of such Affiliate is equal to or superior to the Credit Rating of Supplier as of the Effective Date, or (ii) the Development Security or Operational Security, as applicable, is maintained without change due to such transfer or assignment or is replaced with Development Security or Operational Security, as applicable, in accordance with the requirements of Article 17, and (b) such Affiliate enters into an assignment and assumption agreement, in form and substance satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Supplier agrees that it will provide written notice to Buyer (and, if required, the PUCN Regulatory Operations Staff, and the State of Nevada Attorney General's Bureau of Consumer Protection) of any transfer or assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the transfer or assignment in accordance with the requirements of this Section 23.2, no less than five (5) Business Days prior to the effective date of any such transfer or assignment.
- 23.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided that such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the assigning or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 23.4 Transfers of Ownership. Subject to the provisions of Article 6, Supplier shall not directly or indirectly sell, transfer, assign or otherwise dispose of its ownership interest in the Facility to any third party absent: (a) a transfer of this Agreement to such third party; (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; (c) Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed, of such

third party; and (d) such third party being a Qualified Transferee. This Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Facility in accordance with the provisions of Sections 23.2 or 23.8. This Section 23.4 shall also not apply to any transfer that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee.

- 23.5 Controlling Interest. Subject to the provisions of Article 6, no Controlling Interest in Supplier may be directly or indirectly sold, transferred or assigned (whether through a single transaction or a series of transactions over time) to any Person other than an Affiliate of Supplier where such affiliate is a wholly owned within the same ownership group of companies without Buyer's prior written approval, not to be unreasonably withheld, and then only to a Qualified Transferee. This Section 23.5 shall not apply or restrict any sale, transfer or assignment of a Controlling Interest in Supplier (a) in accordance with the provisions of Section 23.2, (b) that is a Permitted Transfer, or (c) that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee.
- 23.6 Assignee Obligations with Respect to Granting a Security Interest. As a condition precedent to granting any Person a security interest in the Facility, Supplier shall (a) satisfy the requirements of Section 23.8 or (b) procure and deliver to Buyer an agreement, enforceable by Buyer and in form and substance satisfactory to Buyer, from each such Person to the effect that, if such Person forecloses on its security interest, (i) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (ii) it will not sell, transfer or otherwise dispose of its interest in the Facility to any Person other than in accordance with the provisions of this Article 23.
- 23.7 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.
- 23.8 Collateral Assignment by Supplier. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer, pledge, encumber or collaterally assign this Agreement or the account, revenues or proceeds hereof to Supplier's Lender in connection with any financing, including tax equity financing, or other financial arrangements for the Facility. In the event that Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide at least thirty (30) days' prior written notice thereof to Buyer, including the address of Supplier's Lenders. Any negotiation of documentation required in connection with a collateral assignment or other financing activity of Supplier shall be at the sole cost and expense of Supplier, and Supplier shall reimburse Buyer for all documented third-party and internal costs in connection with such activities. As a condition precedent to the effectiveness of any such transfer, pledge, encumbrance or collateral assignment to Supplier's Lenders, Buyer and Supplier and Supplier's Lenders shall have entered into a consent to collateral assignment agreement, which agreement shall be substantially in the form and substance of the Lender's Consent in Exhibit 19.

## 24. DEFAULT AND REMEDIES

- 24.1 Events of Default. An event of default (“Event of Default”) shall be deemed to have occurred with respect to a Party (the “Defaulting Party”) upon the occurrence of one or more of the following events and expiration of any applicable Cure Period:
- 24.1.1 failure to comply with any of its material obligations under this Agreement (not otherwise specifically addressed below) or failure of any its representations or warranties in this Agreement to be true and correct in all material respect when made or deemed made;
  - 24.1.2 failure to make timely payments due under this Agreement;
  - 24.1.3 failure to comply with the material requirements of any Electric System Authority, Transmission Provider or any Governmental Authority;
  - 24.1.4 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Generating Facility as a Renewable Energy System;
  - 24.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Facility in accordance in all material respects with Good Utility Practice;
  - 24.1.6 in the case of Supplier, unless excused by an event of Force Majeure, its failure to timely achieve: (a) any of the Critical Project Milestones (excluding Commercial Operation) before the scheduled date set forth in Exhibit 6; and (b) Commercial Operation by the Commercial Operation Deadline as set forth in Exhibit 6, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1;
  - 24.1.7 in the case of Supplier, its failure to comply with the provisions of Article 17 (including any replenishment requirement);
  - 24.1.8 failure to comply with the provisions of Article 23;
  - 24.1.9 in the case of Supplier, its failure to comply with the provisions of Article 27;
  - 24.1.10 in the case of Supplier, if Supplier: (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within sixty (60) days); (b) makes an assignment for the benefit of creditors; (c) is unable to pay its debts as they become due; or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within sixty (60) days); and

- 24.1.11 in the case of Supplier, if Supplier: (a) relinquished possession and control of all or substantially all of the Facility, other than pursuant to a transfer permitted under this Agreement; or (b) after commencement of the construction of the Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Facility for ninety (90) consecutive days, if not attributable to an Event of Default of, or request by Buyer, or an event of Force Majeure; and
- 24.1.12 in the case of Supplier, if: (a) the Storage Contract Capacity of the Storage Facility determined pursuant to a Storage Capacity Test is less than or equal to ninety percent (90%) for at least two (2) consecutive Contract Years; or (b) the Storage Availability is less than or equal to seventy-five percent (75%) for Summer Months during two (2) consecutive Contract Years.
- 24.2 Duty/Right to Mitigate. Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of its obligations under this Agreement. For the purpose of this Section 24.2, commercially reasonable efforts by Supplier shall include maximizing the price for Product received by Supplier from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such Product to third parties in accordance with the terms of this Agreement.
- 24.3 Cure Period. Other than for an Event of Default under Sections 24.1.6 or 24.1.10 or 24.1.12 for which there is no cure period, an Event of Default shall not be deemed to have occurred under Section 24.1, unless and until the Defaulting Party shall have had: (a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, and 24.1.9, a period of ten (10) Business Days from the date the applicable payment or performance was due; and (b) for purposes of all other Events of Default described in Section 24.1 (other than Sections 24.1.2, 24.1.6, 24.1.7, 24.1.8, 24.1.9, or 24.1.10 or 24.1.11 which are addressed above), a period of thirty (30) days from the date of receipt of written notice of the occurrence of any of the Events of Default described in Section 24.1 (each of the cure periods in Section 24.3(a) and (b), a "Cure Period") to cure such potential Event of Default; provided that such thirty (30)-day period may be extended for an additional reasonable period of time (not to exceed ninety (90) days) if: (i) the potential Event of Default is not reasonably capable of being cured within such thirty (30)-day period; (ii) such potential Event of Default is capable of being cured within an additional reasonable period of time (not to exceed ninety (90) days); and (iii) Supplier is diligently and continuously proceeding to cure such potential Event of Default.
- 24.4 Remedies. If an Event of Default is not cured by the Defaulting Party during the applicable Cure Period, if any, then, subject to Section 8.4.1, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement

as provided in Section 2.3, payment of damages, and in the case of Buyer, drawing upon the Development Security and the Operating Security.

24.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Supplier, neither Supplier nor any Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Facility or any electric generation facility constructed on the Project Site, under the Public Utility Regulatory Policies Act of 1978 or any other Law, for any periods that would have been within the Term had this Agreement remained in effect. Supplier, on behalf of itself and any other entity on whose behalf it may act, hereby waives its rights to require Buyer so to do.

24.5.1 Right of First Offer for Product. If Buyer terminates this Agreement in accordance with Section 2.3.1 or 2.3.3, neither Supplier nor Supplier's Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site and the Storage Contract Capacity at the Storage Rate for any such storage facility or storage facility ("Covered Facility") installed at the Project Site to a party other than Buyer for a period of three (3) years following the effective date of such termination ("Restricted Period"). Supplier shall provide Buyer with no less than six (6) months' prior written notice of the anticipated commercial operation date for any Covered Facility. Buyer shall notify Supplier within thirty (30) days of receipt of such notice from Supplier as to whether Buyer elects to purchase such Product. If Buyer elects to purchase such Product, then the same shall be sold to Buyer at the Product Rate and/or Storage Rate, as the case may be, in this Agreement and the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially similar with this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Supplier nor Supplier's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Project Site (including the interconnection queue position) during the Restricted Period so long as the limitations contained in this Section 24.5.1 apply, unless the transferee agrees to be bound by the terms set forth in this Section 24.5.1. Notwithstanding the above prohibition on a sale of transfer, this prohibition will not prevent the sale to a third party if an independent engineer provides a notarized certification to the fact that a solar facility cannot be developed on the Project Site. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Project Site. Supplier shall indemnify and hold Buyer harmless from all Losses sustained by Buyer as a result of any breach of the covenants contained in this Section 24.5.1.

## 24.6 Step-In Rights.

24.6.1 Step-In Rights following an Event of Default. If Supplier commits an Event of Default (as extended pursuant to Section 8.5 or due to Force Majeure), including pursuant to Section 24.1.6(b), and this Agreement has not been terminated by Buyer, then without limiting its other rights and remedies hereunder, Buyer shall have the right to enter the Project Site and take possession of the Facility and to take or cause to be taken all such actions and do or cause to be done all such things as Buyer may consider necessary or desirable to cure the Event of Default, including to complete the Facility and cause Commercial Operation to occur. Following the cure of the Event of Default, Buyer shall: (a) return possession of the Facility to Supplier upon execution by Supplier of an indemnity and release agreement, in form and substance reasonably acceptable to Buyer, pursuant to which Supplier shall indemnify and release Buyer from all claims arising out of Buyer's exercise of its rights pursuant to this Section 24.6; or (b) failing the execution of such indemnity and release agreement: (i) operate the Facility for all or such portion of the remaining Term as Buyer may elect, in its sole discretion, pursuant to the license granted in Section 24.6.2; and/or (ii) exercise its other rights and remedies under this Agreement, including the right to terminate this Agreement without the payment of any damages by Buyer.

24.6.2 License to Operate Facility. Supplier hereby irrevocably grants to Buyer the right, license and authority to enter the Project Site, to construct, operate and maintain the Facility for the Term during the continuance of and following any Event of Default by Supplier, if Supplier's Lenders have not elected to cure Supplier's Event of Default. During any period in which Buyer constructs, operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Supplier shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility.

24.6.3 Records and Access. Supplier shall collect and have available at a convenient, central location at the Project Site all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Facility in accordance with Good Utility Practice. Upon Buyer's notice of intent to exercise its rights under this Section 24.6, Buyer, its employees, contractors, or designated third parties shall have the right to enter the Project Site and the Facility for the purpose of constructing, operating or maintaining the Facility. Upon the exercise by Buyer of the its rights under this Section 24.6, Supplier shall cause the Facility contractor or operator (and any Person within the control of Supplier) to give Buyer access to and control of the construction, operation and maintenance of the Facility, as applicable, to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of responsibility for construction, operation and maintenance as may be



requested by Buyer. Supplier shall execute such documents and take such other action as may be necessary for Buyer to effectuate its rights under this Section 24.6.

24.6.4 Return. Buyer may, at any time and in its sole discretion, terminate its exercise of its rights under this Section 24.6 whether or not the applicable Event of Default has been cured. If at any time after exercising its rights under this Agreement, Buyer elects to return possession of the Facility to Supplier, Buyer shall provide Supplier with at least ten (10) days advance notice of the date Buyer intends to return such possession, and upon receipt of such notice Supplier shall take all actions necessary to resume possession of the Facility on such date.

24.6.5 No Assumption. Buyer's exercise of its rights under this Section 24.6 shall not be deemed an assumption by Buyer of any liability of Supplier due and owing prior to the exercise of such rights. Buyer shall not assume any liability of Supplier for the period during which Buyer exercises its rights under this Section 24.6. During any period that Buyer is exercising its rights, Supplier shall retain legal title to and ownership of the Facility and all of its other property and its revenues. When exercising its rights under this Section 24.6, Buyer shall assume possession, operation, and control of the Facility solely as agent for Supplier. In no event shall Buyer's election to exercise its rights under this Section 24.6 be deemed to constitute a transfer of ownership of or title to the Facility, the Project Site or any assets of Supplier.

24.6.6 Costs and Expenses. Supplier shall indemnify and hold harmless Buyer from and against all Losses incurred by Buyer in connection with exercise of its rights under this Section 24.6 other than due to the gross negligence or willful misconduct of Buyer. In connection with its exercise of its rights under this Section 24.6, Buyer shall have the right to recoup and set off all such Losses against amounts otherwise owed by Buyer hereunder. Buyer's exercise of such recoupment and set off rights shall not limit the other rights and remedies available to Buyer hereunder or otherwise.

## **25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

Supplier represents and warrants to Buyer as of the Effective Date as follows, and covenants to Buyer that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

25.1 Organization. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite entity power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or

licensed to do business and is in good standing in the State of Nevada and in each other jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Supplier.

- 25.2 Authority. Supplier has full authority to execute and deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution and delivery of this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 25.3 Governmental Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, the execution, delivery and performance of this Agreement by Supplier shall not: (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any Governmental Approval, except where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Supplier; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 25.4 Regulation as a Utility. Except for its anticipated future status as a "public utility" as defined in the Federal Power Act, and as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 25.5 Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all of its obligations under this Agreement and to consummate the transactions contemplated pursuant hereto.
- 25.6 Interconnection Process; Transmission. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Facility to the Transmission System in order to provide for the delivery of Net Energy and Discharging Energy to and at the Delivery Point.
- 25.7 Interconnection Cost Due Diligence. Supplier has conducted due diligence regarding the costs of all facilities and equipment necessary to interconnect the Facility to and at the Delivery Point and all such costs are covered by payments for Product provided for in this Agreement.

- 25.8 Required Facility Documents. All Required Facility Documents are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under requirements of Law), and will maintain for the Term all Required Facility Documents (including all material authorizations, rights and entitlements) necessary to construct, own, operate and maintain the Facility and to perform its obligations under this Agreement, including the sale and delivery of Product to Buyer in accordance with this Agreement. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Facility or the Project Site.
- 25.9 Governmental Approvals. Supplier has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and no other Governmental Approvals are required by Supplier to construct, own, operate and maintain the Facility or perform its obligations under this Agreement. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material Governmental Approvals that are required for the ownership, operation and maintenance of the Facility or the performance by Supplier of its obligations under this Agreement, in each case, promptly after Supplier makes any such determination.
- 25.10 Related Agreements. Supplier has entered into or will enter into all material agreements as listed in Exhibit 12 necessary for the construction, ownership, operation and maintenance of the Facility and the performance of its obligations under this Agreement.
- 25.11 Certification. The Generating Facility qualifies as a Renewable Energy System and Supplier has been and is in compliance with all requirements set forth in the Renewable Energy Law.
- 25.12 Title. Supplier will own all Product attributable to the Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Product by Buyer to a third party.
- 25.13 Project Execution Plan. Supplier will execute the development and construction of the Facility in accordance with the project execution plan submitted by Supplier to Buyer pursuant to the request for proposals dated January 5, 2018. To the extent the Facility uses equipment listed on Exhibit 23, Supplier shall construct the Facility using only such equipment manufactured by the vendors, subcontractors and equipment suppliers listed on Exhibit 23.
- 25.14 Work Site Agreement. Supplier shall enter into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21.

25.15 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 25 are made as of the Effective Date and shall be deemed repeated as of the Commercial Operation Date. If at any time during the Term, Supplier obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time given or deemed given or at any time thereafter for so long as this Agreement is in force and effect, then Supplier shall provide Buyer with written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Supplier intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 25.15 shall be given as soon as practicable after Supplier obtains actual knowledge of any such fact, circumstance, event or information.

## **26. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Supplier as of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 26.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Buyer.
- 26.2 Authority. Buyer has full authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 26.3 Governmental Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of its obligations under this Agreement by Buyer shall not: (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any Governmental Approval, except: (i) where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Buyer; or (ii) for

Governmental Approvals which become applicable to Buyer as a result of specific regulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which Governmental Approvals have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

- 26.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 26 are made as of the Effective Date. If at any time during the Term, Buyer obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 26 to be materially untrue or misleading at the time given or at any time thereafter for so long as this Agreement is in force and effect, Buyer shall provide Supplier with prompt written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Buyer intends to take to make the representations and warranties true and correct.

## **27. INSURANCE**

- 27.1 General Requirements. From and after the Effective Date, Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth in this Article 27. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 27.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A" or better and shall include provisions or endorsements:
- 27.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
- 27.2.2 Stating that cancellation or non-renewal of the policy shall be effective until thirty (30) days from the date notice thereof is actually received by Buyer; provided that upon Supplier's receipt of any notice of cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;

- 27.2.3 Providing Buyer with subrogation waivers on all coverage;
  - 27.2.4 Providing for Separation of Insured coverage in the general liability and auto liability insurance policies; and
  - 27.2.5 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 27.3 Certificates of Insurance. Prior to the Effective Date and each anniversary thereafter during the Term, and upon any change in coverage or at the request of Buyer (not to exceed once each year), Supplier shall provide to Buyer properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:
- 27.3.1 The name of insurance company, policy number and expiration date;
  - 27.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier; and
  - 27.3.3 A statement indicating that Buyer shall receive at least thirty (30) days prior notice of cancellation or non-renewal of a policy.
- 27.4 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 27.5 Supplier's Minimum Insurance Requirements.
- 27.5.1 Worker's Compensation. Workers' compensation insurance in the form and manner required by statutory requirements and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable. Employer's liability insurance with the following limits: (a) one million dollars (\$1,000,000.00) per each bodily injury by accident; (b) one million dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and (c) one million dollars (\$1,000,000.00) in the annual aggregate per each bodily injury by occupational disease.
  - 27.5.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.

27.5.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage with a combined single limit of at least two million dollars (\$2,000,000). The minimum insurance limits set forth in Sections 27.6.1, 27.6.2, and 27.6.3 can be met by Supplier's underlying workers' compensation/employer's liability, general liability, and automobile liability policies in combination with an excess/umbrella insurance policy.

27.5.4 Failure to Comply. If Supplier fails to comply with the provisions of this Article 27, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 27, in accordance with the indemnification provisions of Article 18.

## **28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS**

28.1 No Expectation of Confidentiality. Supplier has no expectation that any of the terms of this Agreement will be treated as confidential by Buyer, and Buyer has no obligation to seek confidential treatment of this Agreement in connection with Buyer's Required Regulatory Approvals or otherwise.

28.2 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and neither Party may issue any such public announcement, statement or other disclosure without having first received the written consent of the other Party, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Facility for educational, promotional or informational purposes, subject to Supplier's prior review and approval of such documents, and Supplier may disclose this Agreement and information regarding the Facility to its members, officers, directors, employees, attorneys, agents and representatives in connection with the execution, delivery and performance of its obligations under this Agreement. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Facility and authorizing the use of pictures of the Facility for such activities, upon reasonable prior notice, during regular business hours, and subject to Buyer's compliance with Suppliers safety requirements regarding the Project Site. It shall not be deemed a violation of this Section 28.2 to file this Agreement with the PUCN or FERC or any other Governmental Authority in connection with Buyer's Required Regulatory Approvals, Supplier's Required Regulatory Approvals or otherwise.

## **29. MISCELLANEOUS**

29.1 Notices.

- 29.1.1 All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties’ Contract Representatives as set forth in Exhibit 4, as the same may be modified from time to time by Notice from the respective Party to the other Party.
- 29.1.2 All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. Such Notices will be effective upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, then such Notice shall be deemed validly and effectively given upon such tender. All oral notifications required under this Agreement shall be made to the receiving Party’s Contract Representative or Operating Representative (as applicable) and shall promptly be followed by Notice as provided in this Section 29.1.
- 29.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 20 or Article 24, respectively, and Notices of a change to Exhibit 4 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery or electronic mail. If any such Notice is sent via electronic mail, then a copy of such Notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery. Such Notices will be effective as provided in Section 29.1.2.
- 29.1.4 Any payments required to be made to a Party under this Agreement shall be made pursuant to the payment instructions in Exhibit 4, as such payment instructions may be amended by such Party from time to time by Notice to the other Party.
- 29.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter contained herein whether written or oral.
- 29.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.



- 29.4 Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” are to articles, sections, schedules, or exhibits hereof; (c) all references to a particular Person include a reference to such Person’s permitted successors and assigns; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” (and the correlative terms “include”, “includes” and “included”) means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Law means that Law as amended, supplemented or otherwise modified from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days”, “months”, “quarters” and “years” shall be to calendar days, months, quarters and years, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- 29.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and shall not be used to construe this Agreement.
- 29.6 Discontinued or Modified Index. If any index publisher discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate adjustments to take into account any changes in the location of measurement.
- 29.7 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 29.8 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as

a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law or in equity.

- 29.9 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party. Buyer may determine that submitting an amendment or modification to this Agreement to the PUCN and FERC, as applicable, for filing, acceptance or approval shall be a condition precedent to the effectiveness of any such amendment.
- 29.10 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, agreements, obligations and conditions hereof.
- 29.11 Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.
- 29.12 Further Assurances. The Parties agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize the same in a reasonable written instrument, to be executed and delivered by both Parties.
- 29.13 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code.
- 29.14 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.
- 29.15 Mobile-Sierra. Absent agreement of all Parties to a proposed modification of this Agreement, the standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S.Ct. 2733,

171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

- 29.16 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of a Party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of a Party's remedies in equity to cause the other Party to perform its obligations hereunder. Each Party agrees that it will not assert as a defense to the other Party's action for specific performance of, or injunctive relief relating to, the other Party's obligations hereunder that the amounts payable or paid by the asserting Party in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and the asserting Party hereby conclusively waives such defense. Supplier shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

**BUYER:**

**SIERRA PACIFIC POWER COMPANY**  
**d/b/a NV ENERGY**

By: \_\_\_\_\_

Name:

Title:

**SUPPLIER:**

**DODGE FLAT SOLAR, LLC**

By:  \_\_\_\_\_

Name: Michael O'Sullivan

Title: Vice President

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

**BUYER:**

**SIERRA PACIFIC POWER COMPANY**  
**d/b/a NV ENERGY**

By: 

Name: Douglas A. Cannon

Title: President

**SUPPLIER:**

**DODGE FLAT SOLAR, LLC**

By: \_\_\_\_\_

Name:

Title:

## **EXHIBIT 1**

### **DESCRIPTION OF FACILITY**

1. Name of Generating Facility: Dodge Flat Solar Energy Center
  - (a) Location: Wadsworth Area, Washoe County, NV, USA
  - (b) Delivery Point: 345 kV Olinghouse switching station
2. Supplier: Dodge Flat Solar, LLC
3. Parent: ESI Energy, LLC
4. Operator: NextEra Energy Operating Services, LLC
5. Equipment:
  - (a) Type of Generating Facility: Photovoltaic solar
  - (b) Installed Nameplate Capacity: 200.00
    - (i) Total capacity: 216.20 MVA
    - (ii) Expected Nameplate Capacity Rating: 200 MW AC @ +/- 0.95, subject to the provisions of Section 3.4.5
    - (iii) Total gross output capacity: 216.20 MW
    - (iv) Total capacity net of Station Usage: 200.00 MW
  - (c) Additional Technology Specific Information, if any:
6. Operating Characteristics of Generating Facility:
  - (a) VAR, leading: 169,200,000 (169.2 MVAR)
  - (b) VAR, lagging (-): 172,020,000 (172.02MVAR)
  - (c) Controlled Ramp Rate (MW/minute): 21.2 (10%/min)
  - (d) Minimum Operating Capacity (MW): 21.2 (inverters 'turn on/off' at 10%)
  - (e) Power Factor: +/- 0.95, subject to the provisions of Section 3.4.5
7. Type of Storage Facility: Battery
8. Operating Characteristics of Storage Facility: Power at the POI is limited to 200.0 MW regardless of power generation (from inverters or batteries). Battery storage system will be 50 MW with 4 hour duration and allow for 300 Cycles per year each Contract Year. Batteries used to maintain generation output to maximum levels as long as possible throughout the day.

## **EXHIBIT 2A**

### **PRODUCT RATES**

#### **PRODUCT RATE**

The Product Rate shall be \$27.51 per MWh; however, if the Power Purchase Agreement between Buyer and Fish Springs Ranch Solar, LLC is approved by the Public Utility Commission of Nevada the Product rate shall be \$26.51 per MWh (the “Product Rate” as applicable).

#### **STORAGE RATE**

The Storage Rate during the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1<sup>st</sup>, during the first Contract Year) shall be \$6,110 per MW-Month (the “Initial Storage Rate” and, as adjusted pursuant to this Exhibit 2A, the “Storage Rate”).

Thereafter, for the Term of the Agreement, the Storage Rate shall be increased on January 1<sup>st</sup> of each Contract Year by an amount equal to two percent (2.0%) of the Storage Rate for the previous Contract Year and shall be subject to adjustment in accordance with Exhibit 25; except that, solely with respect to the January 1<sup>st</sup> immediately following the Stub Period, such percentage shall be prorated as determined by the following formula:

$$\text{Storage Rate} = \text{Initial Storage Rate} * [1 + (2.0\% * \text{FCM}/12)];$$

where FCM is the number of full months between the Commercial Operation Date and December 31<sup>st</sup>.

**EXHIBIT 2B**

**FORM OF MONTHLY ENERGY INVOICE**

**Supplier Letterhead**

**Facility:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Facility ID:** \_\_\_\_\_

**Billing Period:** \_\_\_\_\_

**Invoice Number:** \_\_\_\_\_

**CURRENT MONTHLY BILLING DATA INPUT**

**Pricing** **\$/MWh**

Product Rate \_\_\_\_\_

Provisional Rate \_\_\_\_\_

Test Energy Rate \_\_\_\_\_

**Monthly Supply Amount (kWh)** **On-Peak**

Supply Amount \_\_\_\_\_

**Excused Product**

Planned Outages \_\_\_\_\_

Force Majeure \_\_\_\_\_

Emergencies \_\_\_\_\_

Curtailed Product \_\_\_\_\_

Economic Curtailed Product \_\_\_\_\_

**Total Excused Product** \_\_\_\_\_

**Delivered Amount (kWh)** **On-Peak** **Off-Peak**

Net Energy (excluding Excess Energy) \_\_\_\_\_

Excess Energy \_\_\_\_\_

**Total Delivered Amount** \_\_\_\_\_

**Storage Pricing** **\$/MW**

Storage Rate \_\_\_\_\_

**CURRENT MONTHLY INVOICE CALCULATION**

	<b>Net Energy</b>		<b>Rate/kWh</b>		<b>Amount</b>
a. Product <sup>1</sup>	_____	x	_____	=	\$ _____
b. Excess Energy	_____	x	_____	=	\$ _____
c. Provisional Energy	_____	x	_____	=	\$ _____
d. Test Energy	_____	x	_____	=	\$ _____
e. Shortfall/Replacement Cost (from page 2B-2)					\$ _____
f. Storage Rate	_____				
<b>g. Total Product Payment (a+b+c+d-e+f)</b>					\$ _____
h. Adjustments (+/-)					\$ _____
<b>TOTAL AMOUNT DUE (g + h)</b>					\$ _____

**PAYMENT DUE DATE NO LATER THAN:** \_\_\_\_\_

<sup>1</sup> Excluding Provisional Energy and Test Energy



**EXHIBIT 2B**

**FORM OF MONTHLY ENERGY INVOICE**

**EXHIBIT 2B****FORM OF MONTHLY ENERGY INVOICE****REPLACEMENT COST CALCULATION – For Billing Period: September****Summer On-Peak**

a. Monthly On-Peak Supply Amounts \_\_\_\_\_ kWh  
b. Excused Product – On-Peak \_\_\_\_\_ kWh  
c. Difference (a – b) \_\_\_\_\_ kWh  
d. 90% of Difference (0.90 \* c) \_\_\_\_\_ kWh  
e. Delivered Amount \_\_\_\_\_ kWh

Shortfall (Y/N)? \_\_\_\_\_

f. Shortfall Amount (max d – e or zero) \_\_\_\_\_ kWh

Replacement Cost Calculation

g. Average On-Peak COB \_\_\_\_\_ \$/MWh  
h. Summer On-Peak Product Rate \_\_\_\_\_ \$/MWh  
i. Difference (max g – h or zero) \_\_\_\_\_ \$/MWh

j. 10% of Product Rate (0.1 x i) \_\_\_\_\_ \$/MWh

k. Replacement Cost (max of f \* j or f \* i) \$ \_\_\_\_\_

**REPLACEMENT COST CALCULATION – For Billing Period: December****Non-Summer On-Peak**

l. Monthly On-Peak Supply Amounts \_\_\_\_\_ kWh  
m. Excused Product – On Peak \_\_\_\_\_ kWh  
n. Difference (l – m) \_\_\_\_\_ kWh  
o. 90% of Difference (0.90 \* n) \_\_\_\_\_ kWh

p. Delivered Amount \_\_\_\_\_ kWh

q. Shortfall (Y/N)? \_\_\_\_\_

r. Shortfall Amount (max o – p or zero) \_\_\_\_\_ kWh

Replacement Cost Calculation

s. Average On-Peak COB \_\_\_\_\_ \$/MWh  
t. Non-Summer On-Peak Product Rate \_\_\_\_\_ \$/MWh  
u. Difference (max s – t or zero) \_\_\_\_\_ \$/MWh

v. Replacement Cost (r \* u) \$ \_\_\_\_\_

**EXHIBIT 2B**

## FORM OF MONTHLY ENERGY INVOICE DETAIL

[illegible]

**EXHIBIT 2C**

**FORM OF PC REPLACEMENT INVOICE**

**Buyer Letterhead**

Facility: \_\_\_\_\_  
Facility ID: \_\_\_\_\_

Date: \_\_\_\_\_  
Contract Year(s): \_\_\_\_\_  
Invoice Number: \_\_\_\_\_  
Payment Due Date: \_\_\_\_\_

**Contract Year Data**

**PCs**

a. Yearly PC Amount  
b. Delivered PCs

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PCs associated with Excused Product

c. Planned Outage  
d. Force Majeure  
e. Emergencies

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

f. Curtailed Product

\_\_\_\_\_

g. Economic Curtailed Product

\_\_\_\_\_

h. Excused Product (c + d + e + f + g)

\_\_\_\_\_

**i. PC Shortfall Amount (a – b – h)**

\_\_\_\_\_  
\_\_\_\_\_

**PC REPLACEMENT CALCULATION**

j. PC Replacement Rate

\$ \_\_\_\_\_

**k. PC REPLACEMENT COSTS (i \* j)**

\$ \_\_\_\_\_  
\_\_\_\_\_

### **EXHIBIT 3A**

#### **DESCRIPTION OF PROJECT SITE**

The following real property situated in Washoe County, Nevada:

North Half and Southeast Quarter of Section 25, Township 21 North, Range 23 East, M.D. B. & M., consisting of approximately 480 acres. APN 079-150-11

Lot 1 in Section 19, Township 21 North, Range 24 East, M.D. B. & M., consisting of approximately 38.09 acres. APN 079-180-14

Lots 1-7 inclusive and the East Half of the West Half of Section 31, Township 21 North, Range 24 East, M.D. B. & M., consisting of approximately 498.77 acres. APN 079-180-16

Lot 1 in Section 5, Township 20 North, Range 24 East, M.D. B. & M., consisting of approximately 21 acres. APN 084-150-12

Lot 2 in Section 5, Township 20 North, Range 24 East, M.D. B. & M., consisting of approximately 30.54 acres. APN 084-150-13

Northeast 1/4; North 1/2 of Northwest 1/4; Southeast 1/4 of Northwest 1/4; and South 1/2, of Section 23, Township 21 North, Range 23 East, M.D.B.&M., consisting of approximately 600 acres. APN 079-150-29

## EXHIBIT 3B

### MAP DEPICTING PROJECT SITE



## **EXHIBIT 4**

### **NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

#### **SUPPLIER:**

##### **Dodge Flat Solar, LLC**

<b>Contact</b>	<b>Mailing Address</b>	<b>Phone</b>	<b>E-mail</b>
----------------	------------------------	--------------	---------------

#### **CONTRACT REPRESENTATIVE:**

Prior to Commercial Operation Date:

Josh Marcum	c/o Dodge Flat Solar, LLC FEB/JB 700 Universe Boulevard Juno Beach, Florida 33408	561-691-2115	Joshua.Marcum@nexteraenergy.com
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From and after Commercial Operation Date:

Josh Marcum	c/o Dodge Flat Ranch Solar, LLC FEB/JB 700 Universe Boulevard Juno Beach, Florida 33408	561-691-2115	Joshua.Marcum@nexteraenergy.com
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#### **OPERATING REPRESENTATIVE:**

Prior to Commercial Operation Date:

Josh Marcum	c/o Dodge Flat Ranch Solar, LLC FEB/JB 700 Universe Boulevard Juno Beach, Florida 33408	561-691-2115	Joshua.Marcum@nexteraenergy.com
-------------	--	--------------	---------------------------------

From and after Commercial Operation Date:

Josh Marcum	c/o Dodge Flat Ranch Solar, LLC FEB/JB 700 Universe Boulevard Juno Beach, Florida 33408	561-691-2115	Joshua.Marcum@nexteraenergy.com
-------------	--	--------------	---------------------------------

#### **CHARGING AND DISCHARGING NOTICE COMMUNICATIONS:**

#### **OPERATING NOTIFICATIONS:**

[To be provided prior to start of construction]

Prescheduling

Real-Time

Monthly Checkout

## **EXHIBIT 4**

### **NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

#### **INVOICES:**

Josh Marcum                                      c/o Dodge Flat Ranch Solar, LLC                                      561-691-2115      Joshua.Marcum@nexteraenergy.com  
FEB/JB  
700 Universe Boulevard  
Juno Beach, Florida 33408

#### **PAYMENT INSTRUCTIONS**      [To be provided by Supplier]

### **BUYER: NV ENERGY**

Sierra Pacific Power Company d/b/a NV Energy

<b>Contact</b>	<b>Phone</b>	<b>E-mail</b>
<b>CONTRACT REPRESENTATIVE:</b>		
Manager, Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com
<b><u>OPERATING REPRESENTATIVES</u></b>		
<b><u>Scheduling</u></b>		
- Portfolio Analytics-NPC (Normal Business Hours)	702/402-2882	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Portfolio Analytics-SPPC (Normal Business Hours)	702/402-2884	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Generation Dispatch (Control Area Operations)	702/402-7111	<a href="mailto:Sysopr@nvenergy.com">Sysopr@nvenergy.com</a>
- Daily Availability Notice-NPC (Spreadsheet)	702/402-2882	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Daily Availability Notice-SPPC (Spreadsheet)	702/402-2884	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
<b><u>Emergencies (including Force Majeure)</u></b>		
- Grid Reliability	775/834-4216	<a href="mailto:Grid_Reliability@nvenergy.com">Grid_Reliability@nvenergy.com</a>
- Portfolio Analytics	702/402-1954	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
<b><u>Planned Outages-NPC</u></b>		
<b><u>Planned Outages-SPPC</u></b>		
	702/402-6602	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>
	775/834-4716	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>
<b><u>Metering-NPC</u></b>		
<b><u>Metering-SPPC</u></b>		
	702/402-6110	<a href="mailto:NPCMeterOps@nvenergy.com">NPCMeterOps@nvenergy.com</a>
	775/834-7156	<a href="mailto:Electric_Meter_Ops_North@nvenergy.com">Electric_Meter_Ops_North@nvenergy.com</a>

#### **INVOICES**

Energy Supply Contract Management                                      702/402-5667                                      [ContractManagement@nvenergy.com](mailto:ContractManagement@nvenergy.com)  
6226 W Sahara Ave, M/S 26A  
Las Vegas, NV 89146

#### **CC all invoices to:**

Fuel & Purchased Power Accounting                                      775/834-6281                                      [cmcelwee@nvenergy.com](mailto:cmcelwee@nvenergy.com)  
6100 Neil Road, M/S S2A20  
Reno, NV 89511

#### **“EVENT OF DEFAULT”, “COMMERCIAL OPERATION DATE” AND “FORCE MAJEURE”**

#### **CC all notices to:**

Office of General Counsel  
6226 W. Sahara Ave, M/S 3A



**EXHIBIT 4**

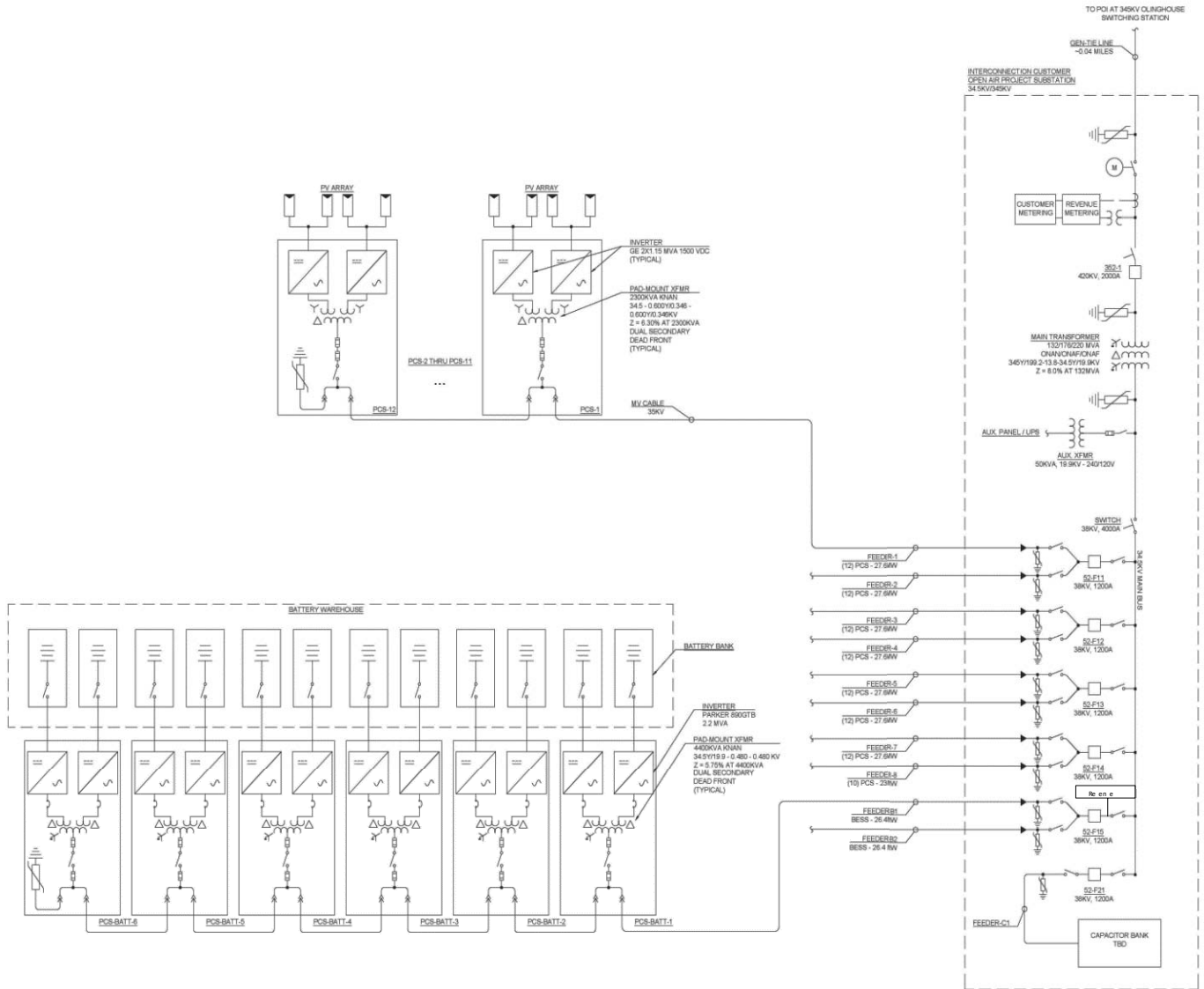
**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

Las Vegas, NV 89146

## EXHIBIT 5

### ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT

Attached is a one-line diagram of the Facility, which indicates the Delivery Point and the ownership and the location of Meters, including the Storage Facility Metering Point.



## **EXHIBIT 6**

### **PROJECT MILESTONE SCHEDULE**

1. All time periods are in months after the PUCN Approval Date (designated as “AA” below). Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit 6 with actual dates after the PUCN Approval is received.

2. All milestones may be completed earlier than stated times, at the sole option of Supplier.

- A) Project Milestone: Supplier shall obtain all Required Facility Documents to construct the Facility.

Completion Date: Twenty four (24) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that the Required Facility Documents to construct the Facility as listed in Exhibit 12 have been obtained, together with the metering system design for the Facility (submitted for Buyer’s approval in accordance with Section 7.1) and a completed version of Exhibit 14.

- B) Project Milestone: Supplier’s major equipment shall be delivered to the Project Site

Completion Date: Thirty four (34) months AA.

Documentation: Supplier shall provide Buyer with documentation that the major equipment (including step-up and medium voltage transformers [and inverters]) has been delivered to the Project Site.

- C) Project Milestone: Supplier shall obtain the Required Facility Documents to operate (but not achieve Commercial Operation) the Facility, including registration with PC Administrator.

Completion Date: Thirty five (35) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that Required Facility Documents to operate (but not achieve Commercial Operation) the Facility as listed in Exhibit 12 have been obtained, together with reasonable documentation evidencing registration with PC Administrator.

- D) Project Milestone: The Facility achieves the Operation Date.

Completion Date: Thirty five (35) months AA.

Documentation: Buyer’s Meters shall record Energy being delivered from the Generating Facility to Buyer and the Storage Facility and Discharging Energy being delivered from the Storage Facility to Buyer, and Supplier provides written notice to Buyer that the Facility satisfies the definition of Operation Date.

### **CRITICAL PROJECT MILESTONES**

## **EXHIBIT 6**

### **PROJECT MILESTONE SCHEDULE**

- E) Project Milestone: Supplier shall demonstrate to Buyer that it has complete financing for construction of the Facility.

Completion Date: Twenty Four (24) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized Representative of Supplier certifying either that Supplier has received internal approval to fund construction of the Facility or that debt and equity financing arrangements have been executed for funding of 100% of the construction financing of the Facility.

- F) Project Milestone: Notice to Proceed has been issued to the Construction Contractor under the Construction Contract and construction of the Facility has commenced.

Completion Date: Nineteen (19) months AA.

Documentation: Supplier shall provide Buyer a copy of the executed Notice to Proceed acknowledged by the Construction Contractor and documentation from qualified professionals which indicates that physical work has begun at the Project Site regarding the construction of the Facility, as well as an ALTA Survey for the Project Site.

- G) Project Milestone: The Facility achieves the Commercial Operation Date.

Completion Date: the 1<sup>st</sup> day of the month following thirty five (35) months AA ("Commercial Operation Deadline").

Documentation: Supplier provides certifications required by Section 8.3.2 to Buyer.

## **EXHIBIT 7**

### **PERFORMANCE TESTS**

1. Performance tests required by the Construction Contract.
2. Such other tests as may be required by Law or by Buyer to document resource supply.

## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

Unit Name	Date	Measure	HE 01	HE 02	HE 03	HE 04	HE 05	HE 06	HE 07	HE 08	HE 09	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24
	Day 1	BaseMW																								
	Dau 2	BaseMW																								
	Day 3	BaseMW																								
	Day 1	Max Capability																								
	Dau 2	Max Capability																								
	Day 3	Max Capability																								
	Day 1	Min Capability																								
	Dau 2	Min Capability																								
	Day 3	Min Capability																								
	Day 1	Min Capability																								
	Dau 2	Min Capability																								
	Day 3	Min Capability																								

Note: Form of Availability Notice to be provided by Buyer to Supplier in Excel format. The format of the form may not be changed, except by Buyer.

Date For Notice:

---

Supplier:

---

Name of Suppliers Representative:

---

## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

Buyer: Sierra Pacific Power Company

Contact Info: Supplier Address here

City, State, Zip here

123- 56- 90

Hour	Net Availability From Plant MWh	Total Derating MWh	Plant Total MWh	Cause and Time of Derating
1:00	0	0	0	
2:00	0	0	0	
3:00	0	0	0	
4:00	0	0	0	
5:00	0	0	0	
6:00	0	0	0	
7:00	0	0	0	
8:00	0	0	0	
9:00	0	0	0	
10:00	0	0	0	
11:00	0	0	0	
12:00	0	0	0	
13:00	0	0	0	
14:00	0	0	0	
15:00	0	0	0	
16:00	0	0	0	
17:00	0	0	0	
18:00	0	0	0	
19:00	0	0	0	
20:00	0	0	0	
21:00	0	0	0	
22:00	0	0	0	
23:00	0	0	0	
0:00	0	0	0	
Total	0	0	0	

Note: Supplier to submit Form of Availability Notice in Excel format to Balancing Authority Area Operator as identified in Exhibit 4 Notices. Form requires 7 days of availability.

## **EXHIBIT 9**

### **BUYER'S REQUIRED REGULATORY APPROVALS**

1. PUCN Approval of this Agreement.
2. Other Buyer Required Regulatory Approvals as may be required.



## **EXHIBIT 10**

### **SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. Renewable Energy System certification.
2. PUCN Approval of this Agreement.
3. Although obtaining EWG status is not a Supplier Required Regulatory Approval, if Supplier elects to obtain EWG status for the Facility, Supplier shall obtain: (a) a Notice of Self Certification as an EWG, or (b) an order from FERC granting the Facility EWG status.
4. Based on Supplier's status as a "public utility" under the Federal Power Act, FERC authorization under section 205 of the Federal Power Act to make sales of electric energy, capacity, and ancillary services from the Facility.
5. Other Supplier Required Regulatory Approvals as may be required.

## **EXHIBIT 11**

### **TECHNICAL SPECIFICATIONS**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(A) of Exhibit 6), a completed version of Exhibit 14; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built.

## **EXHIBIT 12**

### **REQUIRED FACILITY DOCUMENTS**

1. In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(A) of Exhibit 6), a completed version of Exhibit 11; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 11 reflecting the Facility as built. Bureau of Land Management, right of way grant issued pursuant to the Federal Land Policy Management Act and implementing regulations at 43 C.F.R. Part 2800, including environmental review under the National Environmental Policy Act
2. Bureau of Indian Affairs, right of way grant issued pursuant to the Indian Right of Way Act of 1948, 62 Stat. 17.25 U.S.C. 323 and by implementing regulations at 25 CFR Part 169, including environmental review under the National Environmental Policy Act
3. Public Utilities Commission of Nevada, Utility Environmental Protection Act, order and permit to construct
4. Nevada Department of Environmental Protection, Groundwater Discharge Permit
5. Nevada Department of Environmental Protection, construction storm water general permit
6. State Historic Preservation Office, National Historic Preservation Act, Section 106 consultation and determination of no effect; for federal actions only
7. Clean Water Act, Section 404, jurisdictional determination and, if required, general permit/nationwide permit coverage
8. Clean Water Act, Section 401, state water quality certification, if required in connection with other permits
9. Washoe County Special Use Permit pursuant to Article 810 of the County Development Code
10. Washoe County Grading Special Use Permit
11. Washoe County Administrative Permit for Telecommunication Towers pursuant to Article 324 for Communication Facilities
12. Washoe County Health District, Air Quality Management Division Authority to Construct/Permit to Operate
13. Washoe County Building Permit
14. Truckee Meadows Regional Planning Agency Regional Plan Amendment pursuant to Nevada Revised Statute 278.026-Subsection 6
15. Nevada State Fire Marshall Hazardous Material Permit
16. Nevada Department of Transportation, right of way occupancy permit
17. Nevada Department of Environmental Protection, Air Quality Dust Control Permit
18. Crossing consents or easements, Southwest Gas, (and BLM consents if required)
19. U.S. Energy Information Administration, filing of Forms 860 and 923
20. Federal Energy Regulatory Commission, certification of exempt wholesale generator status
21. Public Utilities Commission of Nevada approval
22. Conditionally Exempt Small Quantity Generator or Small Quantity Generator identification number, if required
23. Project site lease option

## **EXHIBIT 12**

### **REQUIRED FACILITY DOCUMENTS**

24. This Agreement
25. Engineering, procurement and construction agreement
26. Operating and maintenance agreement
27. Shared Facilities Agreement, if applicable
28. Interconnection agreement
29. Nevada Department of Transportation Right of Way Encroachment Permit
30. Nevada Renewable Energy System certification
31. Utilities' permission to operate
32. Federal Energy Regulatory Commission market based rate authorization, if required
33. Western Renewable Energy Generation Information System (WREGIS) registrations, if applicable

# EXHIBIT 13

## SUPPLY AMOUNT

The Supply Amount(s) shall be the Energy amounts for each Delivery Hour that shall be delivered by Supplier to Buyer, pursuant to this Agreement, as specified by each value in the attached table below.<sup>2</sup>

Hour Ending		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OC	NOV	DEC
0100	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0300		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0500		0.0	0.0	0.0	0.0	0.0	0.	0.0	0.0	0.0	0.0	0.0	0.0
0600		0.0	0.0	0.0	6.2	43.	69.1	46.	12.9	0.	0.0	0.0	0.0
0700	On Peak	0.0	0.0	14.	78.2	142.	171.	150.	107.1	64.1	17.0	0.3	0.0
0800		7.1	27.1	102.2	149.	171.3	182.	182.	179.	170.	115.	40.	.0
0900		72.	121.	154.2	164.1	177.	187.3	187.1	184.2	181.	163.	123.3	67.
1000		112.	141.	166.2	172.	181.	187.	189.	186.3	185.2	167.9	13 .	98.
1100		112.1	143.1	170.9	171.3	180.	186.9	190.3	186.9	183.2	157.1	12 .1	97.
1200		108.0	137.	168.9	173.0	180.	185.	189.	186.	180.	150.	11 .	92.
1300		108.	133.9	165.9	169.3	178.	183.3	187.0	184.9	180.9	152.2	119.9	91.
1400		111.	134.	166.	167.	175.2	181.	184.	183.	182.0	157.	12 .1	95.1
1500		114.	137.	161.0	163.9	168.9	178.	180.0	181.3	179.3	159.	123.1	98.1
1600		92.9	127.	157.	162.	156.0	174.0	169.	172.1	174.	136.	77.	52.9
1700		12.9	67.	126.	154.	146.3	165.2	158.	161.	134.	45.	3.	0.8
1800		0.0	2.2	21.	72.2	105.3	145.2	136.	99.	26.3	0.3	0.0	0.0
1900		0.0	0.0	0.0	1.	15.3	42.	35.	8.2	0.0	0.0	0.0	0.0
2000		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2100		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2300	Off- Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Supply Amount (MWh)		853	1,175	1, 6	1,806	2,024	2,242	2,189	2,035	1,844	1, 24	991	703
Daily On-Peak Supply Amount (MWh)		853	1,175	1, 6	1,800	1,980	2,172	2,142	2,022	1,843	1, 24	991	703
Monthly Supply Amount (MWh)		26, 5	32,895	48,862	54,179	62, 7	67,251	67,849	63,094	55,319	44,139	29, 8	21,799
Annual Supply Amount (MWh)		4, 07											
Maximum Amount (MW)		200											

<sup>2</sup> NTD: Table to be provided by Buyer in Excel format with hourly values rounded to a single decimal point. The Monthly Supply Amount and the Annual Supply Amount for February shown above represent a non-leap year.

## **EXHIBIT 14**

### **DIAGRAM OF FACILITY**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(A) of Exhibit 6), a completed version of Exhibit 14; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built.

The diagram of the Facility to be attached as Exhibit 14 will include a detailed layout of the Facility, including size, type, location and electrical infrastructure.

**EXHIBIT 15**

**OPERATIONS AND MAINTENANCE AGREEMENT;  
OPERATOR GOOD STANDING CERTIFICATE**

In accordance with Section 8.9, Supplier shall provide Exhibit 15 no later than ninety (90) days prior to the Commercial Operation Date.

**EXHIBIT 16**

**RESERVED**



**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name of Issuing Bank]  
[Address of Issuing Bank]  
[City, State of Issuing Bank]

Letter Of Credit No. [\_\_\_\_\_]   
Irrevocable Standby Letter Of Credit

Date of Issue: [\_\_\_\_\_] , 20\_\_

Stated Expiration Date: [\_\_\_\_\_]

Applicant:  
[Name and address]  
[\_\_\_\_\_]   
[\_\_\_\_\_]

Stated Amount: USD \$[\_\_\_\_\_]

Beneficiary:  
[Name and address]  
[\_\_\_\_\_]   
[\_\_\_\_\_]

Credit Available With: [\_\_\_\_\_]

## **EXHIBIT 17**

### **FORM OF LETTER OF CREDIT**

Ladies and Gentlemen:

At the request and for the account of [\_\_\_\_\_] (the “Applicant”), we hereby establish in favor of Sierra Pacific Power Company (“Beneficiary”) for the aggregate amount not to exceed [\_\_\_\_\_] million United States Dollars (\$[\_\_\_\_\_] ), in connection with the Long Term Renewable Power Purchase Agreement dated as of [\_\_\_\_\_] (as amended, restated, amended and restated or otherwise modified, the “Agreement”), by and between the Applicant and Beneficiary this Irrevocable Standby Letter of Credit no. [\_\_\_\_\_] (this “Letter of Credit”) expiring on [date not earlier than 364 days from issuance] (the “Stated Expiration Date”).

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized officer of a Beneficiary completed in the form of Annex 1 hereto (a “Drawing Request”). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an “Automatic Reduction”).

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the “Available Amount”).

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [\_\_\_\_\_] , referencing this Letter of Credit No. [\_\_\_\_\_] . In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as specified in the Drawing Request.

As used in this Letter of Credit, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by Law to remain closed in the State of New York.

## **EXHIBIT 17**

### **FORM OF LETTER OF CREDIT**

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the “Early Expiration Date”) specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of one (1) year each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least thirty (30) days prior to any such expiry date we have sent you written notice (the “Notice of Non-Renewal”) by certified mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary’s authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon receipt of a Beneficiary’s instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998, International Chamber of Commerce, Publication No. 590” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the Laws of the State of New York.

This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which a

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant. All transfer fees are for the account of the Beneficiary.

All Drawing Requests under this Letter of Credit must bear the clause: "Drawn under [*Name of Issuing Bank*], Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]."

This Letter of Credit shall not be amended except with the written concurrence of [*Name of Issuing Bank*], the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by Law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Name of Issuing Bank*]

Authorized signature

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 1

[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],  
Letter of Credit Number [\_\_\_\_\_] dated [\_\_\_\_\_]

**DRAWING REQUEST**

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$\_\_\_\_\_ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable, and include in this Drawing Request]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the Agreement applicable to Beneficiary.

or

B-2) The Letter of Credit will expire within thirty (30) days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicant has failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;

; and

C) You are directed to make payment of the requested drawing to:

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on  
this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 2  
NOTICE OF EARLY EXPIRATION

[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the "Letter of Credit") dated [\_\_\_\_\_] issued by [Issuing Bank] in favor of [\_\_\_\_\_] (the "Beneficiary"). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on\_\_\_\_\_, \_\_\_\_ [*insert a date which is thirty (30) or more days after the date of this notice of early expiration*] (the "Early Expiration Date").

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[ISSUING BANK]

By: \_\_\_\_\_

Name:

Title:

cc:

[Applicant name and address]

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],

Date: \_\_\_\_\_

[Address]

[City, State]

Attn: Trade Services Department

Re: [Name of Issuing Bank], Irrevocable Standby Letter of Credit No. [\_\_\_\_\_]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE

\_\_\_\_\_  
ADDRESS OF TRANSFEREE

\_\_\_\_\_  
CITY, STATE/COUNTRY ZIP

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[\_\_\_\_\_] and maximum of \$[\_\_\_\_\_].

**Select one of the following:**

\_\_\_\_ we enclose a cashier's/certified check

\_\_\_\_ we have wired funds to you through \_\_\_\_\_ bank

\_\_\_\_ we authorize you to debit our account # \_\_\_\_\_ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer



**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

We certify that this transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America [and the jurisdiction of Issuing Bank].

Very truly yours,

[BENEFICIARY NAME]

\_\_\_\_\_

Authorized Signature

The signature(s) of \_\_\_\_\_ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

\_\_\_\_\_

(Signature of Authenticating Bank)

(Name of Bank)

\_\_\_\_\_

(Printed Name/Title)

(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

ANNEX 4

17-9

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**VOLUNTARY REDUCTION REQUEST CERTIFICATE**

[Date]

[insert name of Issuing Bank]  
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (the “Letter of Credit”) dated [\_\_\_\_\_] issued by you in favor of [\_\_\_\_\_] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [\_\_\_\_\_] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by U.S.\$[\_\_\_\_\_] to U.S.\$[\_\_\_\_\_].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this \_\_\_\_ day of \_\_\_\_\_.

[Beneficiary name]

By: \_\_\_\_\_  
Name:  
Title:

cc:

[Applicant name and address]

**EXHIBIT 18**

**YEARLY PC AMOUNT**

Yearly PC Amount	574,307 MWh
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## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20\_\_, is entered into by and among Sierra Pacific Power Company, a Nevada corporation, d/b/a NV Energy, acting in its merchant function capacity (together with its permitted successors and assigns, “NVE”), \_\_\_\_\_, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and \_\_\_\_\_, a \_\_\_\_\_ formed and existing under the Laws of the State of \_\_\_\_\_ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_\_ MW solar-powered electric generating facility and integrated storage facility located \_\_\_\_\_, known as the \_\_\_\_\_ (the “Project”).

WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

[WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.]

WHEREAS, Buyer and Borrower have entered into that certain Power Purchase Agreement, dated as of \_\_\_\_\_ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).

WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

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

**FORM OF LENDERS CONSENT**

**SECTION 1. CONSENT TO ASSIGNMENT**

NVE acknowledges the collateral assignment by Borrower of, among other things all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, NVE agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, NVE agrees to make directly to Administrative Agent all payments to be made by NVE to Borrower under the PPA from and after NVE's receipt of such instructions, and Borrower consents to any such action.

(B) NVE will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA, or (iii) amend or modify the PPA in any manner without providing prior written notice to the Administrative Agent.

(C) NVE agrees to deliver duplicates or copies of all notices of default delivered by NVE under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. NVE may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time plus an additional twenty (20) days to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to NVE which are due and payable by Borrower under the PPA, except that if NVE does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to NVE, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings. NVE consents to the transfer of Borrower's interest under the PPA to a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, NVE shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). Qualified Transferee" means a Person that is at least as financially and operationally qualified as Borrower and, at a

**FORM OF LENDERS CONSENT**

minimum, has a tangible net worth of at least seven million five hundred thousand dollars (\$7,500,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer and has (or agrees to contract with an operator who has) at least three (3) years of experience operating a generating plant of similar technology and similar size to the Project.

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, NVE will enter into a new contract with a Qualified Transferee. Such new contract shall be on substantially the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent NVE reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, NVE or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental bodies and all judicial orders, judgments and decrees (hereinafter “Applicable Law”) in effect at such time. Lenders or Administrative Agent shall cure or cause the cure of any payment defaults then existing under the original PPA prior to NVE entering into a new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower’s obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of NVE against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties’ interests in the Project, the Development Security and Operating Security required under the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract. Nothing herein abrogates, and any Qualifying Assignee shall be subject to, NVE’s rights under Article 6 of the PPA.

(F) In the event a Qualified Transferee succeeds to Borrower’s interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not capable of being cured and do not impair NVE’s rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign the PPA or the new contract entered into pursuant to subparagraph 1(d) above to any Qualified Transferee to whom Borrower’s interest in the Project is transferred, provided that such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Supplier) shall be released from any further liability thereunder accruing from and after the date of such assignment.

**SECTION 2. REPRESENTATIONS AND WARRANTIES**

NVE, acting in its merchant function capacity (and therefore specifically excluding the knowledge of NVE, acting in its transmission function capacity (“NVE Transmission”), as to any of the matters stated below, and without imputation to NVE of any knowledge whatsoever relating to the NVE Transmission, whether as a result of information publicly posted to the open access

## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

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

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(E) the execution, delivery and performance by it of this Consent and the PPA, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(F) neither NVE nor, to NVE's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder; and

(G) to the best of NVE's actual knowledge, (i) no event of Force Majeure exists under, any as defined in, the PPA and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either NVE or Borrower to terminate or suspend its obligations under the PPA.

### **SECTION 3. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to NVE:

[\_\_\_\_\_]
[\_\_\_\_\_]

## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

[\_\_\_\_\_]
Telephone No.: [\_\_\_\_\_]
Telecopy No.: [\_\_\_\_\_]
Attn: [\_\_\_\_\_]

If to Administrative Agent:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Telephone No.: [\_\_\_\_\_]
Telecopy No.: [\_\_\_\_\_]
Attn: [\_\_\_\_\_]

If to Borrower:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Telephone No.: [\_\_\_\_\_]
Telecopy No.: [\_\_\_\_\_]
Attn: [\_\_\_\_\_]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from NVE by providing written notice to NVE of Tax Investor's address for notices. NVE's failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

#### **SECTION 4. ASSIGNMENT, CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW**

This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and the Tax Investor and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). NVE agrees (a) to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to NVE with respect to its interest in the PPA to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of NVE hereunder. Any purported assignment or transfer of the PPA not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).



## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

#### **SECTION 5. COUNTERPARTS**

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

#### **SECTION 6. SEVERABILITY**

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

#### **SECTION 7. ACKNOWLEDGMENTS BY BORROWER.**

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, NVE may perform as set forth herein and that neither the execution of this Consent, the performance by NVE of any of the obligations of NVE hereunder, the exercise of any of the rights of NVE hereunder, or the acceptance by NVE of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by NVE to, or impute knowledge to NVE of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by NVE of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of NVE that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against NVE on account of this Consent.

#### **SECTION 8. JURY TRIAL WAIVER**

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

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

Sierra Pacific Power Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

**EXHIBIT 19**

**FORM OF LENDERS CONSENT**

Title: \_\_\_\_\_

\_\_\_\_\_,  
as Administrative Agent for the Lenders

[Borrower]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

This GUARANTEE (this “Guarantee”), dated as of \_\_\_\_\_, 20\_\_, is issued by \_\_\_\_\_, a [\_\_\_\_\_] organized and existing under the laws of [\_\_\_\_\_] (“Guarantor”) in favor of Sierra Pacific Power Company, a Nevada corporation doing business as NV Energy (“Company”).

Pursuant to that certain Long-Term Renewable Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified or supplemented from time to time, the “Agreement”), by and between Company and [\_\_\_\_\_] a [\_\_\_\_\_] [\_\_\_\_\_] of which Guarantor is the [direct][indirect] parent (“Subsidiary”), and pursuant to which Guarantor will indirectly benefit from the terms and conditions thereof, and the performance by Subsidiary of its obligations thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants, undertakes and agrees with Company as follows:

**Section 1. Definitions.** Capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Agreement.

**Section 2. Guarantee.**

(a) **Guarantee.** Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of Company, the prompt payment when due by Subsidiary of each and every payment obligation of Subsidiary arising under the Agreement up to the limitations set forth in the Agreement, including, without limitation, the payment when due of all indemnities, refunds and liquidated damages payable at any time under the Agreement (the “Guaranteed Obligations”). The Guaranteed Obligations shall further include, without limitation, (i) interest accruing as part of the Guaranteed Obligations according to the terms thereof following the commencement by or against the Subsidiary of any case or proceeding under any Applicable Law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution or composition or adjustment of debt and (ii) all reasonable costs and expenses (including reasonable attorneys’ fees), if any, incurred in successfully enforcing Company’s rights under this Guarantee. Guarantor further agrees that if Subsidiary shall fail to pay or perform in full when due all or any part of the Guaranteed Obligations, Guarantor will promptly pay (or promptly procure the payment of) the same in accordance with, and up to the limitations set forth in the Agreement. Notwithstanding anything in this Guarantee or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guarantee, and the maximum recovery from Guarantor under this Guarantee, shall in no event exceed \_\_\_\_\_ U.S. Dollars (U.S. \$\_\_\_\_\_) plus the reasonable out-of-pocket fees and expenses (including documented attorneys’ fees) for collection and enforcement of this Guarantee to the extent reasonably and actually incurred by Company; *provided that* Guarantor shall not be liable for such fees and expenses of Company under this Section 1 if it is finally determined by a court of competent jurisdiction that no payment under this Guarantee is due. If Subsidiary fails to pay any Guaranteed Obligation when such Guaranteed Obligation is due and owing under the Agreement, Company may present a written demand to Guarantor calling for Guarantor’s payment of such Guaranteed Obligation pursuant to this Guarantee and Guarantor shall be required to make payment with respect to such Guaranteed Obligation specified in that demand within seven (7) days after Guarantor receives such demand.

(b) **Nature of Guarantee.** The Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, even if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must

**FORM OF GUARANTEE**

otherwise be returned by Company upon the occurrence of any action or event including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of the Subsidiary, Guarantor, any other Person or otherwise, all as though the payment had not been made.

(c) **Absolute Guarantee.** Guarantor agrees that its obligations under this Guarantee are irrevocable, absolute, independent, unconditional and continuing and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to the other terms and conditions hereof, as follows:

(i) this Guarantee is a guarantee of payment when due and not of collectability;

(ii) Company may from time to time in accordance with the terms of the Agreement, without notice or demand and without affecting the validity or enforceability of this Guarantee or giving rise to any limitation, impairment or discharge of Guarantor's liability hereunder, (A) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment or performance of the Guaranteed Obligations, (B) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment or performance of the same to the payment or performance of any other obligations, (C) request and accept other guaranties of or security for the Guaranteed Obligations and take and hold security for the payment or performance of this Guarantee or the Guaranteed Obligations, (D) release, exchange, compromise, subordinate or modify, with or without consideration, any security for payment or performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any person with respect to the Guaranteed Obligations, (E) enforce and apply any security now or hereafter held by or for the benefit of Company in respect of this Guarantee or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Company may have against any such security, as Company in its discretion may determine consistent with the Agreement and any applicable security agreement, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Guarantor against Subsidiary or any other guarantor of the Guaranteed Obligations or any other guarantee of or security for the Guaranteed Obligations, and (F) exercise any other rights available to Company under the Agreement, at law or in equity; and

(iii) this Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full of the Guaranteed Obligations and otherwise as set forth in this Guarantee), including, without limitation, the occurrence of any of the following, whether or not Guarantor shall have had notice or knowledge of any of them: (A) any failure to assert or enforce, or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, or the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions of the Agreement or any agreement or instrument executed pursuant thereto or of any other guarantee or security for the Guaranteed Obligations; (C) the Guaranteed

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (D) the personal or corporate incapacity of any person; (E) any change in the financial condition, or the bankruptcy, administration, receivership or insolvency of Subsidiary or any other person, or any rejection, release, stay or discharge of Subsidiary's or any other person's obligations in connection with any bankruptcy, administration, receivership or similar proceeding or otherwise or any disallowance of all or any portion of any claim by Company, its successors or permitted assigns in connection with any such proceeding; (F) any change in the corporate existence of, or cessation of existence of, Guarantor or the Subsidiary (whether by way of merger, amalgamation, transfer, sale, lease or otherwise); (G) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any person; (H) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guaranty of any of the Guaranteed Obligations or failure to apply such security or collateral or failure to enforce such guaranty; (I) the existence of any claim, set-off, or other rights which Guarantor or any affiliate thereof may have at any time against Company or any affiliate thereof in connection with any matter unrelated to the Agreement; and (J) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

(d) **Currency.** All payments made by Guarantor hereunder shall be made in U.S. dollars in immediately available funds.

(e) **Defenses.** Notwithstanding anything herein to the contrary, Guarantor specifically reserves to itself all rights, counterclaims and other defenses that the Subsidiary is or may be entitled to arising from or out of the Agreement, except for any defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Subsidiary, the lack of power or authority of the Subsidiary to enter into the Agreement and to perform its obligations thereunder, or the lack of validity or enforceability of the Subsidiary's obligations under the Agreement or any transaction thereunder.

### **Section 3. Other Provisions of the Guarantee.**

(a) **Waivers by Guarantor.** Guarantor hereby waives for the benefit of Company, to the maximum extent permitted by Applicable Law:

- (i) notice of acceptance hereof;
- (ii) notice of any action taken or omitted to be taken by Company in reliance hereon;
- (iii) any right to require Company, as a condition of payment by Guarantor, to (A) proceed against or exhaust its remedies against Subsidiary or any person, including any other guarantor of the Guaranteed Obligations, or (B) proceed against or exhaust any security held from Subsidiary or any person, including any other guarantor of the Guaranteed Obligations;
- (iv) subject to Clause 2(e), any defense arising by reason of the incapacity, lack of authority or any disability of Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Subsidiary

**FORM OF GUARANTEE**

from any cause other than payment in full of the Guaranteed Obligations or termination of this Guarantee in accordance with its terms;

(v) any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(vi) any requirement that Company be diligent or prompt in making demands hereunder or give notices of default under the Agreement, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, and any right to consent to any thereof; and

(vii) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety, including promptness, diligence, notice of acceptance and notice of any default under the Agreement, notice of presentment, demand, protest, and notice of dishonor or nonpayment, notice of acceleration or other demand and any other notice with respect to this Guarantee.

(b) **Deferral of Subrogation.** Until such time as the Guaranteed Obligations have been paid or performed in full, notwithstanding any payment made by Guarantor hereunder or the receipt of any amounts by Company with respect to the Guaranteed Obligations, (i) Guarantor (on behalf of itself, its successors and assigns, including any surety) hereby expressly agrees not to exercise any right, nor assert the impairment of such rights, it may have to be subrogated to any of the rights of Company against Subsidiary or against any other collateral security held by Company for the payment or performance of the Guaranteed Obligations, (ii) Guarantor agrees that it will not seek any reimbursement from Company in respect of payments or performance made by Guarantor in connection with the Guaranteed Obligations, or amounts realized by Company in connection with the Guaranteed Obligations and (iii) Guarantor shall not claim or prove in a liquidation or other insolvency proceeding of the Subsidiary in competition with the Company. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full or otherwise fully satisfied, such amount shall be held in trust by Guarantor for the benefit of Company and shall forthwith be paid to Company, to be credited and applied to the Guaranteed Obligations.

**Section 4. Representations and Warranties of Guarantor.** Guarantor hereby represents, warrants, and undertakes to Company as follows:

(a) Guarantor is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and has the corporate power, authority and legal right to own its property and assets and to transact the business in which it is engaged.

(b) Guarantor has full power, authority and legal right to execute and deliver this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor, and to perform its obligations hereunder and thereunder.

(c) The execution, delivery and performance of this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly authorized by all necessary

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

company action on the part of Guarantor and do not contravene or conflict with Guarantor's memorandum and articles of association.

(d) This Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly executed and delivered by Guarantor and constitute the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity.

(e) Neither the execution and delivery of this Guarantee nor the performance of the terms and conditions hereof by Guarantor shall result in (i) a violation or breach of, or a default under, or a right to accelerate, terminate or amend, any contract, commitment or other obligation to which Guarantor is a party or is subject or by which any of its assets are bound, or (ii) a violation by Guarantor of any Applicable Law, which in either case would invalidate or materially impair Guarantor's ability to perform its obligations under this Guarantee.

(f) There are no actions, suits, investigations, proceedings, condemnations, or audits by or before any court or other governmental or regulatory authority or any arbitration proceeding pending or, to its actual knowledge after due inquiry, threatened against or affecting Guarantor, its properties, or its assets, which if determined adversely to the Guarantor, would be likely to have a material adverse effect on the ability of Guarantor to perform its obligations under this Guarantee.

(g) All necessary action has been taken under Applicable Laws to authorize the execution, delivery and performance of this Guarantee. No governmental approvals or other consents, approvals, or notices of or to any person are required in connection with the execution, delivery, performance by Guarantor, or the validity or enforceability, of this Guarantee.

**Section 5. Notices.** All notices, demands, instructions, waivers, consents, or other communications required or permitted hereunder shall be in writing in the English language and shall be sent by personal delivery, courier or certified mail, to the following addresses:

(a) If to Guarantor:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_]

(b) If to Company:

Sierra Pacific Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile No.: 702-402-2455  
Email: ContractManagement@nvenergy.com

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

Attn: [\_\_\_\_\_]

With a copy to (which shall not constitute notice):

Sierra Pacific Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile: (702) 402-2069  
Attn: [\_\_\_\_\_]

The addresses of either party for notices given pursuant to this Guarantee may be changed by means of a written notice given to the other party at least three (3) Business Days (being a day on which clearing banks are generally open for business in the jurisdiction of the party to whom a notice is sent) prior to the effective date of such change. Any notice required or authorized to be given hereunder shall be in writing (unless otherwise provided) and shall be served (i) personally or (ii) by courier service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the intended Person.

#### **Section 6. Miscellaneous Provisions.**

(a) **Waiver; Remedies Cumulative.** No failure on the part of Company to exercise, and no delay on the part of Company in exercising, any right or remedy, in whole or in part hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by Company shall be effective unless it is in writing and such writing expressly states that it is intended to constitute such waiver. Any waiver given by Company of any right, power or remedy in any one instance shall be effective only in that specific instance and only for the purpose for which given, and will not be construed as a waiver of any right, power or remedy on any future occasion. The rights and remedies of Company herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) **Successors and Assigns.** This Guarantee shall be binding upon the successors of Guarantor and shall inure to the benefit of Company and its successors and permitted assigns. Guarantor shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of Company. Any purported assignment or delegation without such written consent shall be null and void. Company may assign its rights and obligations hereunder to any assignee of its rights under the Agreement permitted in accordance with the Agreement.

(c) **Amendment.** This Guarantee may not be modified, amended, terminated or revoked, in whole or in part, except by an agreement in writing signed by Company and Guarantor.

(d) **Termination, Limits and Release.** This Guarantee is irrevocable, unconditional and continuing in nature and is made with respect to all Guaranteed Obligations now existing or hereafter arising and shall remain in full force and effect until the earlier of (i) the time when in accordance with the terms of the Agreement all of the Guaranteed Obligations are fully satisfied and discharged, (ii) \_\_\_\_\_ [need fixed termination date – term of agreement plus 9 months] and (iii) then, and only then, this Guarantee shall automatically be released and shall be of no further force and effect; otherwise, it shall remain in full force and effect. Other than as set



## **EXHIBIT 20**

### **FORM OF GUARANTEE**

forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor.

**(e) Law and Jurisdiction.**

(i) THIS GUARANTEE IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD FOR ANY PRINCIPLES OF CONFLICTS OF LAW THAT WOULD DIRECT OR PERMIT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(ii) GUARANTOR AND COMPANY IRREVOCABLY AGREE THAT THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY SUIT, ACTION OR PROCEEDING, AND TO SETTLE ANY DISPUTE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS GUARANTEE, AND FOR SUCH PURPOSES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURT, AND GUARANTOR CONSENTS TO THE JURISDICTION OF, AND TO THE LAYING OF VENUE IN, SUCH COURT FOR SUCH PURPOSES AND HEREBY WAIVES ANY DEFENSE BASED ON LACK OF VENUE OR PERSONAL JURISDICTION OR OF INCONVENIENT FORUM.

**(f) Survival.** All representations and warranties made in this Guarantee and by Guarantor in any other instrument, document, or agreement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Guarantee.

**(g) Severability.** Any provision of this Guarantee that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where provisions of law or regulation resulting in such prohibition or unenforceability may be waived they are hereby waived by Guarantor and Company to the full extent permitted by law so that this Guarantee shall be deemed a valid binding agreement in each case enforceable in accordance with its terms.

**(h) Third Party Rights.** The terms and provisions of this Guarantee are intended solely for the benefit of Company and Guarantor and their respective successors and permitted assigns, and it is not the intention of Company or Guarantor to confer upon any other persons any rights by reason of this Guarantee.

**(i) No Set-off, Deduction or Withholding.** Guarantor hereby guarantees that payments hereunder shall be made without set-off or counterclaim and free and clear of and without deduction or withholding for any taxes; provided, that if the Guarantor shall be required under Applicable Law to deduct or withhold any taxes from such payments, then (i) the sum payable by Guarantor shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable pursuant to this sentence) the Company receives an amount equal to the sum it would have received had no such deduction or withholding been required, (ii) Guarantor shall make such deduction or

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

withholding, and (iii) Guarantor shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law.

(j) **Waiver of Right to Trial by Jury.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF GUARANTOR AND COMPANY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTEE. EACH OF GUARANTOR AND COMPANY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

(k) **Counterparts; Facsimile Signatures.** This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile shall be deemed to be original signatures.

[Signature page follows.]

**EXHIBIT 20**

**FORM OF GUARANTEE**

IN WITNESS WHEREOF, Guarantor has duly executed this Guarantee on the day and year first before written.

**[GUARANTOR]**

---

Name:

Title:

Acknowledged and Accepted:

**SIERRA PACIFIC POWER COMPANY D/B/A NV  
ENERGY, A NEVADA CORPORATION**

---

Name:

Title:

**EXHIBIT 21**

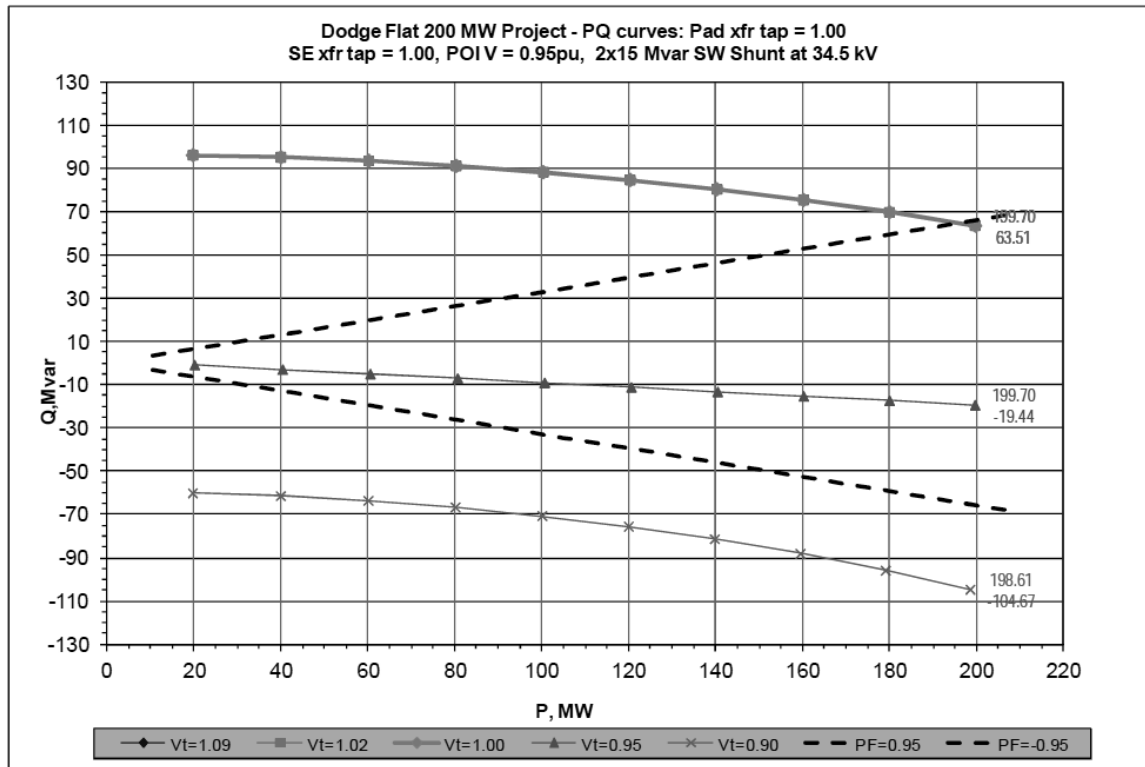
**WORK SITE AGREEMENT**

**CONFIDENTIAL**

## EXHIBIT 22

### REACTIVE CAPABILITY CURVES

The unit real/reactive capability curve is based on standard inverter capabilities and supplier has the right to update this Exhibit 22 to reflect final inverter selection, which shall be in compliance with the Approved Vendor List.



**EXHIBIT 23**

**APPROVED VENDORS LIST**

[To be provided by Buyer]

## **EXHIBIT 24**

### **OPERATING PROCEDURES**

The operating guidelines of the Generation Facility and Energy Storage Facility will be defined herein. The main operations are broken into two parts: Charging Notice and Discharging Notice. The Operating Procedures set forth below are illustrative. Final Operating Procedures for the Facilities will be mutually developed and agreed upon within 90 days of the Operation Date. The Operating Procedures will be periodically reviewed to optimize operations for both parties. Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures.

#### **I. Forecasting**

- A. Supplier will provide to Buyer a 7-day hourly rolling availability forecast, the Availability Notice, of the solar resource, which incorporates the following information:
  - 1) Supplier's optimal charging schedule, including charging window and hourly charging rate;
  - 2) hourly maximum charging rate availability of the Storage Facility;
  - 3) hourly minimum charging rate availability of the Storage Facility; and
  - 4) current status of the Storage Facility, expressed in a percentage of total battery available for discharge or state of charge;
- B. Planned and forced outage notification and scheduling shall be via the Availability Notice. Additionally, in the event of a forced outage, Supplier shall notify the appropriate NV Energy personnel of forced outage and expected return to service.

#### **II. Charging Notices and Discharging Notices**

- A. A Discharging Notice will be delivered to the Supplier in conjunction with each Charging Notice
- B. Buyer will provide to Supplier, per the Western Electricity Coordinating Council ("WECC") pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging and Discharging Notice will incorporate Supplier's solar resource availability per Supplier's 7-day hourly rolling forecast.
- C. For the Charging component of the Charging and Discharging Notice, Buyer shall provide Supplier with the following information:
  - 1) the hours in which Supplier shall charge the Storage Facility;
  - 2) the total capacity the Supplier shall charge the Storage Facility to, by the end of the last hour in which Supplier shall charge the Storage Facility.
  - 3) Buyer, whenever feasible, will utilize Supplier's provided optimal charging window identified in section I.A.1.
- D. For the Discharging Notice, Buyer shall provide Supplier with the following information:
  - 1) the hours in which the Supplier shall discharge the Storage Facility;
  - 2) the energy discharged in each hour the Supplier shall discharge the Storage Facility.

## **EXHIBIT 24**

### **OPERATING PROCEDURES**

#### **III. Modifications to the Charging and Discharging Notices**

- A. On the day of operation, to the degree that it is technically feasible, Buyer reserves the right to make adjustments to its Charging Notices and Discharging Notices. To this end, Supplier will provide to Buyer a real-time software application which allows Buyer to access the status of the Storage Facility, as well the current forecasts of PV generation.
- B. To make intraday adjustments on the day of operation, Buyer will communicate with Supplier in a manner that is mutually agreeable to both Buyer and Supplier:
  - 1) either through a software application which allows Buyer to directly adjust the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility; or
  - 2) telephonically with Supplier to verbally request adjustments to the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility; or
  - 3) through a software application which allows for real-time communication, such as Microsoft Lync, Skype for Business, etc. to request adjustments to the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility.
  - 4) A realtime dispatch signal will be the primary control of the Facility
- C. Supplier will communicate with Buyer, utilizing the manner of communication mutually agreed upon above, whether Buyer's requested adjustment to the charge or discharge schedule contained in Buyer's Charging Notice and Discharging Notice is feasible, both in terms of the hour(s) requested, as well as the rate of charge or discharge requested. Should Buyer's requested adjustment to the charge or discharge schedule be infeasible, due to the current charged or discharged status of the Storage Facility, Buyer and Supplier shall mutually agree to:
  - 1) an alternate adjustment to the charge or discharge schedule, which is technically feasible given the current state of charge or discharge of the Storage Facility; or
  - 2) reject Buyer's adjustment to the charge or discharge schedule, and resume Buyer's original charge or discharge schedule as specified in Buyer's Charging and Discharging notice.
  - 3) any adjustments necessary to future charge or discharge schedules contained in Buyer's Charging and Discharging Notices which will be rendered infeasible due to Buyer's requested adjustment to the charge or discharge schedules on the day of operation.



**OPERATING PROCEDURES**

**IV. Delivery**

The Supplier will deliver the Discharging Energy to the point of delivery in response to:

1. Primarily with a realtime dispatch command Per section III above
  2. Or an automated, scheduled Discharge Notice per section II.D above as a backup.
- The total discharged energy in realtime will be limited to the Stored Energy Level of the Storage Facility and to the available power rating of the Generating Facility.

If a Discharging Notice is not scheduled, not dispatched or cancelled and the Stored Energy Level requested from the Charging Notice exceeds XX% of the Maximum Stored Energy Level for greater than X days the Seller shall request to schedule a discharge in order to return the Storage Facility to this percentage of Maximum Stored Energy Level after the XX day.

**V. Measurement and Verification**

Buyer will also have real time access to view the Supplier's Energy Management system and data historian that will monitor the Storage Facility's state of health metrics as well usage metrics such as Equivalent Cycles to date. In accordance to Exhibit 1 Buyer will be allowed to use 300 Equivalent Cycles per year. Buyer will be able to monitor the amount of cycles that have occurred over the life of the project on a real-time basis. As soon as the Storage Facility meets the cycle limit, the supplier will no longer be able to execute Charge and Discharges for that year.

**VI. Scheduling Reports**

Supplier will send out a daily report to the Buyer so they may transmit to other parties. The report will include at a minimum the following day's Charging Notice and Discharging Notice as well as forecasted Energy Generation, including the forecasted output of the solar facility in so much as it is reduced by charging the Storage Facility.

## **EXHIBIT 25**

### **STORAGE CAPACITY TESTS**

Upon no less than ten (10) Business Days prior notice to Buyer, and at any time up until the Commercial Operation Date, Supplier shall schedule and complete a Storage Capacity Test to determine the Storage Contract Capacity of the Storage Facility for the first Contract Year. The Storage Capacity Test shall require the Supplier to maintain Discharging Energy from the Storage Facility for four consecutive (4) hours and the Storage Contract Capacity in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the four (4) hour test period, as measured at the Delivery Point, divided by four (4); provided, however, that the Storage Contract Capacity cannot exceed fifty (50) MW.

Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than five (5) Business Days prior notice to Buyer, Supplier shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon five (5) days prior written notice to Supplier if Buyer reasonably believes that the Storage Capacity has varied materially from the results of the most recent tests. Supplier shall have the right to run up to three (3) retests of the Storage Capacity Test at any time upon five (5) days prior written notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Utility Practice). Except for establishing the Storage Contract Capacity prior to the Commercial Operation Date, the Supplier may with Buyer's approval, fulfill the requirement to conduct a Storage Capacity Test by use of operational data from a Meter.

No later than five (5) days following any Storage Capacity Test, Supplier shall submit a testing report detailing results and findings of the test. The report shall include Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. The actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

Supplier will perform a Storage Capacity Test generally in the following manner and utilizing the following steps:

- 1) Supplier will fully charge the Storage Facility so that it is in a state that it is made commonly and typically available to Buyer as fully charged and dispatchable;
- 2) Supplier will discharge the Storage Facility at full capacity, over a duration of four (4) full and consecutive hours;
- 3) Supplier will add the quantity of MWh produced by the Storage Facility for each of the four (4) full and consecutive hours to produce a sum quantity of MWh for the four (4) hour full discharge of the Storage Facility;
- 4) Supplier will divide the sum quantity of MWh produced over the four (4) hour full discharge of the Storage Facility by a factor of four(4), to produce a value that will become the Storage Contract Capacity for the Contract Year.

Example:

## **EXHIBIT 25**

### **STORAGE CAPACITY TESTS**

Hour 1 Discharge = 25 MWh

Hour 2 Discharge = 25 MWh

Hour 3 Discharge = 25 MWh

Hour 4 Discharge = 25 MWh

$25 + 25 + 25 + 25 = 100 \text{ MWh}$

$100 \text{ MWh} / 4 \text{ hours} = 25 \text{ MWh}$

Storage Contract Capacity = 25 MW

## **EXHIBIT 26**

### **STORAGE AVAILABILITY LIQUIDATED DAMAGES**

The Availability Liquidated Damages in Summer Months, subject to the Availability Liquidated Damages for Summer Months Cap, in which the Storage Facility availability is less than the Guaranteed Storage Availability shall be calculated as follows:

$$\text{Availability Liquidated Damages}_m = \text{Undischarged Energy Price} * \text{Excess Undischarged Energy}$$

Where:

Availability Liquidated Damages  
for Summer Months Cap Per  
Contract Year (\$)

$$= \$4,000,000$$

Undischarged Energy Price

$$= \text{simple average of the COB for the On-Peak hours correlating to the day or days that the Storage Facility was unavailable (in \$/MWh)}$$

Guaranteed Storage Availability  
Threshold

$$= 122 \text{ MWh}$$

Undischarged Energy<sub>m</sub>

$$= \text{the amount of Discharging Energy in a Summer Month in MWh that was unable to be scheduled and received by Buyer because the Storage Facility was, in whole or in part, mechanically out of service or otherwise not physically capable of performing in accordance with the operational requirements specified in Exhibit 1, including responding to a Discharge or Charge Notice consistent with Exhibit 24, due to an outage, other than a Planned Outage under Section 11.1, but excluding Force Majeure events. The amount of Undischarged Energy will be reasonably determined by Supplier.}$$

Excess Undischarged Energy<sub>m</sub>

$$= \text{the amount by which Undischarged Energy exceeds the Guaranteed Storage Availability Threshold}$$



**REN-6-DFS (b)**

## Technical Appendix REN-6-DFS (b)

Summary of Nevada Administrative Codes applicable to Dodge Flat Solar.

NAC § 704.8885 (New renewable energy contracts: Review by Commission; criteria for approval) and NAC § 704.8887 (New renewable energy contracts: Determination of whether price for electricity is reasonable) requires that the Companies provide specific information regarding new renewable energy contracts for which it is seeking approval. For Dodge Flat, this information is set forth below:

NAC § 704.8885(2)(a) requires the Commission to determine the reasonableness of the price of electricity based on the factors set forth in NAC § 704.8887, detailed in pertinent part as follows:

NAC § 704.8887(1) instructs the utility to calculate the price for electricity acquired or saved pursuant to a new renewable energy contract or energy efficiency contract by calculating the levelized market price for the electricity.

*The LCOE for the contract is \$29.23/MWh for PV only, and \$34.87/MWh with battery storage, including network upgrade costs. The rate is for the purchase of energy and PCs at a blended rate, as well as the use and maintenance associated with the battery energy storage system.*

NAC § 704.8887(2)(a) requires the Commission to address whether the new renewable energy contract or energy efficiency contract comports with the utility provider's most recently approved plan to increase its supply of or decrease the demand for electricity.

*This project is being proposed as part of the utilities' triennial integrated resource plan to increase its supply of electricity. The contract will contribute towards the fulfillment of the Sierra Renewable Portfolio Standard ("RPS") compliance.*

NAC § 704.8887(2)(b) addresses the reasonableness of any price indexing provisions set forth in the new renewable energy contract or energy efficiency contract.

*The price for renewable energy and PCs set forth in this contract is \$27.51/MWh with no escalation for the term of the contract. Should the Fish Springs Ranch project also be approved (see discussion below), the price will be \$26.51/MWh with no escalation for the term of the contract. The capacity price for the storage portion of the PPA is \$6,110/MW-month with 2 percent annual escalation for the term of 15 years.*

NAC § 704.8887(2)(c) address whether the new renewable energy systems will reduce environmental costs in this State as compared to competing facilities or energy systems that use fossil fuels.

*The technology that the NextEra project utilizes creates zero air emissions. When compared to a modern gas-fired combined cycle unit, the emissions avoided are shown in the table below.*

#### **AVOIDED AIR EMISSIONS**

<b>AVOIDED AIR EMISSIONS<sup>1</sup></b>					
	<b>S02</b>	<b>CO</b>	<b>VOC</b>	<b>NOX</b>	<b>PM</b>
<b>Project</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>	<b>ton/yr</b>
<b>Dodge Flat + Battery Storage</b>	<b>1.08</b>	<b>0.81</b>	<b>0.42</b>	<b>8.97</b>	<b>4.03</b>

<sup>1</sup> Avoided Emissions derived from average heat rate for a state of the art combined cycle unit. This is a conservative assumption as avoided emissions are likely to be from higher heat rate market purchases or from older, less efficient units.

*According to the bidder, the project uses de minimis amounts of water, creates no waste streams in its energy production, efficiently utilizes land for solar energy generation, and has minimal impacts on wildlife.*

NAC § 704.8887(2)(d) addresses the net economic impact and all environmental benefits and environmental costs to this State in accordance with NAC §§ 704.9005 to 704.9525, inclusive, and section 7 of this regulation (measurement and verification protocol for all energy efficiency measures).

*According to the bidder, the net economic impact of the project includes:*

- *A temporary increase in workforce during the construction phase of the facility of an estimated 339 positions;*
- *A permanent long-term increase in the workforce for the operation and maintenance of the facility of an estimated 37 positions at an estimated average salary of \$45,760 annually, and a total payroll of \$60 million over 25 years; and,*
- *The environmental benefit will be a reduction in air emissions as shown in the table above.*



NAC § 704.8887(2)(e) addresses any economic benefits that might inure to any sector of the economy of this State.

*The economic benefits of the project include increased property tax in Wadsworth and Washoe County, and sales taxes from the purchase of local goods. Other benefits include an increase in short-term construction employment and long term operations employment.*

NAC § 704.8887(2)(f) addresses the diversity of energy sources being used to generate electricity that is consumed in this State.

*Commission approval of the PPA will increase the diversity of energy sources used to generate electricity that is consumed in Nevada. Sierra's portfolio of renewable energy will increase with a commensurate decrease in its reliance on fossil fuel generation.*

NAC § 704.8887(2)(g) addresses the diversity of energy suppliers generating or selling electricity in this State.

*NextEra Energy Resources Acquisitions, LLC is a U.S.-based company, headquartered in Juno Beach, Florida. Its parent company, NEER, is a leading wholesale power generator, operating power plants and offering a diverse fuel mix to utilities, retail electricity providers, power cooperatives, municipal electric providers and large industrial companies. NEER is the world's largest operator of wind and solar resources. The Dodge Flat Solar PPA project will be in addition to the one existing PPA between NextEra and NV Energy, and one of the first PPAs to include battery storage.*

NAC § 704.8887(2)(h) addresses the value of any price hedging or energy price stability associated with the new renewable energy contract or energy efficiency contract.

*The agreement has a low starting price with no price escalation over the term of the contract. The price is therefore known through the term of the contract and is not subject to fuel risk. As a result of the exceptional pricing in this agreement, it represents one of the lowest LCOE values of any renewable agreement the Companies have under contract.*

NAC § 704.8887(2)(i) addresses the date on which each renewable energy system is projected to begin commercial operation.

*The project's commercial operation date is estimated to be December 1, 2021.*

NAC § 704.8887(2)(j) addresses whether the utility provider has any flexibility concerning the quantity of electricity that the utility provider must acquire or save pursuant to the new renewable energy contract or energy efficiency contract.

*The agreement calls for Sierra to take all net energy, including any excess energy and PCs generated by the facility. Curtailment or re-dispatch of up to 100 percent of the expected output can be ordered by the transmission provider, electric system authority, or market operator. Sierra has no obligation to pay for such curtailed product. Sierra has no obligation to pay for generation in excess of the maximum amount. Excess energy is paid for at the lesser of: (i) 50 percent of the applicable product rate, or (ii) the California Oregon Border ("COB") price for each delivery hour. The Company has flexibility in operation of the battery storage system which can be charged and discharged at the discretion of the Company.*

NAC § 704.8887(2)(k) addresses whether the new renewable energy contract or energy efficiency contract will result in any benefits to the transmission system of the utility provider.

*The System Impact Study and Facilities Study for this solar facility have been completed and the project has an executed Large Generator Interconnection Agreement ("LGIA"). The System Impact Study did not identify any negative impacts on Sierra's transmission grid that could not be mitigated by the transmission system additions proposed in the study. The project generates electricity which will provide benefits to the transmission grid by providing real and reactive power at the point of interconnection. See Technical Appendix TRAN-2 for information on the LGIA.*

NAC § 704.8887(2)(l) addresses whether the electricity acquired or saved pursuant to the new renewable energy contract or energy efficiency contract is priced at or below the utility provider's long-term avoided cost rate.

*When compared to the long-term avoided costs approved by the Commission in Docket No. 17-11003, the blended rate for energy and PCs is lower in all years than the long-term avoided costs over the life of the agreement.*

NAC § 704.8887(3) addresses the price of electricity acquired or saved in a renewable energy contract or energy efficiency contract for the solar energy requirement of its portfolio standard to be evaluated separately.

*The cost of power and PCs delivered from the project is competitive to both the prices Sierra pays for its current portfolio of renewable projects and the other compliant bids submitted in the 2018 RERFP. In addition, the price received in this PPA represents one of the best prices that the Companies have ever received for a renewable energy agreement.*

NAC § 704.8885(2)(b) addresses the term of the contract.

*The term of the PPA is 25 years, with a storage term of 15 years.*

NAC § 704.8885(2)(c) addresses the location of the portfolio [renewable] energy system or efficiency measure that is subject to the contract.

*The project is located near Wadsworth in Washoe County, Nevada*

NAC § 704.8885(2)(d) addresses the use of natural resources by each renewable energy system that is subject to the contract.

*The project utilizes irradiance from the sun gathered by solar panels. No water is consumed during the operation of the project other than the occasional cleaning of the panels.*

NAC § 704.8885(2)(e) addresses the firmness of the electricity to be delivered and the delivery schedule.

*The project generates non-firm energy that will be delivered into the utility's grid which will be delivered through firm transmission pursuant to the designation of the facility as a network resource.*

NAC § 704.8885(2)(f) addresses the delivery point for the electricity.

*The generating facility will be interconnected to the proposed Olinghouse 345kV Substation in northern Nevada. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-DFS (a).*

NAC § 704.8885(2)(g) addresses the characteristics of similar renewable energy systems.

*The characteristics of the project are similar to that of Sierra's other large scale PV systems, including Boulder Solar II, Nevada Solar One, and Switch Station II. The plant design is proven technology. The project includes a battery storage system which uses proven lithium-ion battery and inverter technology.*

NAC § 704.8885(2)(h) addresses the requirements for ancillary services.

*Requirements for ancillary services are not affected by the PPA.*

NAC § 704.8885(2)(i) addresses the unit contingent provisions.

*The energy from the facility is contingent upon the availability of the unit. If the unit is not producing within the performance specifications of the PPA, then the energy will be replaced from other sources.*

NAC § 704.8885(2)(j) addresses the system peak capacity requirements of the utility provider.

*The power purchase agreement will provide benefits to the system peak capacity requirements of the Companies.*

NAC § 704.8885(2)(k) addresses the requirements for scheduling.

*All net energy from the facility will be delivered directly to Sierra's electric grid. The facility will be considered a network resource within Sierra's system and output produced by the facility will be used to meet the Sierra's native load.*

NAC § 704.8885(2)(l) addresses conditions and limitations on the transmission system.

*The System Impact Study for this project has been completed. Network Upgrades identified for this project are the new Olinghouse 345 kV Substation. This project will require transmission provider interconnection facilities, which includes associated protection, communications, and metering, that are directly paid for by the interconnection customer. The estimated cost for the Network Upgrades is \$12,565,000.*

NAC § 704.8885(2)(m) addresses project insurance.

*The PPA requires the supplier to provide workers compensation insurance of not less than \$1 million per occurrence, general liability of not less than \$5 million annual aggregate, and automobile liability insurance of at least \$2 million aggregate.*

NAC § 704.8885(2)(n) addresses the costs for procuring replacement power in the event of non-delivery.

*In the event the project does not meet certain performance requirements, the supplier is obligated to compensate Sierra for shortfalls in energy and PCs. Compensation for an energy shortfall is based upon the difference between the cost of replacement power, as specified in the PPA, and the PPA price. However, should the cost of replacement power be less than the contract price of power from supplier, the replacement cost will be \$0.00. Compensation for a PC shortfall is determined by Sierra exercising its reasonable discretion based on the estimated cost of purchasing PCs.*

NAC § 704.8885(2)(o) addresses information verifying that each renewable energy system transmits or distributes or will transmit or distribute the electricity that it generates in accordance with the requirements of NRS 704.7815, as amended.

*The generating facility uses renewable solar energy to generate electricity and transmits that energy to Sierra. Therefore, the generating facility comports with NRS §§ 704.7815(1)(a) and 704.7815 (1)(b).*

NAC § 704.8885(2)(p) addresses the total number of renewable energy systems that the owner of the renewable energy system is or has been associated with as an owner or operator.

*NEER and its parent company NextEra Energy, Inc., has a proven track record of developing, constructing and operating utility-scale solar power plants. The company has been generating clean energy for more than 25 years, and is the largest generator of wind and solar power in North America, with approximately 14,000 MW of wind, 2,600 MW of solar, and 100 MW of battery storage commercially operating in its portfolio as of 2016. Between 2017 and 2018, NextEra expects to add approximately 2,400 – 4,100 MW of new contracted wind generation, and 400 – 1,300 MW of new contracted solar generation. As of 2017, NextEra owned and operated more than 100 renewable wind facilities and some 30 renewable solar facilities throughout the United States and Canada.*

NAC § 704.8885(2)(q) addresses the points of interconnection with the electric system of the utility.

*The generating facility will be interconnected to the proposed Olinghouse 345 kV switching station on the Valmy – East Tracy #1 345 kV line. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-DFS (a).*

NAC § 704.8885(2)(r) addresses the interconnection priority which has been established for the available transmission capacity of the utility provider for all proposed renewable energy systems that will interconnect and begin commercial operation within the three-year period immediately following the date on which the new renewable energy contract or energy efficiency contract is submitted for approval.

*Commission approval of the project will not affect any pending Federal Energy Regulatory Commission (“FERC”) interconnection priorities. Pursuant to the provisions of the Company’s FERC approved Open Access Transmission Tariff (“OATT”), interconnection priority of a generator is determined based on the date the requesting customer submits a valid interconnection request.*

NAC § 704.8885(2)(s) addresses any requests for transmission service that have been filed with the utility provider.

*A LGIA between Sierra and Dodge Flat Solar, LLC was executed on January 24, 2018 with an in-service date of April 1, 2020.*

NAC § 704.8885(2)(t) addresses any evidence that an environmental assessment, an environmental impact statement or an environmental impact report is being completed or has been completed with regard to the renewable energy system, or any evidence that a contract has been executed with an environmental contractor who will prepare such an assessment, statement or report within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*The project is in an advanced stage of development with respect to permitting and environmental compliance. The Dodge Flat Solar project as proposed by NextEra is sited on privately owned parcels. Access to the site crosses Pyramid Lake Paiute Reservation land held in trust by the Bureau of Indian Affairs (BIA). Access between the privately owned parcels will cross public land managed by the Bureau of Land Management (BLM). NextEra is currently working with the Pyramid Lake Paiute Tribe to obtain a right of entry easement for the access road to the proposed site. Additionally, an application for a right-of-way grant for access between the private parcels was submitted to BLM in October 2017. It is anticipated that one of the federal agencies will take the lead in initiating regulatory environmental review under the National Environmental Policy Act (NEPA).*

NAC § 704.8885(2)(u) addresses permits required for the renewable energy systems within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*Permits necessary for the construction and operation of the NextEra Dodge Flat project are listed in Exhibit 12 of the PPA, Technical Appendix – REN-6-DFS (a).*

NAC § 704.8885(2)(v) addresses applications for development rights with the appropriate Federal agencies (including BLM), where the granting of such developmental rights is not contingent upon a competitive bidding process.

*Applications required from federal agencies for the development of NextEra Dodge Flat are listed in Exhibit 12 of the PPA, Technical Appendix – REN-6-DFS (a).*

NAC § 704.8885(2)(w) addresses any evidence that establishes rights of ownership, possession or use concerning land or natural resources, including, without limitation, deeds, land patents, leases, contracts, licenses or permits concerning land, geothermal drilling rights or other rights to natural resources.

*NEER has executed options to purchase roughly 1,200 acres of land in unincorporated Washoe County, northeast of the town of Wadsworth, Nevada. Land needed for access from Highway 447 along Olinghouse Road is in the process of being secured with the Pyramid Lake Paiute Tribe via a Right of Entry Easement. Land needed for access between private land parcels is being secured via a right of way from the Bureau of Land Management (“BLM”). NextEra has secured purchase option agreements with the private land owners Nevada Land and Resource Holdings, Inc. and New Nevada Lands, LLC. NextEra has also initiated the federal permitting process with the BLM for access to and between the private parcels (summer 2017 for expected approval March 2019). The access road leading to the site also crosses Pyramid Lake Paiute Reservation land held in trust by the Bureau of Indian Affairs (BIA). The BIA is preparing a Determination of National Environmental Policy Act (“NEPA”) Adequacy (“DNA”), which is tiered to a larger road project for the Dodge Flats access road. The project received its Special Use Permit in February 2018. In addition, included under the purchase option agreements, is 250 acre feet of temporary water rights for use during construction. Finally, a permanent water supply of 18 acre feet, available from existing wells onsite is part of the purchase option agreements.*

NAC § 704.8885(2)(x) addresses whether the utility provider has any economical dispatch rights.

*Sierra has economical dispatch rights for battery storage charging and discharging. Sierra does not have economic dispatch rights for the solar PV component, but curtailment or re-dispatch of up to 100 percent of the net energy can be ordered by the transmission provider, electric system*

*authority, or market operator. Sierra has no obligation to pay for curtailed product or for generation in excess of the maximum amount defined in the PPA.*