

# **BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

IN THE MATTER of the Application of NEVADA POWER COMPANY, seeking approval of the Second Amendment to its Emissions Reduction and Capacity Replacement Plan seeking approval of a 100 MW Purchased Power Agreement with Techren Solar and the retirement of Reid Gardner Unit 4 on or about February 28, 2017.

Docket No. 16-08\_\_\_\_

## **VOLUME 2 OF 4**

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

#### **TECHNICAL APPENDIX**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>PAGE NUMBER</b>
<b>LOAD FORECAST</b>		
REN-1	2016 ERCR RE RFP Protocol with Attachments (Part 1 of 2)	2

**REN-1**

**2016**  
**EMISSIONS REDUCTION AND CAPACITY REPLACEMENT**  
**RENEWABLE ENERGY**  
**REQUEST FOR PROPOSALS**

<b>Issued:</b>	<b>February 24, 2016</b>
<b>Responses Due:</b>	<b>5:00 p.m. PPT, March 18, 2016</b>
<b>Bid Event Website:</b>	<u><a href="http://PowerAdvocate.com">PowerAdvocate.com</a></u>

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## 1.0 OVERVIEW

Nevada Power Company d/b/a NV Energy (“NV Energy” or the “Company”) is issuing this 2016 Emissions Reduction and Capacity Replacement plan renewable energy request for proposal (“2016 ERCR RE RFP” or “RFP”) to interested parties with the intent of securing renewable energy resources and all associated environmental and energy attributes. Proposals submitted in this RFP will be evaluated by the Company such that 135 megawatts<sup>1</sup> of new renewable energy resources may be selected. Additionally, through the Company’s evaluation of proposals submitted, **the Company may contract for additional megawatts of renewable energy resources** should additional demand be identified. Per the direction of the Public Utilities Commission of Nevada (“PUCN”), the Company will follow the schedule for evaluation and execution as set forth in this bid protocol.

In 2013, Senate Bill No. 123 (SB 123) was enacted by the Nevada Legislature. This legislation requires Nevada Power Company to file with the Public Utilities Commission of Nevada (“PUCN”) as part of an integrated resource plan submitted under NRS§704.741 a comprehensive plan for the reduction of emissions from coal-fired electric generation plants and the replacement of the capacity of such plants with increased capacity from renewable energy facilities and other electric generating plants. Nevada Senate Bill 123 (“SB123”), in particular NRS§704.7316, coupled with the PUCN’s regulations implementing the statute, LCB File No. 131-13, require that NV Energy’s Emissions Reduction and Capacity Replacement (“ERCR”) Plan address three major items:

- Retirement or elimination of 800 MW of coal-fired generating capacity as follows: (i) not less than 300 MW by December 31, 2014, (ii) not less than 250 MW by December 31, 2017, and (iii) not less than 250 MW by December 31, 2019;
- Replacement of retired or eliminated coal-fired capacity with 550 MW (planning capacity) of non-technology specific company-owned generation; and

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<sup>1</sup> As used herein, MW refers to the nameplate capacity or quantity of capacity.

- Replacement of retired or eliminated coal-fired capacity by issuing three requests for proposals for 100 MWs each of nameplate generating capacity from renewable energy facilities on or before December 31, 2014, December 31, 2015, and December 31, 2016, and construction of 50 MW of nameplate renewable energy generating capacity beginning on or before December 31, 2017.

On October 1, 2014, Nevada Power Company issued the 2014 RE RFP for the first of the three 100 MW request for proposals (“RFPs”) for renewable energy resources under SB123. On January 15, 2015, the PUCN issued an order in Docket No. 13-06023, directing Nevada Power Company to combine the originally proposed 2014 and 2015 RFPs, thereby allowing for up to 200 MWs of renewable energy capacity. Finally, in 2014, NV Energy filed with the Commission, and was given approval for, a request that the 15 MW Nellis Solar project be used to satisfy a portion of the 50 MW of nameplate renewable energy generating capacity.

NV Energy is issuing this RFP to secure the final 100 MW (AC)<sup>2</sup> (Product 1) of replacement capacity from renewable energy facilities and construction of the final 35 MW (Product 2) of nameplate renewable energy capacity under SB123. This request is for new renewable energy resources including biomass, geothermal, solar, wind or other qualifying renewable energy resources as set forth in Nevada Revised Statute NRS§704.7811.

The Company is seeking to select and submit to the PUCN for approval of a renewable energy power purchase agreement (“PPA”) for the 100 MW replacement capacity that is compliant with existing renewable portfolio standards, that is a new renewable energy generating facility and that provides resource diversification value. The Company may contract for additional megawatts of renewable energy resources should additional demand be identified.

The 35 MW resource portion of this RFP is open to those parties who are developing, propose to develop, or have rights to develop a new generating resource that would satisfy the Company’s need to own a 35 MW renewable energy generating facility.

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<sup>2</sup> A Bidder may bid energy and associated environmental attributes from a facility larger than 100 MW, but the maximum committed capacity under contract to satisfy the ERCR requirement may not exceed 100 MW.



This generating resource would be acquired by the Company upon PUCN approval. Bidders to this Product 2 must provide offers for the Company's acquisition of the generating resource including all energy, capacity and environmental attributes. While this RFP is not technology specific, the Company will not consider demand side, energy efficiency, or PC-only proposals.

As part of this RFP, NV Energy is offering its existing "Dry Lake" site to Bidders as an option for satisfying resource needs identified in this RFP. The Dry Lake site will be limited to photovoltaic solar development as it is currently permitted. NV Energy wishes to realize the maximum development potential of the Dry Lake site through optional pricing for a site greater than 100 MW if additional demand is identified.

NV Energy is seeking the following categories of resources, as outlined in more detail in Sections 2.8 through 2.11 below:

- 1) **Product 1 Category I Resource** – Bidder identified and contracted *renewable energy resource* of a minimum of 100 MW under a Power Purchase Agreement ("PPA").
  - Base Option 1 – A contracted resource of 100 MW
  - Option 2 – Contracted resource greater than 100 MW
- 2) **Product 1 Category II Resource** – Assignment of NV Energy's "Dry Lake" site and development assets for a contracted *photovoltaic solar renewable energy resource* of a minimum 100 MW under a PPA.
  - Dry Lake Base Option 1 – A contracted resource of 100 MW
  - Dry Lake Option 2 – Contracted resource greater than 100 MW of an optimized site up to 150 MW
- 3) **Product 2 Category III Resource** – A 35 MW *photovoltaic solar renewable energy resource* constructed on a Bidder supplied site pursuant to an Asset Purchase Agreement ("APA") for Bidder's land and development rights, an Engineering, Procurement and Construction ("EPC") contract, and an operation and maintenance ("O&M") contract.
- 4) **Product 2 Category IV Resource** – Build-Transfer of a 35 MW *renewable energy resource* on a Bidder supplied site involving a sale of all assets and rights pursuant to an APA and an O&M contract.

Bidders are invited to submit multiple proposals, incorporating combinations of the Categories of Resources that allows for cost savings of the individual products.

Bidders will be allowed to submit power purchase agreement (“PPA”) proposals that include a buy-out option in the sixth year following commercial operation of the facility. NV Energy would be required to obtain approval from the PUCN prior to exercising any such buy-out option.

Bidders to this RFP are requested to provide offers for the supply of renewable energy with all environmental attributes as a bundled product, pursuant to the instructions provided herein.

Bidders to the 2016 RE RFP will be required to submit bids electronically to the Company using PowerAdvocate. It is accessible via [www.poweradvocate.com](http://www.poweradvocate.com). Accordingly, Bidders are expected to provide a response in each data field represented. The “free text” data field accepts responses that are approximately 1,000 characters. Also, in these fields, Bidders should avoid special formatting and characters, as these can inflate the character count unnecessarily and result in a saving error. In this RFP Bidders should simply remove any special characters/formatting or shorten the answer to save successfully. Bidders should also fill out Excel spreadsheets and provide attachments, to the extent requested by the Company. Affiliates of NV Energy are excluded from submitting proposals in this RFP.

The renewable resources must be integrated into the NV Energy system as a network resource for serving load in NV Energy’s balancing authority area. This RFP requires renewable resources to be located within Nevada and capable of delivering renewable energy to serve load in NV Energy’s retail service territory. (<http://www.oasis.oati.com/NEVP/>). Proposals must allow for a commercial operation date on or prior to December 31, 2017. Proposals that are bid into the 2015 RE RFP must have a Point of Delivery already identified. Bidders must demonstrate, through documentation of the completed process milestones that a Large Generator Interconnection Agreement (“LGIA”) is in place or will be in place that allows for the proposed commercial operations

date. Bidders may bid any of the renewable resources, for Product 1, in the form of a PPA for a minimum term of 10 years and a maximum term of twenty five years. The form of PPA will accommodate bids with and without a purchase option, as discussed in more detail below. The form of PPA for bidding is included as Attachment C.

In order to provide for a transparent and fair process, this RFP will be conducted under the oversight of an Independent Evaluator (“IE”). An IE has been retained by the Company, who will be involved in ensuring the RFP is conducted in a fair, transparent and reasonable manner. The role of the IE is provided in Attachment N.

## **2.0 GENERAL INFORMATION ON THE 2016 ERCR RE RFP**

### **2.1 General Information**

NV Energy is seeking proposals for new renewable energy projects. NV Energy is seeking proposals for the potential quantities set forth in Section 1 of this solicitation. Consistent with NRS§704.7316, NV Energy will evaluate the proposals based on (1) the greatest economic benefit to the State of Nevada, (2) the greatest opportunity for the creation of new jobs in the State of Nevada, and (3) the best value to NV Energy’s customers. NV Energy may elect to select less than the product quantity, more than the product quantity or no proposals at all as a result of this solicitation.

All proposals submitted to NV Energy pursuant to this RFP shall become the exclusive property of NV Energy and may be used by NV Energy as it deems appropriate. NV Energy shall only consider as confidential those portions of a Bidder’s proposal clearly marked “Proprietary and Confidential.” A proposal may be subject to discovery and disclosure in regulatory or judicial proceedings, including those initiated by a party other than NV Energy. Bidders may be required to justify the requested confidential treatment under the provisions of a protective order issued in such a proceeding. If required by an order of the PUCN or any agency or court, NV Energy may provide the subject material without prior consultation or notice to the Bidders. Such information may also be made available under applicable state or federal law to regulatory commission(s), their staff(s), and other governmental agencies having an interest or jurisdiction in these matters. The

Company also reserves the right to release such information to the IE and any contractors for the purpose of providing technical expertise to the Company. Under no circumstances will NV Energy or any NV Energy Party, or the IE, be held liable for any damages resulting from any disclosure of a Bidder's claimed confidential information during or after the RFP process.

## **2.2 RFP Schedule**

NV Energy has established the target schedule for this RFP as shown in Table 2-1. NV Energy reserves the right to amend the target schedule at any time.

Table 2-1

RE RFP Event	Target Schedule
Issue 2016 ERCR RE RFP	02/24/16
Bids Due	03/18/16
Initial Short List	04/15/16
Best and Final Pricing	04/19/16
Final Short List	04/29/16
Negotiations	04/29/16 - 06/01/16
Execution of Contract(s)	06/01/16
PUCN Filing for Approval	07/01/16
PUCN Approval Timeline (up to 180 Days)	11/14/16 <sup>3</sup>

## **2.3 Registration**

All parties interested in becoming a Bidder to this RFP are requested to complete and submit a Bidders Registration and Contact Information Form contained on the RFP website. Bidders should identify all proposals they intend to submit on the Bidder Registration Form. The IE will provide registered Bidders with a bid number for each

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<sup>3</sup> Nevada Power Company anticipates filing, on July 1, 2016, any contracts executed as a result of the 2016 ERCR RE RFP as part of its amended Emissions Reduction and Capacity Replacement Plan, which will be part of the company's Amended Triennial Integrated Resource Plan. Pursuant to NRS§704.751(1)(b), the PUCN must issue an order on such plan within 180 days after its filing.

proposal. Companies registering for this RFP must include both a primary and alternate point of contact for the company and identify one lead negotiator from your organization who will be available to discuss any questions specific to your proposal.

## **2.4 Contact Information, Questions, and Answers**

This RFP can be accessed at [www.poweradvocate.com](http://www.poweradvocate.com). All information will be transmitted through PowerAdvocate. As part of the bid process, the Bidder will be required to sign a Confidentiality and Non-Reliance Agreement in the form provided in Attachment A to this RFP.

All questions associated with the RFP must be submitted electronically using the sourcing intelligence platform, accessible via [www.poweradvocate.com](http://www.poweradvocate.com). PowerAdvocate will be hosting the RFP and the platform will serve as the means of communication between Bidders and the Company. Questions submitted by Bidders through PowerAdvocate, and Company responses, will be made public and available to Bidders during the RFP process. At any time during the RFP, a Bidder may log in to [www.poweradvocate.com](http://www.poweradvocate.com), download the communications, complete the online datasheets information and/or upload responses.

NV Energy requires that all questions concerning these RFP be submitted on or before March 4, 2016. Questions submitted after this date may not be answered.

## **2.5 Proposal Submittal Instructions**

Submitted proposals must be organized in the manner described in Section 3 of this RFP instructions and signed by a representative of the Bidder who is duly authorized to submit the offer contained in the proposal on behalf of the Bidder. Each proposal shall specify the assigned bid number.

***Bidders must direct all communications regarding this RFP using PowerAdvocate as the messaging system.*** Communication through this system will be monitored by the IE and the Company. Communications with Company and/or IE personnel regarding this RFP outside of the PowerAdvocate system may be grounds to disqualify a Bidder's submission. Any response submitted by postal mail, facsimile, or email **will not be accepted unless specifically authorized**. Bidders will be required to submit both parts of the proposal (as detailed in Section 3.0) through PowerAdvocate. Part

One of the Bidder's proposal, as detailed in Section 3.1 below, will be utilized by NV Energy's credit group in completing a credit review of each of the Bidders.

In order to consistently analyze responses to this RFP, Bidders are required to prepare their submission within the outlined format. Responses not complying with the format requirements may be considered non-responsive and may be disqualified at the discretion of the Company.

For a proposal to be considered by NV Energy, the proposal must be uploaded into PowerAdvocate by 5:00 p.m. (PPT) on March 18, 2016. Proposals received after 5:00 p.m. (PPT) on March 18, 2016, will not be accepted.

## **2.6 Bid Fee**

Each Bidder in the RFP must provide the Bid Fee(s) to NV Energy, by certified check or cashier's check made payable to "Nevada Power Company d/b/a NV Energy," at the address listed below. **The checks must not be made out to the IE.** The check must reference the 2016 ERCR RE RFP and Bidder's bid number(s). The aggregate Bid Fee (as determined below) for each Bidder must be postmarked within two (2) business days of submitting the proposal(s) in PowerAdvocate. The proposal will not be considered if the Bidder fails to submit the required Bid Fee(s).

### Address for Delivery of Bid Fee:

Nevada Power Company, d/b/a NV Energy  
Renewable Energy & Origination, Attention – A. Ryan  
Mail Stop 13  
P.O. Box 98910  
Las Vegas, Nevada 89151-0001

The required amount of the Bid Fee for each proposal is as follows:

- (1) \$10,000 if the nameplate capacity of the generating facility is equal to or greater than 100 MW (AC); and
- (2) \$5,000 if the nameplate capacity of the generating facility is equal to 35 MW (AC).

A proposal may consist of one base proposal in addition to two alternatives for the same bid fee as required above. The two alternatives may consist of a different proposal

size for the same proposal on the same site. In addition, Bidders will have the option of submitting up to three additional alternative Proposals for the same site at a fee of \$1,000 per proposal. Proposals that include both Product 1 and Product 2 on the same site, will need to provide the costs for each product separately. The Bid Fees will be used to cover the cost of the IE and any required technical consultant(s). Any cost of the IE not recovered by the Bid Fees shall be recovered through a fee assessed upon the successful proposal(s) (the "Success Fee"). The Success Fee will be determined once the final amount of Bid Fees and the cost are known, provided that in no event shall the Success Fee exceed \$250,000 per successful proposal(s).

**THE BID FEE IS NON-REFUNDABLE. AFTER SUBMISSION OF BIDDER'S PROPOSAL, THE BID FEE WILL NOT BE REFUNDED UNLESS THE PROPOSAL DOES NOT MEET THE MINIMUM ELIGIBILITY REQUIREMENTS AND CANNOT BE CURED, THE PROPOSAL IS WITHDRAWN PRIOR TO THE SUBMITTAL DUE DATE, OR THE PROPOSAL IS REJECTED FOR NON-CONFORMANCE.**

## **2.7 Minimum Eligibility Requirements for Bidders**

In addition to meeting the organization requirements in Section 3, all Bidders must comply with certain minimum eligibility requirements to be considered in this RFP. Any proposal submitted in this RFP will be deemed non-conforming and rejected as a result of any of the following:

- a) Either Bidder, its proposed prime contractor, or any material subcontractors has an Occupational Safety and Health Administration recordable incident rate greater than or equal to 1.5 or has had any fatalities on past projects for at least three years. Please provide relevant supporting documentation.
- b) Failure to meet the requirements and provide all of the information requested in the Attachments of this RFP and submit in PowerAdvocate.
- c) Failure to permit disclosure of information contained in the Proposal to NV Energy's agents, contractors, regulators, or non-bidding parties to regulatory proceedings under appropriate confidentiality agreements.

- d) As appropriate, the Bidder fails to demonstrate adequate site control for the proposal, as evidenced through title, lease agreement, right-of-way, or easement issued by the fee owner or the applicable state or federal land resource agency.
- e) Any attempt to influence NV Energy in the evaluation of the proposals outside the solicitation process.
- f) Any failure to disclose the real parties of interest in the proposal submitted.
- g) The Bidder, or an affiliate of Bidder, is in current litigation with NV Energy or has, in writing, threatened litigation against NV Energy respecting an amount in dispute in excess of one million dollars.
- h) Proposal has failed to specify all pricing terms.
- i) Bidder fails to address satisfactorily both the price and non-price factors, as discussed in more detail in Section 6 of this RFP.
- j) Collusive bidding or any other anticompetitive behavior or conduct exists.
- k) Bidder or project being bid is involved in bankruptcy proceedings.
- l) Failure of the Bidder's authorized officer to sign the Proposal.
- m) Any matter materially impairing the Bidder, its prime contractor, any major subcontractor or the project itself, including any matters impairing the output of the generating resource or its energy or environmental attributes.
- n) Failure to adhere to Approved Vendors List.
- o) Failure to provide one year of viable wind data utilizing at least two anemometers for any wind project to support capacity factors submitted and failure to provide a third party wind study or equivalent to support the expected capacity factor of the project.
- p) Failure to provide a minimum of one production well and one injection well flow results to support the viability and amount of the geothermal resource submitted.



- q) Failure to provide Tier 1 solar panel manufacturer resource and technology with a financeable third party report to support the expected capacity factor.
- r) Failure for a biomass resource to provide a letter of intent with a biomass fuel source for a period of 10 years or greater.
- s) Failure for a biogas resource to provide a resource assessment report. Report to include at a minimum, history of landfill, total volume permitted, volume filled, estimated closure date, organic fraction of the municipal solid waste, moisture levels, temperature and pH of the waste, future waste receipt, increase or decrease and average rainfall in the area.
- t) Failure to provide cash flow values required during the development, construction, and operations phase for each resource including values and schedules for the EPC Agreement, APA, and O&M Agreement.
- u) Failure to provide adequate development rights, including water rights, permits and information regarding water sources and well systems to support construction and operational phases for each resource and site offered.
- v) Failure to comply with or satisfy any other requirements specified in this RFP or any Attachments hereto, including any requirements in connection with the pro forma agreements and any exhibits thereto.

Evaluation of proposals will follow the process discussed in Section 6. Evaluations to determine the final shortlist of Bidders are targeted to be completed April 29, 2016, and NV Energy may choose to engage the final shortlist of Bidders in further discussions and/or negotiations. Any such discussion or negotiation may be terminated by NV Energy at any time for any reason.

## **2.8 Product 1 Proposal for Power Purchase Agreement**

NV Energy is seeking proposals to enter into a power purchase agreement (“PPA”) with the Company, in the form attached as Attachment C to this RFP. Bidders must submit PPA proposals that include a buy-out option in the sixth year following commercial operation of the facility. The Bidder’s proposal must contain documentation of the completed process milestones, showing that a LGIA is in place or will be in place that allows for the proposed commercial operations date, and any proposed changes to Attachment C. For the Product 1 Category II Resource, assignment of the Dry Lake site and development costs will be negotiated through the PPA. For the purposes of this RFP,

NV Energy will include the development costs and interconnection costs to date in determining the levelized cost of energy (“LCOE”).

Any proposal made for the sale of renewable energy and associated environmental and energy attributes must be made by the Bidder with the understanding that the Pro Forma PPA (see Attachment C) will be the basis for any definitive agreement between the Bidder and NV Energy. Project Development Security and Operating Security will be required from Bidders based on the capacity bid into the 2016 ERCR RE RFP. The aforementioned development and operating security amounts are non-negotiable. The Development Security is due within ten (10) business days of countersignature of the PPA by NV Energy. The Operating Security is due at the time the renewable facility declares commercial operation. *The proposal pricing must reflect the terms and conditions set forth in the Pro Forma PPA.*

## **2.9 Product 2 Proposal including EPC**

NV Energy is seeking proposals to develop, engineer, and construct one or more photovoltaic solar facilities at sites identified by the Bidder in its proposal as a Product 2 Category III Resource. The Bidder may submit separate proposals, and may propose multiple sites within each proposal, subject to a 35 MW size limitation.

A Bidder proposing to build a Product 2 Category III would enter into an APA, whereby the Seller will sell and convey all necessary development rights in the facility to NV Energy, and an associated EPC Agreement pursuant to which the Bidder or its affiliate (“EPC Contractor”) would engineer and construct the facility on behalf of NV Energy. The pro forma EPC Agreement for this resource is included as Attachment E to this RFP. The specifications for solar development are provided as exhibits to the pro forma EPC Agreement. A Nevada contractor’s license is required prior to execution of the EPC Agreement.

A Bidder proposing to build a Product 2 Category III or IV resource must also agree to operate and maintain the photovoltaic solar facility following commercial operation for a term of up to 25 years to be set by NV Energy (in five-year increments) based on the bid

price. Attachment F includes a pro forma term sheet for an O&M agreement between the Company and the Operator (“O&M Term Sheet”).

Bidders may propose modifications to the pro forma EPC Agreement and/or O&M Term Sheet as part of their bid package. However, the Company encourages Bidders to accept the form EPC Agreement and the O&M Term Sheet with minimum modifications. Significant revisions to the form of EPC Agreement and O&M Term Sheet will adversely impact the competitiveness of a Bidder’s Proposal.

The Bidder’s proposal must contain a monthly cash flow projection for payments under the EPC Agreement and an annual O&M cash flow by calendar year with a partial year forecast for the period between the commercial operation date and the next full calendar year. The cash flows will be used in the LCOE evaluations.

## **2.10 Product 2 Proposal for Asset Purchase Agreements**

NV Energy is seeking proposals to develop, engineer, and construct one or more renewable energy facilities at sites identified by the Bidder in its proposal for Product 2 Category III and IV Resources. The Bidder may submit separate Proposals, and may propose multiple sites within each Proposal, subject to a 35 MW size limitation.

The winning Bidder(s) for a Product 2, Category III or IV Resource will be required to enter into an APA with NV Energy, whereby the Bidder or its affiliate (“Seller”) will sell and convey all necessary development rights in the facility to NV Energy (as well as an EPC Agreement and/or O&M Term Sheet discussed above). Bidders will be required to submit all site development documentation for review and inclusion as an exhibit to the APA. Facility specifications should follow those specification identified in EPC Agreement (Attachment E).

The pro forma APA contemplates that Sellers will transfer the fee title interest in the relevant site to the other party. If a Seller intends that the other party will acquire site control through another means (e.g. through a lease agreement, license or otherwise), then this fact should be addressed in the Bidder’s proposal and the Bidder’s comments to the

form of APA must reflect the intended method by which another party will acquire and maintain site control.

The Bidder's proposal must contain any proposed changes to the forms of APA, EPC Agreement, and the O&M Term Sheet included in Attachments D, E, and F. However, the Company encourages Bidders to accept the forms of the PPA, APA, EPC Agreement, and the O&M Term Sheet with minimum modifications. Significant revisions to the forms of the APA, EPC Agreement, and O&M Term Sheet will adversely impact the competitiveness of a Bidder's proposal.

The Bidder's proposal must contain a monthly cash flow projection for payments under the APA and the EPC Agreement and an annual O&M cash flow with a partial year forecast for the period between the commercial operation date and the next full calendar year.

## **2.11 Security and Approvals**

**PLEASE NOTE THAT NV ENERGY WILL NOT POST SECURITY TO SUPPORT ITS OBLIGATIONS AS PURCHASER UNDER ANY PPA. BIDDERS WHO WILL REQUIRE SECURITY FROM NV ENERGY SHOULD NOT SUBMIT A PROPOSAL UNDER THIS RFP.**

NV Energy reserves the right to update, modify, or revise any or all of the terms and conditions contained in the applicable pro forma agreements, as provided in Attachments C, D, E, and F to this RFP. If a definitive agreement is reached with a Bidder, the agreement will be subject to the approval of the PUCN and other regulatory agencies as required, including, without limitation, any approval from the Federal Energy Regulatory Commission.

## **2.12 Performance and Reliability Standards**

The performance and reliability standards for this RFP are incorporated or referenced in the pro forma agreements included as Attachments to this RFP. The Company is seeking performance and reliability standards that will provide the most value to Nevada Power's customers by ensuring the resource is meeting load during the summer months

and is able to provide portfolio credits to meet its compliance requirements. Such performance and reliability standards are similar to those that NV Energy has required in past transactions but have been updated to address changes in market circumstances and consistency in contract administration, all with the intent to ensure NV Energy's customers are afforded reliable and cost effective energy resources.

### **3.0 SUBMITTAL PREPARATION INSTRUCTIONS**

All proposals must comply with the requirements specified in this section. Specifically, Bidders must organize their written proposal according to the format specified in Section 3.1 and must provide all applicable information required in Sections 3.1.1 through 3.2.10. In addition, all proposals must be submitted in accordance with the requirements set forth in Section 2.5 of this RFP.

#### **3.1 General Organization of the Proposal**

All proposals must contain the following information without exception and, to help facilitate timely evaluation, must be organized as indicated below. The sections of the proposals must be as follows:

##### **Part One**

- 3.1.1. Cover Letter (include a description of all alternatives offered)
- 3.1.2. Bidder Information

##### **Part Two**

- 3.2.1 Executive Summary
- 3.2.2 Technical Information
- 3.2.3 Transmission
- 3.2.4 Resource Supply
- 3.2.5 Assurance of Generating Equipment Supply
- 3.2.6 Facility Operation and Maintenance Plan
- 3.2.7 Project Schedule
- 3.2.8 Financing Plan
- 3.2.9 Contract Terms and Conditions
- 3.2.10 Other Information

The proposal should include, but not be limited to, complete responses to the parts set forth above in addition to the information provided in the relevant RFP Attachments.

Supporting documentation for these sections may be included separately as appendices by providing clear references to the sections concerned. Section titles should match those listed above.

If submitting a document as a separate file, the document name/reference must be stated in the written proposal. As an alternative, the document may be included as an appendix/attachment at the end of the written proposal, and should also be referenced within the body of the written proposal.

Supporting documentation of an official document (e.g. permits, studies, applications, etc.) may be submitted as a comprehensive listing, in spreadsheet format, summarizing the pertinent aspects of the required documents. Please specify whether or not approvals have been obtained or applied for.

### **3.1.1 Cover Letter (Part One of Proposal)**

The cover letter must include all signatures necessary to approve and submit the Bidder's proposal by a representative having the authority to contractually commit the Bidder for Bidder's offer provided in the proposal. Additionally, the cover letter should also include the following declaration:

*"[Insert legal name of Bidder] (the "Bidder") hereby acknowledges receipt of NV Energy's Request for Proposals for Renewable Energy on February 24, 2016 (the "2016 ERCR RE RFP"), and acknowledges that it has read and agrees to be fully bound by all of the terms, conditions and other provisions set forth in the RFP. Additionally, the Bidder hereby makes the following representations to NV Energy:*

- 1. All of the statements and representations made in this proposal are true to the best of the Bidder's knowledge and belief;*
- 2. The Bidder possesses or will possess all necessary land rights for sufficient site control to undertake development of a renewable energy generating facility as set forth in the proposal;*

3. *The Bidder has obtained or can demonstrate how they will obtain all necessary authorizations and approvals that will enable the Bidder to commit to the terms provided in this proposal;*
4. *This proposal pertains solely to renewable energy from a generating facility that is or will be qualified as a renewable energy system in accordance with Sections 7801 to 7828 of Chapter 704 of the Nevada Revised Statutes and the associated regulations promulgated by the Public Utilities Commission of Nevada; and*
5. *This proposal is a firm and binding offer, for a period of at least 220 days from [March 18, 2016].”*

### **3.1.2 Bidder Information (Part One of Proposal)**

In this section the Bidder should provide the following information:

- Profile of the Bidder’s company and its ownership structure (including direct ownership and ultimate parent company, which can be in the form of a diagram);
- Description of any generating facilities (including nameplate, gross and net capacities) that are owned and/or operated by Bidder and currently in service;
- The number of generating facilities (including total nameplate, gross and net capacities) successfully developed, constructed, and placed into commercial operation by Bidder (and not otherwise set forth in response to the above request);
- The number of generating facilities (including nameplate, gross and net capacities) of the same technology proposed in the proposal which are currently in service and owned by the Bidders;
- Bidder’s Nevada contractor’s license information;
- Bidder’s pertinent experience in Nevada and adjacent states; and
- Any current litigation that the Bidder, or any of its subsidiaries (including any off-balance sheet entities in which Bidder has an interest) is involved in regarding an energy generating facility or an energy supply contract.

For the Bidder to provide proof of financial capability to carry out its obligations explicitly articulated or implied in the proposal, the following information must also be included in this section of the proposal for the Bidder's company, any parent company and any partners involved with the generating facility proposed in the Proposal:

- Current bond ratings, if any;
- Current rating agency ratings or reviews, if any;
- Audited financial statements and footnotes from the last three (3) years;
- Plan for financing the proposal (government, private, self-funded, etc.) and general description of status; and
- Other financial information that would be necessary for NV Energy's evaluation.

NV Energy's Credit Department will analyze the required financial criteria to determine, in its sole discretion, the Bidder's financial capability to successfully implement its proposal, and may require the provision of credit support in connection with the definitive agreements.

### **3.2.1 Proposal Executive Summary**

The Executive Summary should highlight the content of the proposal and features of the renewable energy offering broken down by resource and site. Each resource and site description will include the commercial operation date, the amount of renewable energy and capacity being offered, the type of renewable energy being offered (e.g., wind, solar, geothermal, etc.), a general description of the base pricing proposal, whether alternative Proposals have been included by the Bidder, the status of interconnection, a summary description of the transmission interconnection and service path for the project to connect to the NV Energy transmission system, water rights, status of environmental permitting, and whether the generating facility is currently operational, in construction, or in development. In addition, this section should identify any material government incentives that are being sought in connection with the proposal. For Dry Lake resources, NV Energy has included a description of any development assets on which the Bidder may utilize in



connection with its proposal under Exhibits 2.01 and 6B.01 of the Pro Forma EPC Agreement.

### **3.2.2 Technical Information**

Bidders must provide technical information regarding the proposal as described below. If various options are proposed for a single generating facility (i.e., different generating facility sizes, commercial operation dates, etc.), separate technical information, clearly marked, must be prepared for each option. To be considered responsive, the technical information must be completed in its entirety and in accordance with the corresponding instructions. If the project is bid using photovoltaic (“PV”) technology, the plant capacity bid and the pricing should reflect the facility’s AC MW rating. Additionally, the specifications for solar development provided as exhibits to the pro forma EPC in Attachment E are indicative of the level of care that will be expected of NV Energy assets. Under Category IV Resources, these specifications should be followed.

The Bidder must provide the following information describing the generating facility:

- Technical Information
- Site Characteristics and Control
- Environmental Compliance Plan
- Benefits of the Generating Facility to Nevada

#### **3.2.2.1 Facility Description**

The Bidder must include a description of the generating facility forming the basis of the proposal to NV Energy, in the form set forth in Attachment G of this RFP. This includes information related to the type of plant, configuration, general layout diagrams, preliminary site plan showing site boundaries and plant layout, one-line diagram, resource type (for example, geothermal, solar, wind), nameplate capacity rating (MW AC), net plant capacity (MW AC), annual net output (MWh) for each hour of the year, projected capacity factor, in-service date, and the major equipment providers contemplated as approved in Attachment J.

The Bidder must describe any feasibility studies performed for the proposed generating facility. The Bidder must also describe the level of engineering completed for the generating facility and the plan for equipment procurement and construction. If companies have been identified for any of these services, the Bidder should identify those companies. The Bidder should also describe any innovative technical features of the generating facility incorporating new renewable energy technologies. If innovative technical features are included, the Bidder must describe any previous experience with implementation of the technology and the level of risk involved in this application. A production profile must be provided showing the energy deliveries in average energy production by month and time of day. The data and evaluations provided must support the proposed level of generation and the projected capacity factor.

All information provided in this section should be consistent with the information provided in Attachment G, which include required information for the evaluation of the Proposal as further described in Section 6.0 of this RFP.

#### **3.2.2.2 Site Characteristics and Demonstrated Site Control**

As applicable, the Bidder must:

- (a) Provide a legal description, including Township & Ranges or metes and bounds, of the generating facility site and, both a street map and the appropriate section of a USGS (or equivalent) map showing the location of the generating facility.
- (b) Provide an aerial photo or Google Earth<sup>®</sup> image of the project site showing project facilities under construction, and/or a layout of the proposed facilities.
- (c) Provide the County Assessor's parcel number, site address, and site coordinates.
- (d) Provide an ALTA/ACSM survey of the project site if such survey has been conducted.
- (e) Provide a description of the lease/ownership arrangement in place or contemplated, the number of acres at the site, site access roads and, as applicable, water rights or the plan for securing water rights, the waste disposal plan, and the transmission, water supply, fuel supply (as applicable), or other

infrastructure additions required outside of the site boundaries for the Proposal to be implemented. The map should show all land parcels, with parcels owned, leased or optioned by the Bidder clearly marked.

- (f) Documentation of exclusive site control and property rights, or a description of the current status of efforts to secure such site control and property rights (i.e., easement/ROW negotiation complete, grant applied for and expected date, site rights granted and when, executed site option with ongoing option payments, and unilateral right to strike on site option at agreed upon price or prices over the tenure of the option agreement, etc.).
- (g) Identify any mitigation requirements already defined and estimated cost, and any future site procurement costs and environmental permitting work to be completed.

### **3.2.2.3 Environmental Compliance Plan and Land Permitting**

For Dry Lake, the Bidder must also:

- (a) Include a description of how the generating facility will comply with all applicable environmental laws and regulations.
- (b) Provide a detailed list of all applicable state, local and federal permits for the construction and operation of the facility and provide a detailed critical path schedule containing clear and concise task descriptions and anticipated timelines for securing those permits and approvals.
- (c) Identify important milestones and decision points in the schedule along with an explanation of how permitting activities will be coordinated within the overall construction and development schedule.
- (d) Identify important milestones and decision points in the schedule along with an explanation of how permitting activities will be coordinated within the overall construction and development schedule.
- (e) Describe any coordination efforts with local, state, and federal agencies with respect to any environmental issues.

For Bidder supplied site, the Bidder must also:

- (a) Include a description of how the generating facility complies or will comply with all applicable environmental laws and regulations.
- (b) Provide a detailed list of all applicable state, local, and federal permits for the construction and operation of the facility and provide a detailed critical path schedule containing clear and concise task descriptions and anticipated timelines for securing such permits and approvals.
- (c) Identify important milestones and decision points in the schedule along with an explanation of how permitting activities will be coordinated within the overall construction and development schedule.
- (d) Provide copies of any permits already successfully secured, including their associated applications and supporting documents, studies and reports.
- (e) Provide copies of any environmental surveys, constraint studies, reports or other information associated with the generation facility.
- (f) Describe any coordination efforts with local, state and federal agencies with respect to any environmental issues.
- (g) Describe any existing on-site environmental issues of concern such as site contamination, presence or lack of waste disposal area, state or federally protected plant and wildlife species and species of concern present or potentially present, sensitive habitats or ecologically sensitive areas, wetland delineations, and any other known environmental issues potentially having a negative impact on the ability to meet the anticipated commercial operation date or the other long-term obligations of the PPA.
- (h) Include any Phase I and/or Phase II environmental site assessment conducted by or available to the Bidder.
- (i) Describe the land uses adjacent to and in proximity of the generating facility site. Describe current or planned efforts to build local community support.

- (j) Provide any air quality modeling results, and estimated air emission rates identified or expected to be included in an air permit process. For wind projects include airspace and radar clearance.

#### **3.2.2.4 Benefits of the Generating Facility to Nevada**

The Bidder must describe any other special expected environmental, social, or economic benefits of the generating facility. The Bidder must describe how the generation facility will provide the creation of new jobs in the state of Nevada. Bidders should refer to the economic bid spreadsheet in project scorecard in PowerAdvocate to complete the spreadsheet. Instructions are provided in the “Instruction Tab.”

#### **3.2.3 Transmission**

As applicable, the Bidder must provide information on whether an interconnection request has been submitted to the applicable transmission provider for the generating facility, and if so, the status of such request. Included with such responses shall be information on requested transmission upgrades or modifications and their estimated costs. The Bidder shall also identify the anticipated interconnection point and energization date for the proposed generating facility. The Bidder shall provide the executed interconnection agreement with documentation supporting completed milestones. For proposals where the LGIA is not executed, the Bidder shall provide the system impact study and facilities study as minimum documentation.

All Bidders must provide a copy of their executed Voluntary Consent submitted to the transmission provider, in the form provided in Attachment B of this RFP as applicable. If the Bidder has not previously submitted a Voluntary Consent, the Bidder must do so in conjunction with this RFP response, or the RFP submittal will not be considered complete.

NV Energy will only consider generating facilities physically located in Nevada.

#### **3.2.4 Resource Supply (Part Two of Proposal)**

The Bidder must provide sufficient information on the renewable resource supply to provide assurance to NV Energy that the generating facility will be able to meet its projected production estimates for the full term of the PPA or, if applicable, the expected

useful life of the generating facility. In particular, the following information is requested for the different technologies:

### **Geothermal**

- Provide a summary of all collected geothermal data for the proposed generating facility site.
- Characterize the geothermal resource quality, quantity and projected production levels.
- Provide a graph or table that illustrates the annual and monthly projection of geothermal resources.
- Describe any other existing geothermal facilities in the resource area and characterize their production and their anticipated impact, if any, on the generating facility.
- Provide any production well and injection well flow results to support the viability and amount of geothermal resource submitted. For results in excess of 3 years, summarize the results for all years and provide the detail for the past three (3) years of production well flow tests.

### **Biomass**

- Describe the biomass fuel makeup and its source.
- Provide all available resource assessments of available biomass fuel for the generating facility and its proximity to the generating facility. Such resource assessments should identify long-term fuel price risk and availability risk issues.
- Identify competing resource end-uses.
- Provide a plan for obtaining the biomass fuel, including a transportation plan.
- Identify any contracts or letters of intent to acquire and transport the biomass fuel.
- A letter of intent with a biomass fuel source for a period of ten (10) years or greater.

### **Solar**

- Describe the sources of insolation data, either onsite, satellite, or a nearby station. If using a nearby station, state the exact distance from that station.

- Provide source and number of years of solar data used to support the capacity factor.
- Specific resource and technology, including a requirement that all bids include panels manufactured by a Tier 1 solar panel manufacturer.

### **Wind**

- Provide a summary of all collected wind data for the generating facility site.
- Indicate where the data was collected and its proximity to the generating facility site.
- Provide one (1) year of wind resource data utilizing at least two anemometers for any wind project to support capacity factors and a wind resource assessment report that can be used to finance the project.
- Compare the long-term wind speeds in the area to the collected resource data at the generating facility site.
- Confirmation of wind turbine availability, size, and manufacturer.

### **Biogas**

- Provide all available resource assessment reports. Such assessment reports should include at a minimum: history of landfill, total volume permitted, volume filled, estimated closure date, organic fraction of the municipal solid waste, moisture levels, temperatures and pH of the waste, future waste receipt, increase or decrease and average rainfall in the area.

### **3.2.5 Assurance of Generating Equipment Supply (Part Two of Proposal)**

The Bidder must demonstrate that it has access to, or has completed sourcing of, the necessary major equipment to complete engineering and construction of the facility contemplated in the proposal to meet the stated commercial operation date.

For photovoltaic solar resource, the Bidder must demonstrate that it has access to, or has completed sourcing of, the necessary major equipment pursuant to the Approved Vendor Lists provided in Attachment K of this RFP to complete engineering and construction of the facility contemplated in the Proposal by the stated commercial operation date.

### **3.2.6 Facility Operation and Maintenance Plan (Part Two of Proposal)**

The Bidder must provide a description of the expected O&M plan for the generating facility. This information should include the following:

- Whether the Bidder or affiliate will operate and manage the generating facility or will contract for O&M services. If the Bidder will contract for O&M services, explain the current status of selecting an O&M contractor.
- Provide a brief description of the basic philosophy for performing O&M including a discussion of contracting for outside services.

### **3.2.7 Project Schedule**

The Bidder must provide a project schedule that includes the anticipated period to complete the project (i.e., achieve commercial operation), referenced in months, following receipt of all necessary regulatory approvals, including PUCN approval. This time period must allow for environmental and land permitting, environmental studies, mitigation and treatment, transmission construction, financing, site development, construction, testing, and any other development requirements. The Bidder must provide a milestone schedule, as applicable, for the generating facility major development milestones listed below:

- Major Equipment Ordered;
- Project Interconnection to Transmission System;
- All Permits Obtained;
- Construction Financing Obtained;
- Construction Start;
- Operation Date (first energy to grid); and
- Commercial Operation Date.

These milestones should be noted in number of months following all regulatory approvals, including PUCN approval.

The Bidder will be required to post the Development Security following execution of a PPA and prior to the submittal of the PPA for PUCN approval.



## **Project Execution Plan**

Bidder shall provide a summary-level, site-specific project execution plan. Key elements of the execution plan are:

### **3.2.7.2.1 Safety Program**

The development and implementation of a good safety program at the site is of paramount importance to NV Energy. Bidder's safety program shall comply with or exceed NV Energy's safety requirements, as set forth in Exhibit 20 of the applicable pro forma EPC agreement and as set forth in Attachment E of this RFP. Any exceptions or comments shall be noted in the Bidder's proposal. As part of its proposal, each Bidder shall submit its corporate safety incident report for the preceding five (5) years.

### **3.2.7.2.2 Project Controls and Reporting Plan**

Bidder shall submit a summary (Level II) construction schedule displaying major activities, durations and proposed sequencing which shall demonstrate Bidder's proposal to achieve substantial completion prior to the date listed in its Proposal.

### **3.2.7.2.3 QA/QC Program**

Bidder shall provide an outline of its QA/QC Program with its proposal.

### **3.2.7.2.4 Subcontractor Strategy**

Bidder shall provide detailed information as to a proposed execution plan for its proposal, including the name and experience of anticipated major subcontractors. It is the expectation that the Bidder (or an affiliate thereof) would remain primarily responsible for the obligations of the Bidder under the EPC Agreement, APA, and O&M Agreement regardless of whether the obligations thereunder are performed by the Bidder or a subcontractor.

#### **3.2.7.2.5 Labor Study**

Bidders shall make an independent study of the local labor environment. Such study shall include, without limitation, an employment survey of the local area where the proposed facility will be located, including labor rates and figures, the expected number of jobs that will be filled by the local labor force during the construction and operation phases of the Proposal, and the identification of any agreements under which the proposed project tasks will be performed.

#### **3.2.7.2.6 Evaluation of Work**

Bidder shall cooperate with and provide information to any person or entity retained by NV Energy for purposes of evaluating the Bidder's proposal.

#### **3.2.8 Financing Plan**

The Bidder should provide a detailed description of the financing plan for the proposal.

#### **3.2.9 Contract Terms and Conditions**

NV Energy encourages Bidders to accept the terms and conditions set forth in the pro forma PPA included as Attachment C to this RFP. Bidders who take exceptions to the pro forma PPA may provide a mark-up of the pro-forma PPA with their proposal. In providing such a mark-up, the Bidder should ensure that the risk allocation provisions in the pro-forma agreement are not substantially revised. NV Energy will consider the impact of the mark-up in its evaluation of the proposal.

#### **3.2.10 Other Information**

The Bidder should provide any additional information that will assist NV Energy in its evaluation of the proposal.

### 3.2.11 File Naming Convention

All required documents must use the following naming convention:

File Name	RFP Sect Ref
Bid_[Bid number]_Proposal_Part_One	3.1
Bid_[Bid number]_Proposal_Part_Two	3.1
Bid_[Bid number]_Proposal_Part_One_Appx_[1, 2, 3, etc.][RFP section ref and descriptor]	3.1
Bid_[Bid number]_Proposal_Part_Two_Appx_[1, 2, 3, etc.][RFP section ref and descriptor]	3.1
<b>Examples:</b>	
Bid_440.0_Proposal_Part_Two_Appx_1_3.2.2.1_Historic_Production_Data	3.2.2.1
Bid_440.0_Proposal_Part_Two_Appx_2_3.2.2.1_Third_Party_Support_of_Cap_Fac	3.2.2.1; 2.8 l) and n)
Bid_440.0_Proposal_Part_Two_Appx_3_3.2.4_Resource_Supply_Viability	3.2.4; 2.8 l), m) and q)
Bid_440.0_Proposal_Part_Two_Appx_4_3.2.4_Biomass_Fuel_Letter_of_Intent	3.2.4; 2.8 p)
Bid_440.0_Proposal_Part_Two_Appx_5_3.2.10_Other_Info_[descriptor]	3.2.10
Bid_[Bid number]_Attch_B_Voluntary_Consent_Form	Attachment B
Bid_[Bid number]_Attch_C_Pro_Forma_PPA_Redline	Attachment C
Bid_[Bid number]_Attch_D_PPA_Bid_Summary	Attachment D
Bid_[Bid number]_Attch_E_Conf_and_Non-Reliance_Agmt	Attachment E
Bid_[Bid number]_Attch_G_Technical_Proposal_Input_Forms.xlsm	Attachment G

## 4.0 STANDARDS OF CONDUCT

Each Bidder responding to this RFP must conduct its communications, operations and other actions in compliance with FERC's Standards of Conduct for Transmission Providers. Any necessary interconnection to or transmission service on NV Energy's transmission system contemplated in a Bidder's Proposal shall NOT be considered an arrangement with NV Energy's merchant function, which is sponsoring this RFP. Such arrangements for interconnection and transmission service will be with NV Energy's functionally separate transmission function, and hence absolutely no communication by a Bidder to NV Energy's transmission function can be made through the submission of a bid in this RFP. Any proposal seeking to do so will be summarily rejected if the attempt is not immediately withdrawn when discovered. Short-listed Bidders are required to execute the Voluntary Consent Form in Attachment B that enables NV Energy's merchant function to discuss the Bidder's interconnection and/or transmission service application(s) with the

transmission interconnection or transmission service provider, including, if applicable, NV Energy's transmission function.

## **5.0 TRANSMISSION PROVIDER CONSIDERATIONS**

### **Transmission Interconnection and Transmission Service**

All proposals must include the cost of interconnection, together with a diagram of the interconnection facilities provided in the LGIA. The Bidder will be responsible for, and is required to include in its proposal, all costs to interconnect to the transmission provider's system. The interconnection costs from all Bidders will be included in the bid evaluation. Bidders shall describe interconnection costs in their bids by disclosing that portion of costs associated with network upgrades and that portion that is facility-specific. Bidders are reminded that the cost responsibility for all transmission facilities will be pursuant to the provisions of the OATT. The Interconnection Customer is responsible for all of the Transmission Provider's LGIA Facilities ("TPIF") costs. The Transmission Provider is responsible for the costs associated with Network Upgrades ("NU") pursuant to the OATT; however such costs will be securitized by the Interconnection Customer as provided under the provisions of the OATT. Interconnection Customer's Interconnection Facilities ("ICIF") are the sole responsibility of the Interconnection Customer. Due to the construction timeline, Bidders are expected to have an Executed LGIA or completed system impact and facility studies at a minimum.

Proposals for Dry Lake resources will not require a new electrical interconnection or an upgrade to the existing electrical interconnection agreement as identified in the existing Dry Lake LGIA (see Attachment I). The transmission interconnection costs for this Product 1 Category II Resource will be captured in the APA proposed price from the Bidder.

## **6.0 EVALUATION PROCEDURES AND CRITERIA**

As discussed in Section 1 above, proposals submitted in this RFP will be evaluated separately by the Company such that no more than 100 megawatts of renewable energy

resources may be contracted from proposals for Product 1, and 35 megawatts of renewable energy resources may be selected for ownership for Product 2.

For each product in this RFP, NV Energy will conduct a two-stage process as part of its proposal evaluation and selection process leading up to selection of the preferred proposals for contract execution. In the first stage, NV Energy will conduct a price, economic benefit analysis (including job impacts) and non-price analysis, including a price screening methodology designed to identify the lowest cost proposals for each product. NV Energy will select a short list based on those proposals for each product which have the highest overall score based on an evaluation of price, economic benefit and non-price factors. In the second stage, the short list proposals will have the opportunity to refresh their prices; provided, however, that Bidders will not be permitted to increase the prices initially submitted with their proposal. The final proposals will then be evaluated based on the impact of the proposals on NV Energy's overall system costs. A more detailed description of each stage of the process is provided below.

Note that should a developer choose to bid on both products to realize economies of scale etc., a separate bid must also be submitted for each product.

NV Energy will conduct the two-stage evaluation and selection process independently for each of the Products and resource types. NV Energy will select and propose to the PUCN for review and final approval the proposal(s) that provide the best value to NV Energy's customers, considering all the factors described in this Section 6.

#### **6.1. Price, Economic Benefit and Non Price Information; Development of Initial Shortlists**

The price, economic benefit and non-price forms will be used to determine individual initial shortlists of proposals, separated by type of resource (i.e., wind resources, solar resources, geothermal resources, and biomass and biogas resources). These resource-specific short lists will be deemed as the initial shortlists for screening purposes.

Proposals will be evaluated on the basis of price, economic benefit and non-price factors to determine the initial shortlist. In considering a proposal, NV Energy shall, in addition to considering the cost to customers, evaluate the following:

- (a) The greatest economic benefit to the State of Nevada;
- (b) The greatest opportunity for the creation of new jobs in the State of Nevada;
- and
- (c) The best value to customers of the electric utility.

Price factors will be analyzed using the comparison metric with the LCOE per megawatt hour.

Non-price factors considered by the Company fall into four general categories: (1) the Bidder's project development experience, (2) technology, (3) conformity to the terms of the pro-forma PPA, and (4) development milestones. Price factors will recognize the value of the power associated with the delivery shape, and the relative value of environmental attributes associated with the resources.

NV Energy intends to evaluate each proposal in a consistent manner by separately evaluating the non-price characteristics, economic benefit characteristics and the price characteristics of the proposal. Each component will be evaluated separately and recombined to determine the bundled price, economic benefit and non-price score. The price factor will be weighted up to 60%; the economic benefit factor will be weighted up to 10%, while the non-price factor will be weighted up to 30%. No proposal will receive a total weighting in excess of 100%. The price, economic benefit and non-price evaluation will be added together and used to determine the initial shortlist for each resource type. The project scorecard will include four non-price categories, in addition to a separate category to evaluate the economic benefits all of which will be in PowerAdvocate. The initial shortlists in this RFP will be made up of the highest scoring proposals for each resource selection.

#### **6.1.1 Price Factor Evaluation (up to 60%)**

For each of the products, NV Energy will utilize a spreadsheet model to screen the proposals and to evaluate and determine the price ranking for the resource-specific initial shortlists.

The spreadsheet model is contained in an excel workbook to derive a LCOE.

### Comparison Metric

The comparison metric will be the LCOE per megawatt hour. The LCOE is determined by calculating the present value of the annual cost over the term, converting the present value to an equivalent annual annuity and then dividing that annual annuity by the levelized annual energy provided. The discount rate will be the weighted average cost of capital for Nevada Power Company as approved by the PUCN in its most recent General Rate Case (8.09 percent).

### **6.1.2 Non-Price Factors (up to 30%)**

The primary purpose of the non-price analysis is to help gauge the factors related to the proposal which are outside of price. The project scorecard has two parts, the first part is divided into four categories and the second part is to calculate the economic benefits. The first part, non-price factors will be weighted up to 30% (in combination with the price scores) in the determination of which proposals in this RFP will be chosen for each resource-specific initial shortlist. The project scorecard will be used to score the non-price criteria. The four categories in the project scorecard include (1) the Bidder's project development experience, (2) technology, (3) conformity to the terms of the pro-forma PPA, and (4) development milestones. The criteria for each of these four categories are set forth below.

#### Category 1 – Bidder's Project Development Experience

- Project Development Experience
- Project Ownership/O&M Experience
- Safety – Occupational Safety and Health Administration recordable incident rate
- Financial Capability

Category 2 – Technology

- Technical Feasibility
- Resource Quality
- Equipment Supply Control
- Utilization of Resource

Category 3 – Conformity to Pro-Forma Agreement(s)

- Magnitude of proposed edits to pro-forma Agreement(s)

Category 4 – Development Milestones

- Site Control
- Permitting Status/Feasibility
- Status of any necessary project financing
- Status of Interconnection
- Transmission Requirements
- Reasonableness of Identified Critical Path Dates

### **6.1.3 Economic Benefit Factors (up to 10%)**

This second part will take into consideration the following matters, based on information submitted by Bidders, and NV Energy's evaluation:

- Jobs created during construction
- Permanent jobs created
- The value of expenditures attributed to the Project made in Nevada
- Other economic benefits to Nevada

## **6.2 Best and Final Pricing**

Proposals selected for the short list in each product will have an opportunity to refresh their price to take into account further development of the project or updated pricing for equipment or other costs from the time the initial proposal was submitted to the time of "best and final" offer. However, Bidders are only permitted to lower their pricing during this refresh period. Bidders may not increase their pricing initially submitted with their proposal. Bidders are encouraged to lower their pricing or look for opportunities to enhance



their production profiles (based, for example, on changes to equipment) to increase the value of their Proposals to NV Energy.

### **6.3 The Final Shortlist**

For each of the products, proposals on the initial shortlist will then be evaluated using a production cost model to determine the final shortlist based on the best and final pricing. NV Energy's production cost simulation model, used for integrated resource planning, will be used to determine a list of Proposals deemed as the final shortlist.

In its analysis for this RFP, the Company will run each of the resource-specific initial shortlisted proposals and portfolios through the Preferred Plan by replacing the first 100MW of renewable resources in the Preferred Plan with each of the initial shortlisted proposals under Product 1 to determine the Present Worth Revenue Requirement ("PWRR") of each alternative portfolio of resources. The same process will be conducted for Product 2.

### **6.4 Final Selection of Proposal(s)**

The two stages described above constitute the formal evaluation process which will be utilized to select the proposals for each of the products that will be submitted for approval to the PUCN. In addition to this two-stage analysis, in selecting the proposals in the RFP, NV Energy will consider the requirements set forth in NRS§704.7316 (as identified in Section 6.1 above) and non-price factors qualitatively. In addition, NV Energy will also include in its evaluation any factor that may impact the total cost of a resource, including but not limited to all of the factors used in the initial shortlist cost analysis plus consideration of accounting treatment and potential effects due to rating agency treatment, if applicable.

## **7.0 AWARDING OF CONTRACTS**

This RFP is merely an invitation to make proposals to the Company. No proposal in and of itself shall constitute a binding contract. The Company may, in its sole discretion, perform any one or more of the following:

- Determine, in consultation with the IE, which proposals are eligible for

consideration as proposals in response to this RFP.

- Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each Bidder.
- Disqualify proposals contemplating resources that do not meet the definition of renewable resources as defined in NRS§704.7811
- Supplement, amend, or otherwise modify this RFP, or cancel this RFP with or without the substitution of another RFP.
- Negotiate and request Bidders to amend any proposals.
- Select and enter into agreements with the Bidder(s) who, in the Company's sole judgment, is most responsive to this RFP and whose proposals best satisfy the interests of the Company, its customers, and state legal and regulatory requirements, and not necessarily on the basis of any single factor alone.
- Issue additional subsequent solicitations for proposals.
- Reject any or all proposals in whole or in part.
- Vary any timetable.
- Conduct any briefing session or further RFP process on any terms and conditions.
- Withdraw any invitation to submit a response.
- Select and enter into agreements with Bidder(s) for additional megawatts of renewable energy resources should additional demand be identified.

## 8.0 POST-BID NEGOTIATION

The Bidder will be required to sign a Confidentiality and Non-Reliance Agreement if it is selected for the final shortlist, in the form provided in Attachment E, prior to entering into negotiations with the Company.

NV Energy may further negotiate both price and contract terms and conditions during post-bid negotiations. Post-bid negotiation will be based on NV Energy's cost and value assessment. NV Energy will continually update its economic and risk evaluations until both parties execute a definitive agreement acceptable to NV Energy in its sole discretion. All transactions are subject to the approval of the PUCN on terms and conditions that are satisfactory to NV Energy in its sole and absolute discretion.

**ATTACHMENT A – CONFIDENTIALITY AND NON-RELIANCE  
AGREEMENT**

This attachment is available in electronic format in PowerAdvocate.

**ATTACHMENT B – VOLUNTARY CONSENT FORM**

This attachment is available in electronic format in PowerAdvocate.

**ATTACHMENT C – PRO FORMA POWER PURCHASE AGREEMENT AND  
EXHIBITS**

This attachment is available in electronic format in PowerAdvocate.

**ATTACHMENT D – ASSET PURCHASE AGREEMENT AND EXHIBITS**

This attachment is available in electronic format in PowerAdvocate.

## **ATTACHMENT E – PRO FORMA EPC AGREEMENT AND EXHIBITS**

This attachment is available in electronic format in PowerAdvocate.

## **ATTACHMENT F – PRO FORMA O&M TERM SHEET**

This attachment is available in electronic format in PowerAdvocate.



## **ATTACHMENT G – TECHNICAL PROPOSAL INPUT FORMS**

### **(Price, Economic Benefit and Non-Price Input Forms)**

This attachment is available in electronic format in PowerAdvocate.

## **ATTACHMENT H – BID SUMMARY**

This attachment is available in electronic format in PowerAdvocate.

## **ATTACHMENT I – DRY LAKE SITE DESCRIPTION**

This attachment is available in electronic format in PowerAdvocate.

## **ATTACHMENT J – OWNER’S COSTS**

This attachment is available in electronic format in PowerAdvocate.

**ATTACHMENT K – APPROVED VENDORS LIST**

Refer to the Pro Forma EPC Agreement, Exhibit 22.

## ATTACHMENT L – TRANSMISSION SYSTEM MAP

Reserved

**ATTACHMENT M – INTEGRATION COSTS DESCRIPTION AND TABLE**

Reserved

## **ATTACHMENT N – ROLE OF INDEPENDENT EVALUATOR**

This attachment is available in electronic format in PowerAdvocate.



## CONFIDENTIALITY AND NON-RELIANCE AGREEMENT

This CONFIDENTIALITY AND NON-RELIANCE AGREEMENT (the “Agreement”), dated as of the [ ] day of [ ], 2015 is entered into by and between NV ENERGY, INC., a Nevada corporation, on behalf of itself and its subsidiaries (collectively “NV Energy”), and [ ], a [ ] [ ], on behalf of itself, its subsidiaries and its affiliates (collectively “(Bidder)”). NV Energy and Bidder individually may be referred to as a “Party” and collectively as “Parties.”

### WITNESSETH

WHEREAS, Bidder desires to submit a proposal in connection with NV Energy’s Emissions Reduction Capacity Replacement Request for Proposals (the “RFP”); and

WHEREAS, in connection with the RFP process, the Parties desire to exchange certain information that they want to be treated as confidential and proprietary pursuant to the terms of this Agreement;

NOW, THEREFORE, for good and valuable consideration, and the Parties intending to be bound by the mutual and reciprocal covenants, terms and conditions contained herein, the Parties hereby agree as follows:

1. This Agreement shall cover all discussions regarding and exchange of information related to the Purpose: (i) any and all information or material (in any form, whether tangible, intangible, oral, written or electronically encoded) provided by NV Energy to Bidder; (ii) the existence and subject matter involved in any and all discussions between NV Energy and the Bidder and as between the Bidder and its Representatives, as hereinafter defined, whether such discussions be formal or informal in nature; (iii) any and all notes, summaries, reports, memoranda, and the like, or any other compilation thereof which contain any Information or materials relating to the Purpose prepared by the Bidder or provided to the Bidder; and (iv) any and all work product, new or different information or material (in any form, whether tangible, intangible, oral, written or electronically encoded) which is generated, developed or created by Bidder, (collectively the “Confidential Information”).

2. Bidder acknowledges and agrees that Bidder shall be receiving the Confidential Information, and covenants to protect, preserve and safeguard the Confidential Information. NV Energy represents that it is the sole owner or has permission to provide Bidder all Confidential Information which it provides to Bidder. This Agreement contemplates that a limited number of employees and Representatives of Bidder shall have knowledge of and access to the Confidential Information, or any facts related thereto. Bidder shall cause its employees and Representatives (as defined below), who are provided the Confidential Information to take all reasonable steps necessary to preserve, protect and safeguard the Confidential Information and in no event shall the Bidder apply a lesser standard of care than it undertakes to preserve, protect and safeguard its own confidential information. Without limitation, the Bidder and its Representatives shall not (i) copy, reproduce, distribute, or disclose any of the Confidential Information, or any facts related thereto to any person, firm, entity, corporation, or any agents, employees, or other persons, except as may be required to execute the purpose and as permitted by this Agreement; or (ii) disclose to any third party or permit any third party to have access to the Confidential Information. Without limitation, Bidder and its Representatives shall ensure that: (a) the Confidential Information, which is in an electronic, tangible or written form, be kept in a secure and safe place and cause or permit the Confidential Information to be removed only by employees authorized to have access to the Confidential Information under the terms of this Agreement; and (b) all the Confidential Information shall be promptly returned to NV Energy upon NV Energy’s written request, or the termination of this Agreement, whichever occurs first or the Bidder shall destroy all copies of the Confidential Information, whether in written or electronic form, which is in the possession or control of the Bidder and its Representatives and will not retain any copies or other reproductions in whole or in part of such material, except to the extent required by law. Notwithstanding the foregoing, electronic copies of materials or summaries containing the Confidential Information that are automatically generated through data backup or archiving systems and which are not readily accessible by the Bidder’s or its Representative’s

employees, shall not be deemed to violate this Agreement, so long as the Confidential Information contained therein is not disclosed in violation of the other terms of this Agreement.

3. Bidder may transmit or deliver the Confidential Information to its Representatives without the prior written authorization of NV Energy; provided, however, that each Representative first agrees to keep the Confidential Information confidential. In the event of any unauthorized disclosure of the Confidential Information by Bidder or its Representatives, Bidder shall promptly notify NV Energy following discovery thereof. Bidder shall be responsible and liable for any breach of the terms of this Agreement by its Representatives. As used in this Agreement, the term “Representatives” of a Party means such Party’s directors, affiliated party employees, advisors, contractors, and providers or prospective providers of financing and their advisors, who need to know the Confidential Information for purposes of assisting Bidder in evaluating the Confidential Information or performing services or work as contemplated herein.

4. Bidder understands that because of the unique nature of the Confidential Information, in addition to other available remedies, NV Energy shall be entitled to seek injunctive and other extraordinary relief in enforcing this Agreement. In any action brought to enforce the terms of this Agreement in which NV Energy prevails or prevents Bidder from disclosing the Confidential Information to an unauthorized third party, NV Energy shall be entitled to recover all costs of such an action, including reasonable attorneys’ fees and expert witness fees, from Bidder.

5. If Bidder or any of its Representatives is requested or required by law, rule, applicable regulation, interrogatories, subpoenas, civil investigative demands or other similar legal process, stock exchange rules or disclosure requirement of a governmental authority or agency including, but not limited to the Securities and Exchange Commission, Federal Energy Regulatory Commission or any state or local public utility commission (collectively, “Applicable Law”) to disclose any of the Confidential Information, Bidder shall (to the extent legally permitted) promptly notify NV Energy of such request or requirement prior to disclosure so that NV Energy may seek an appropriate protective order or other remedy and/or waive compliance, in whole or in part, with the terms of this Agreement, as applicable. In any event, Bidder shall reasonably cooperate with NV Energy to the extent permitted by Applicable Law with respect to taking available actions to ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment and Bidder shall furnish only that portion of the Confidential Information that it is advised by Bidder’s counsel is legally required to be disclosed.

6. This Agreement shall not restrict the release or use by Bidder or its Representative of any Confidential Information which:

(a) is, or after disclosure becomes, generally known, readily available to or readily ascertainable by the public (“Public Information”), other than as a result of a disclosure by the Recipient in breach of its obligations under this Agreement;

(b) becomes available to Bidder on a non-confidential basis from a Person other than the NV Energy or any of its Representatives, provided that to the Bidder’s knowledge and belief the Person is not bound by a confidentiality agreement, or other contractual, legal or fiduciary obligation of confidentiality regarding the information;

(c) was developed by or for the Recipient or one or more of its Representatives or Recipients employees, agents or other contractors independently of the Confidential Information disclosed by NV Energy.

7. Bidder understands, acknowledges, and agrees that NV Energy is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information.

8. The Receiving Party understands, acknowledges, and agrees that the Disclosing Party is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and the Disclosing Party, including its respective officers, directors, employees, and Representatives

will have no liability to the Receiving Party or its Representatives resulting from the Receiving Party's use of the Confidential Information.

9. If Bidder or its Representative questions whether an item constitutes the Confidential Information, Bidder shall immediately bring the question to the attention of NV Energy and obtain written clarification regarding the item's proprietary nature prior to any further disclosure.

10. No failure or delay by either Party in exercising any right, power, or privilege under this Agreement shall be deemed a waiver thereof or preclude exercise of any other or further right, power, or privilege hereunder.

11. Nothing in this Agreement shall be interpreted as granting the Bidder any right or license, express or implied, to use all or part of the Confidential Information, except for the Purpose.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada, except conflict of laws provisions which would apply the laws of another jurisdiction. Any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach hereof, shall be instituted in any State or Federal Court in Clark County, Nevada (the "Acceptable Forums"). Each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, and waives any and all objections to jurisdiction or venue that it may have any such suit, action or proceeding. 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.

13. This Agreement and the obligations set forth herein shall be for a term of two (2) years from the date of this Agreement. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

**NV ENERGY, INC.**

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

Attn: General Counsel  
6226 W. Sahara Ave.  
Las Vegas, NV 89146

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address for notices:

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

**ATTACHMENT B**  
**VOLUNTARY CONSENT FORM**

<Date>

Mr. Charlie Pottey  
Director, Transmission Policy, Contracts and Business Services  
Nevada Power Company (NPC), d/b/a NV Energy  
6100 Neil Road, S3B40  
Reno, NV 89511

Re: <Project Name>

Dear Mr. Pottey

<Your Company Name> has submitted one or more bid responses into the 2016 ERCR RE Request for Proposals (“2016 ERCR RE RFP”) for Nevada Power Company d/b/a NV Energy (“NV Energy”). As part of NV Energy’s evaluation of the bid response, it could become necessary for the Transmission Provider’s transmission function employees and non-marketing function employees (as such terms are defined by the Federal Energy Regulatory Commission in 18 CFR Part 358) to share certain customer information designated by <Your Company Name> as “Confidential Information” pursuant to Section 13 of the Transmission Provider’s Large Generator Interconnection Procedures found in its Open Access Transmission Tariff (“OATT”) or Section 4.5 of the Small Generator Interconnection Procedures found in the OATT with certain non-transmission function employees. If this were to occur, such information sharing shall be limited to the evaluation in connection with such bid response(s) into the 2015 Solar PV RFP and such information would continue to be treated as “Confidential Information” by the transmission function employees.

By this letter, <Your Company Name> hereby provides NV Energy written consent for its transmission function employees to share <Your Company Name>’s information designated as “Confidential Information” with its non-transmission function employees, as may be necessary to evaluate the such bid response(s) into the 2016 ERCR RE RFP. Further <Your Company Name> understands that by providing this consent there will not be any preferences provided, either operational or rate-related, in exchange for that consent.

Please call < Your Contact Name and number> if you have any questions.

Sincerely,

Name  
Title

# **2016 ERCR RE Request for Proposals**



## **Attachment C**

THIS AGREEMENT DOES NOT CONSTITUTE AN OFFER, IS NOT BINDING, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON LEGAL AND CONFIRMATORY DUE DILIGENCE, EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT APPROVALS (INCLUDING CREDIT AND LEGAL APPROVAL) AND ALL REGULATORY APPROVALS. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS AGREEMENT OR ON STATEMENTS MADE DURING NEGOTIATIONS ARE AT THAT PARTY'S RISK. UNTIL A FINAL AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED, DELIVERED AND APPROVED BY ALL REQUIRED REGULATORY BODIES, AND EXCEPT FOR ANY OBLIGATIONS OF THE PARTIES UNDER ANY CONFIDENTIALITY AGREEMENT, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS AGREEMENT OR IN THE COURSE OF ANY NEGOTIATIONS.

**LONG-TERM RENEWABLE  
POWER PURCHASE AGREEMENT**

**BETWEEN**

**[NEVADA POWER COMPANY/SIERRA PACIFIC POWER COMPANY]**

**AND**

**[SUPPLIER]**

\_\_\_\_\_, 201\_\_

\_\_\_\_\_

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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 \_\_\_\_\_, 201\_ (the “Effective Date”) by and between [**NEVADA POWER COMPANY/SIERRA PACIFIC POWER COMPANY**] a Nevada corporation, d/b/a NV Energy acting in its merchant function capacity (“Buyer”), and \_\_\_\_\_, a \_\_\_\_\_ (“Supplier”). Buyer and Supplier are 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;

**WHEREAS**, Supplier desires to sell to Buyer, and Buyer desires to purchase from Supplier, Product from the Generating 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 Monthly Supply Amounts for that Contract Year.
- 1.8 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Article 14 notifying Buyer of the availability of the Generating Facility.
- 1.9 “Average On-Peak Mead Index” means the simple average of the Mead Index for the On-Peak hours of the Summer Months or the Non-Summer Months, as applicable.
- 1.10 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.11 “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 Generating Facility is located. As of the Effective Date, the Balancing Authority Area Operator is the Transmission Provider.
- 1.12 “Billing Period” is defined in Section 7.2.1.
- 1.13 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.
- 1.14 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.15 “Buyer ROFO Notice” is defined in Section 6.1.1.
- 1.16 “Buyer ROFR Notice” is defined in Section 6.2.1.
- 1.17 “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.
- 1.18 “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.

- 1.19 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.20 “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 Generating Facility or the Generating 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 Generating Facility.
- 1.21 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.22 “Commercial Operation” means that the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System, all of which shall be Supplier’s responsibility to receive or obtain, and which occurs when all of the requirements set forth in Section 8.3, Section 17.2 and Exhibits 6 and 7 (a) have occurred, and (b) remain simultaneously true and accurate as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred.
- 1.23 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.24 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur.
- 1.25 “Compliance Cost Cap” is defined in Section 3.5.
- 1.26 “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.
- 1.27 “Contract Year” means each year during the Term beginning on January 1 and ending on December 31 of the calendar year following the Commercial Operation Date (or commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).
- 1.28 “Controlling Interest” with respect to a Person, means 50% or more of outstanding ownership interest, or the power to vote such percentage of ownership interest.
- 1.29 “Covered Facility” is defined in Section 24.5.1.

- 1.30 “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.
- 1.31 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.32 “Cure Period” is defined in Section 24.3.
- 1.33 “Curtailed Product” is defined in Section 10.3.
- 1.34 “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, \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert Development Security divided by three hundred sixty (360)*] 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, \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert Development Security divided by one hundred eighty (180)*] per day; and (c) with respect to the one-hundred-twenty-first (121st) through and including the one-hundred-eightieth (180th) day subsequent to the Commercial Operation Deadline, \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert Development Security divided by one hundred twenty (120)*] per day.
- 1.35 “Daily On-Peak Supply Amount” means, with respect to a calendar month, the sum of the Supply Amounts for the hours ending 0700 through 2200 for that month.
- 1.36 “Daily Supply Amount” means, with respect to each day of a calendar month, the sum of the Supply Amounts for the hours ending 0100 through 2400 for that month.
- 1.37 “Defaulting Party” is defined in Section 24.1.
- 1.38 “Deficit Damages” is defined in Section 8.6.
- 1.39 “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.
- 1.40 “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.
- 1.41 “Delivery Hour” means each hour.

- 1.42 “Delivery Point” means the delivery point on the Transmission System set forth in Exhibit 5.
- 1.43 “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.
- 1.44 “Development Security” is defined in Section 17.1.
- 1.45 “Dispute” is defined in Section 21.1.
- 1.46 “Early Option Closing Date” is defined in Section 6.3.1.
- 1.47 “Early Option Notice” is defined in Section **Error! Reference source not found.**3.1.
- 1.48 “Early Purchase Option” is defined in Section 6.2.1.
- 1.49 “Effective Date” is defined in the preamble of this Agreement.
- 1.50 “Electric System Authority” means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, an RTO, 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.
- 1.51 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating 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.
- 1.52 “Energy” means all energy that is generated by the Generating Facility.
- 1.53 “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.
- 1.54 “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 federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Project Site will not be available or usable for the purposes contemplated by this Agreement.

- 1.55 “Environmental Law” shall mean any federal, state, local or other law, common law, regulation, rule, ordinance, code, decree, judgment, binding directive, or judicial or administrative order 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.
- 1.56 “EPC Contract” means the turnkey engineering, procurement and construction contract for the Generating Facility.
- 1.57 “Event of Default” is defined in Section 24.1.
- 1.58 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.59 “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.
- 1.60 “Excused Product” has the meaning set forth in Section 3.6.5.
- 1.61 “Expected Nameplate Capacity Rating” means \_\_\_\_\_ MW.
- 1.62 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.63 “Final Purchase Option” is defined in Section 6.4.1.
- 1.64 “Final Option Notice” is defined in Section 6.4.1.
- 1.65 “Force Majeure” is defined in Article 20.2.
- 1.66 “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, including items as further described in Exhibits 1, 3A, 3B, 5 and 14 hereto, and as such generating power plant may be

expanded or otherwise modified from time to time in accordance with the terms hereof.

- 1.67 “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 and regulations, 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.
- 1.68 “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.
- 1.69 “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.
- 1.70 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.



- 1.71 “Indemnified Party” is defined in Section 18.1.
- 1.72 “Indemnifying Party” is defined in Section 18.1.
- 1.73 “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 or the Contract Year, in accordance with Exhibit 2A.
- 1.74 “ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- 1.75 “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.
- 1.76 [“Lease” is defined in Section 8.10.]
- 1.77 “Loss” 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 an Indemnified Party or incurred in connection with a claim by a third party against an Indemnified Party.
- 1.78 “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 Generating Facility, or of a manufacturer or supplier of any equipment installed in the Generating Facility.
- 1.79 “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.
- 1.80 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.

- 1.81 “Maximum Amount” means, with respect to a Delivery Hour, \_\_\_\_\_ MWh [*insert one hundred percent (100%) of the highest Supply Amount in Exhibit 13, not to exceed the Expected Nameplate Capacity Rating*].
- 1.82 “Measurement Period” means each two (2) consecutive Contract Years commencing with the first two Contract Years of the Term.
- 1.83 “Mead Index” means the Hourly Mead Index published by Powerdex.
- 1.84 “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 Generating Facility and for recording other related parameters required for the reporting of data to Supplier, (b) the computation of the payment due to Supplier from Buyer 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, other than the gross meter installed to determine gross Energy (and Station Usage).
- 1.85 “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.
- 1.86 “Monthly Supply Amount” means, with respect to a calendar month, the Daily Supply Amount for that month times the number of days in that month.
- 1.87 “Monthly On-Peak Supply Amount” means, with respect to a calendar month, the Daily On-Peak Supply Amount for such month times the number of days in that month.
- 1.88 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.89 “MW” means megawatts of electrical power.
- 1.90 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.91 “NAC” means the Nevada Administrative Code.
- 1.92 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.93 “Net Energy” means all Energy and capacity produced by the Generating 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.

- 1.94 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.95 “Non-Summer Months” means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.96 “Notice to Proceed” means the initial notification by the Supplier to its EPC contractor to commence work under the EPC Contract.
- 1.97 “NRS” means the Nevada Revised Statutes.
- 1.98 “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.
- 1.99 “Offered Interests” is defined in Section 6.1.1.
- 1.100 “Off-Peak” means hours ending 01:00 through 06:00 PPT and hours ending 23:00 through 24:00 PPT of each day.
- 1.101 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.102 “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 herein.
- 1.103 “Operating Security” is defined in Section 17.2.
- 1.104 “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.
- 1.105 “Output Right of First Offer” is defined in Section 24.5.1.
- 1.106 “Pacific Prevailing Time” or “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.107 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.108 “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 Generating 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.

- 1.109 “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.
- 1.110 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.111 “PC Shortfall” has that meaning ascribed to that term in Section 3.7.1.
- 1.112 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.113 “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.
- 1.114 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.115 “Planned Outage” is defined in Article 11.1.
- 1.116 “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).
- 1.117 “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.

- 1.118 “Product” means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits and (d) Capacity Rights arising from or relating to the Generating Facility.
- 1.119 “Product Rate” means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.120 “Project Milestone” means each of the milestones listed in Exhibit 6.
- 1.121 “Project Milestone Schedule” means the schedule of Project Milestones, completion dates and required documentation specified in Exhibit 6.
- 1.122 “Project Site” means the site for the Generating Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.123 “PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.124 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.125 “PUCN Approval” is defined in Section 16.2.
- 1.126 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.127 “PUCN Approval Deadline” means, with respect to any matter submitted to the PUCN for approval, the expiration of the time period provided for by Nevada Law during which the PUCN is required to either approve or specify inadequacies with respect to such matter.
- 1.128 “Qualifying Facility” or “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.
- 1.129 “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.
- 1.130 “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Supplier and, at a minimum, has a tangible net worth of at least thirty million dollars (\$30,000,000) and at least three (3) years of experience operating a generating plant of similar technology and similar size to the Generating Facility.
- 1.131 “Relevant Rating Agency” means Moody’s or S&P.
- 1.132 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions, reductions, 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 Generating Facility or the generation, transmission or use of the Product, including but not limited to 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 Generating Facility's use of renewable resources for generation or because the Generating Facility constitutes a renewable energy system or the like or because the Generating 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 Generating 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 but are not limited to: (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), 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 Generating Facility, (ii) matters designated by Buyer as sources of liability and (iii) adverse wildlife or environmental impacts.

- 1.133 “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 federal or state Law, if applicable, and to federal or state agencies or other Persons at such purchaser's discretion, and include reporting under (1) Section 1605(b) of the Energy Policy Act of 1992, (2) the Environmental Protection Agency, (3) the Clean Air Act Amendments Section 111(d) and regulations thereunder and (4) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
- 1.134 “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, regulations, guidance and requirements may be amended, preempted or superseded.

- 1.135 “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.
- 1.136 “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.
- 1.137 “Required Facility Documents” means the permits and other authorizations, rights and agreements now or hereafter necessary for construction, operation, and maintenance of the Generating Facility set forth in Exhibit 12. Nothing set forth in Exhibit 12 limits Supplier’s obligation to obtain the permits set forth in Exhibit 12 or otherwise required hereunder or with respect to the Generating Facility.
- 1.138 “Restricted Period” is defined in Section 8.4.2.
- 1.139 “Restricted Transaction” is defined in Section 6.1.1.
- 1.140 “ROFO Seller” is defined in Section 6.1.1.
- 1.141 “ROFR Seller” is defined in Section 6.1.1.
- 1.142 “ROFO Transaction” is defined in Section 6.1.1.
- 1.143 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.144 “Seller ROFR Notice” is defined in Section 6.2.1.
- 1.145 “Shortfall” is defined in Section 3.6.1.1 with respect to the Summer Month and Section 3.6.2.1 with respect to Non-Summer Months.
- 1.146 “Shortfall Amount” is defined in Section 3.6.1.2 for the Summer Months and Section 3.6.2.2 for Non-Summer Months.
- 1.147 “Shortfall Threshold” is defined in Section 3.6.1.1 with respect to a Summer Month, Section 3.6.2.1 with respect to Non-Summer Months and Section 3.6.3.1 with respect to the Off-Peak Period.
- 1.148 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor.
- 1.149 “Stub Period” means the period of time commencing on the Commercial Operation Date and ending on December 31 of the calendar 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).

- 1.150 “Stub Period Supply Amount” means the sum of the Daily Supply Amount for each day of the Stub Period.
- 1.151 “Summer Months” means the months of June, July, August and September occurring during the Stub Period or a Contract Year.
- 1.152 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.153 “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 Generating Facility, including without limitation lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.
- 1.154 “Supplier’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filings with or notifications to, the Governmental Authorities listed on Exhibit 10.
- 1.155 “Supply Amount” means, with respect to any Delivery Hour, the amount of Energy stated in Exhibit 13.
- 1.156 “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.
- 1.157 “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.
- 1.158 “Term” is defined in Section 2.2.
- 1.159 “Test Product Rate” is defined in Section 4.1.1.
- 1.160 “Transmission Provider” means Nevada Power Company or any successor operator or owner of the Transmission System.



- 1.161 “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.
- 1.162 “UEPA” means the Utility Environmental Protection Act, as set forth in NRS §§ 704.820 through 704.900 and the PUCN regulations promulgated thereunder at NAC §§ 703.415 through 703.427.
- 1.163 “Weather Meter” is defined in Section 7.1.8.
- 1.164 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.165 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.
- 1.166 “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. 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 [*insert #*] years from January 1 immediately following the Commercial Operation Date, 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. Buyer shall not be obligated to accept or pay for any Product, unless the PUCN Approval is received or Buyer waives its right to terminate this Agreement pursuant to Section 16.3.
- 2.3 Termination.
- 2.3.1 For Cause. 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. Supplier will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the 15 Business Days after receipt of such notice.

- 2.3.2 Termination. This Agreement may be terminated by Buyer without payment or penalty in accordance with Article 16 in the event the PUCN Approval is not obtained by the PUCN Deadline, or is granted with conditions that are not acceptable to Buyer in its sole discretion.
- 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 pursuant to Article 20 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. Any termination of this Agreement or expiration of the Term 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 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 Generating Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Supplier shall not (a) sell, divert, grant, transfer or assign Product to any Person other than Buyer, (b) provide Buyer with electric Net Energy, PCs, Renewable Energy Benefits or Capacity Rights from any source other than the Generating Facility or (c) divert, redirect or make available the Generating 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 the Supplier agrees that Buyer shall be entitled, without proof of actual damages, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining the 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 Capacity Rights, if any. During the Term, Supplier shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Capacity Rights. 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, Supplier shall supply and deliver the Product to Buyer at the Delivery Point throughout the Term.

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 and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. Without limiting the generality of the foregoing, Supplier, shall bear all costs associated with the modifications to the Transmission System (including system upgrades) caused by or related to (a) the interconnection of the Generating Facility with the Transmission System and (b) any increase in generating capacity of the Generating Facility.

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 and 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.

3.5 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 being delivered; provided, if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net 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 \$100,000 (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: (1) agree to reimburse Supplier for such excess costs (the “Accepted Compliance Costs”) or (2) 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 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 the damages for any Shortfall (defined below) and any Penalties.

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 such Summer Months, 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, 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. If the calculation set forth in this Section 3.6.1.2 yields an amount of zero or less for the Summer Months,

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 shall equal (a) the Shortfall Amount multiplied by (b) the greater of (i) ten-percent (10%) of the applicable Summer On-Peak Product Rate or (ii) an amount equal to Average On-Peak Mead Index for the Summer Months minus the applicable Summer On-Peak Product Rate. If the calculation of Replacement Costs as set forth in this Section 3.6.1.3 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 the Summer Months in which a Shortfall has occurred, 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 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 such Non-Summer Months, 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, an amount expressed in MWh equal Shortfall Threshold for such Non-Summer Months minus the sum of all Delivered Amounts during the On-Peak hours of such Non-Summer Months. If the calculation set forth in this Section 3.6.2.2 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 shall equal (a) the Shortfall Amount multiplied by (b) an amount equal to Average On-Peak Mead Index for the Non-

Summer Months minus the applicable Non-Summer On-Peak Product Rate. If the calculation of Replacement Costs as set forth in this Section 3.6.2.3 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 Generating Facility that is not also a Force Majeure), (d) Planned Outage, or (e) 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 was capable of delivering (not to exceed the Supply Amount) and (ii) the Delivered Amount (the "Excused Product"). 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, Supplier shall pay Buyer for the replacement costs associated with such PC Shortfall and calculated in accordance with this Section 3.7.1 and any Penalties ("PC Replacement

Costs”). A “PC Shortfall” means the occurrence of the following with respect any Measurement Period: 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 years in such Measurement Period minus (ii) the total amount of PCs associated with Excused Product. “PC Shortfall Amount,” with respect to any Measurement Period, means (a) the sum of the Yearly PC Amount for the years in such Measurement Period; minus (b) the total amount of PCs associated with Excused Product; minus (c) Delivered PCs. 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 that are 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 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.
- 3.7.4 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, the Annual Supply Amount, each Supply Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by \_\_\_\_\_ percent (\_\_\_%). Buyer shall revise Exhibits 13 and 18 accordingly, effective January 1 of such Contract Year.

#### **4. PRICE OF PRODUCT**

- 4.1 Product Payments. Supplier shall be paid for the Product based on the Delivered Amount of Net Energy, as follows:

4.1.1 Upon 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 Excess Energy (which shall not be compensable), shall be paid for by Buyer at the lesser of (i) fifty percent (50%) of the applicable Product Rate, (ii) XXXX dollars (\$XX) per MWh or (iii) the Mead Index for the Delivery Hour ("Test Product Rate").

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, and provided further that Buyer shall be paid at the Test Product Rate for the calendar 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 calendar month.

4.1.2.2 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 Energy that is for any reason not Net Energy.

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

- 4.2 Excused Product. Buyer shall not be required to pay for Product comprising Excused 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 Generation Facilities 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 Generating 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 Generating 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 Generating 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, but not limited to, (1) taking all actions necessary to register or certify any Renewable Energy Benefits or the Generating Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise) and WREGIS, (2) causing the automatic transfer of the Renewable Energy Benefits derived from the Generating Facility to Buyer (pursuant to NAC 704.8927 or otherwise), (3) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable and (4) cooperating in any registration by Buyer of the Generating 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 Generating 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 Generating 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 calendar 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 calendar 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 Generating 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 the Supplier hereby in advance agrees (i) 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 (ii) 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 (i)).

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.**

6.1.1 Supplier shall not (and shall cause any direct, or indirect parent of Supplier whose principal assets are Supplier or the Generating Facility not to) (for purposes of Section 6.1, each a “ROFO Seller” and, for purposes of Section 6.2, each a “ROFR Seller”), sell, transfer or offer, or negotiate to sell or transfer, the Generating Facility, any material portion of such Person’s assets or any direct or indirect equity interests in Supplier (the “Offered Interests”) other than to an Affiliate in accordance with the provisions of Section 23.4 (each a “Restricted Transaction”) except in accordance with this Section 6.1.1. If a ROFO Seller intends to enter into a Restricted Transaction, it 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, ROFO Seller shall 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, but not limited to, Section 6.1.3 and Section 6.2 below 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 twenty (120) 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 Right of First Refusal.**

- 6.2.1 If ROFR Seller and such other Person agree upon the terms, conditions and pricing for the Offered Interests with respect to a Restricted Transaction within one hundred twenty (120) days following the expiration of the ROFO Period, then prior to ROFR Seller and such Person entering into such Restricted Transaction, ROFR Seller shall provide Buyer with written notice of the terms, conditions and pricing for the Offered Interests, including (i) the name and address of the proposed transferee, (ii) a description of the Offered Interests proposed to be transferred to the proposed transferee and (iii) the proposed form of consideration and terms and conditions of payment contemplated for the proposed Restricted Transaction (a “Seller ROFR Notice”), and Buyer shall have a sixty (60)-day exclusive right of first refusal to purchase such Offered Interests on the terms, conditions and pricing set forth in the Seller ROFR Notice. Should Buyer notify ROFR Seller in writing during such sixty (60)-day period of Buyer’s intention to purchase the Offered Interests from ROFR Seller (a “Buyer ROFR Notice”), then (A) the Parties shall negotiate and execute definitive transaction documents with respect to such Offered Interests and (B) ROFR Seller shall not be permitted to sell the Offered Interests to any other Person.
- 6.2.2 If Buyer does not elect to purchase the Offered Interest from ROFR Seller pursuant to Section 6.2.1, ROFR Seller shall be permitted to consummate a Restricted Transaction with another Person, provided that (i) the terms of such Restricted Transaction are not more favorable to such Person than those which were included in the Seller ROFO Notice, and (ii) the consummation of such Restricted Transaction is subject, in all cases, to the terms and conditions of this Agreement, including Section 6.2.3 below and the provisions of Article 23.
- 6.2.3 If ROFR Seller does not consummate a Restricted Transaction under Section 6.2.2 within one hundred eighty (180) days of the date of ROFR Seller’s receipt of the Buyer ROFR Notice, ROFR Seller and any Offered Interests shall again be subject to Section 6.1 and Section 6.2 with respect to any Restricted Transaction.

6.3 Early Purchase Option.

- 6.3.1 Supplier hereby grants to Buyer options to purchase (“Early Purchase Option”) the Generating Facility as of the 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, and 20<sup>th</sup> Anniversaries of the Commercial Operation Date (the “Early Option Closing Date”), at fair market value by providing written notice to Supplier no less than two hundred and forty (240) days before the Early Option Closing Date (“Early Option Notice”).
- 6.3.2 Upon the acquisition of the Generating Facility by Buyer pursuant to this Section 6.23, 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.

6.4 Purchase Option at the End of Term.

6.4.1 Supplier hereby grants to Buyer the option to purchase the Generating Facility at the end of the Term for ten dollars (\$10.00) (the “Final Purchase Option”) which option may be exercised by Buyer providing written notice to Supplier no less than two hundred and forty (240) days prior to the end of the Term of Buyer’s interest in exercising the Final Purchase Option (“Final Option Notice”).

6.5 Efforts Required to Transfer Generating Facility. If Buyer exercises the Early Purchase Option, the Final Purchase Option or otherwise agrees to purchase the Generating Facility pursuant to Section 6.1 or 6.2, then after all necessary regulatory approvals are received, Supplier will take all actions necessary to transfer by deed, bill of sale, or both, the Generating 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 Generating Facility, free and clear from any lien or monetary encumbrance for which Supplier or its representatives are responsible. In addition, Supplier will [(i)] assign to Buyer all transferrable permits and Required Facility Documents, and all transferrable warranties for the Generating Facility [and (ii) the Lease shall be deemed to be terminated effective upon the closing of the Purchase of the Generating Facility<sup>1</sup>]. Supplier shall cooperate with Buyer to assign and enforce any and all warranties that apply to the Generating Facility or any of its component parts, which obligation shall survive the termination of this Agreement. If Buyer agrees to purchase the Generating Facility or any Offered Interests pursuant to Section 6.1, 6.2, 6.3 or 6.4, such purchase shall occur pursuant to a form of purchase and sale agreement with customary representations, warranties and covenants and in form reasonably acceptable to Buyer, which purchase shall be conditioned upon Buyer obtaining all necessary regulatory approvals.

6.6 Due Diligence; Cooperation; Regulatory Approvals; Notice of Rights. Supplier will provide in a timely manner, information regarding the Generating Facility which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Generating Facility pursuant to Section 6.1, 6.2, 6.3 or 6.4. Supplier shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation, throughout Buyer’s efforts to properly account for and obtain and necessary regulatory approvals with respect to the purchase of the Generating Facility pursuant to Section 6.1, 6.2, 6.3 or 6.4. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of the Generating Facility or any Offered Interests pursuant to Section 6.1, 6.2, 6.3 or 6.4 if Buyer does not receive all necessary regulatory approvals in connection with such transaction. Supplier shall put any Person with which it enters into

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<sup>1</sup> NTD: This language is to be included if a project is on Buyer property.

discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in Section 6.1, 6.2, 6.3 and 6.4. Buyer shall be permitted to file a notice of the rights contained in Section 6.1, 6.2, 6.3 and 6.4 with respect to the Project Site.

## **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. If more than one Meter is installed, then data from all Meters shall be aggregated into one revenue Meter. The metering system design shall be subject to the Buyer's approval and shall be submitted to Buyer not later than the Supplier's completion of the Project Milestone relating to obtaining of construction permits. 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 . The Meters shall also be used for, among other things, metering Station Usage of the Generating 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 Generating 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 Generating Facility and only the Generating 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 specified in Exhibit 5, or as otherwise 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.

- 7.1.5 Meter Testing. Meters shall be tested at least once every two calendar 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 calendar 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; however, 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; however, 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 actual direct normal irradiance 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, 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) calendar 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) calendar days of the date of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to Invoicing Party.
- 7.2.5.3 If an invoicing Party fails to provide the invoiced Party with notice of any alleged error in the invoicing Party's Invoice within three (3) years of the invoiced Party's receipt of such Invoice, then the invoicing Party shall be deemed to have waived all rights to object to such Invoice.
- 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 or with respect to 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 Generating Facility. Supplier shall construct or cause the Generating Facility to be constructed in accordance with Good Utility Practices, in accordance with the Project Milestones and to ensure that (a) Supplier is capable of meeting its supply and delivery obligations over the Term, (b) the Generating Facility is at all times considered a Renewable Energy System and (c) 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 construct or cause the Generating Facility to be constructed on the Project Site. 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 Supplier's completion of the Project Milestone relating to obtaining of construction permits, 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 Generating Facility as built. At Buyer's request, Supplier shall provide Buyer with copies of the EPC Contract for the facility 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.
- 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. Failure of Supplier to

achieve a Critical Project Milestone on or before the scheduled date 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 event (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 the 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 EPC Contract. 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. Supplier shall notify Buyer at least ten (10) Business Days prior to the commencement of the performance tests required by Exhibit 7. 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 Generating Facility has achieved Commercial Operation, including the following written certifications.

- 8.3.2.1 A certification (certified by an 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 Generating Facility has been constructed in accordance with Good Utility Practice and has delivered Net Energy to and at the Delivery Point; (b) all of the requirements set forth in Sections 8.1 and 8.3, and Exhibits 6 and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [\_\_\_\_\_] have been satisfied; (c) I am authorized to act on behalf of and bind Supplier with respect to this certificate; (d) 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 Generating Facility at the anticipated time of Commercial Operation in MW AC (“Certified Nameplate Capacity Rating”) and (2) that the Generating 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; and, (3) performance tests required by Exhibit 7 have been completed. The Certified Nameplate Capacity Rating must not be less than [#] MW AC
- 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 Generating Facility is physically interconnected with the 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 Generating Facility addressed to Buyer stating that 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, and copies of the Supplier Required Regulatory Approvals listed in Exhibit 10 and all Required Facility Documents listed in Exhibit 12, provided, however, that Supplier may redact or omit confidential or commercial terms from such documents. [The opinion shall further state that the Lease 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 for the Term.]<sup>2</sup>

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<sup>2</sup> NTD: See footnote 1.

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 contest the Commercial Operation Date by written notice to Supplier. In the event of such a Dispute, Buyer and Supplier will then attempt for no more than fifteen (15) Business Days after Buyer's notice of Dispute to resolve the Dispute. If the Parties are unable to resolve the Dispute within fifteen (15) Business Days, then either Party may seek resolution of the Dispute in accordance with Section 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, for any loss of the required extension payment that would have otherwise been due pursuant to Section 8.4 or 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, at Buyer's election, 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 by Buyer in its sole discretion, and neither Party will have any further obligations hereunder, 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 If Buyer terminates this Agreement due to an Event of Default of Supplier prior to Commercial Operation Deadline or the failure of Supplier to achieve Commercial Operation, 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 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"). This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Supplier or Supplier's Affiliate provides Buyer with a written offer to sell the Net Energy or any Product to Buyer at the Product Rate and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after its receipt thereof. Neither Supplier nor Supplier's Affiliates may sell or transfer the Generating 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 8.4.2 apply, unless the transferee agrees to be bound by the terms set forth in this Section 8.4.2 pursuant to a written agreement approved by Buyer. Buyer shall be permitted to file a notice of the rights contained in this Section 8.4.2 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 within this Section 8.4.2.

8.4.3 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 the Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, for each day, but not exceeding, up to two hundred forty (240) days, that the Supplier fails to achieve Commercial Operation thereafter, Supplier shall pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have been accumulated for one hundred eighty (180) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement. If Buyer elects not to terminate this Agreement at that time and Delay Damages have accumulated for an additional sixty (60) days, then Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Period 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 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.

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 MWs, multiplied by (b) \_\_\_\_\_ dollars (\$\_\_\_\_\_) per MW of difference (“Deficit Damages”). Supplier’s total liability for Deficit Damages shall not exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_). 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, (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 [ ] percent [#%], 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 or Operational Security. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.

- 8.7 Modification. Buyer shall not be permitted to make any modification that would increase the 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 Generating 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. 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 Generating 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 an amount equal to the Development Security or Operating Security, as applicable, which may be obtained by Buyer by retention of the Development Security or Operating Security.

- 8.8 Operation and Maintenance. Supplier, at all times shall install, operate, maintain and repair the Generating 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 Generating 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 Generating 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 Generating 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 Generating Facility, Supplier shall provide a copy of any proposed agreement between Supplier and such sub-operator which requires the sub-operator to operate the Generating 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 Generating 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.
- 8.10 [Lease]. Supplier and Buyer have entered into a lease for the Project Site which establishes the right of Supplier to construct, maintain, access and operate the Generating Facility on the Project Site (the "Lease"), which is attached to this Agreement as Exhibit 16.]<sup>3</sup>
- 8.11 Right to Review. Buyer shall have the right to review during normal business hours 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 Generating Facility or this Agreement.
- 8.12 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including, but not limited to, 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,

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<sup>3</sup> NTD: See footnote 1.



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 generation of the Generating 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 with a description in reasonable detail of the Emergency and any steps employed to cure it.
- 9.3 Due Care. In the event of an Emergency, either Party may take reasonable and necessary action to prevent, avoid or mitigate Loss or to expedite 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. Buyer shall have no payment responsibility in respect of Product Buyer is unable to receive 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. In no event shall any compliance or curtailment of Energy made in response to such an order impose any liability on Buyer. Buyer has no obligation to pay any amounts to Supplier with respect to any Curtailed Product.
- 10.2 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Energy (or associated Renewable Energy Benefits) if such Net Energy (or associated Renewable Energy Benefits) is not delivered to the Transmission System or Delivery Point for any reason, including due to any of the following: (a) the interconnection between the Generating 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 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 Generating Facility's Energy is not received because the Generating 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.

- 10.3 Curtailed Product. The amount of Net Energy curtailed under Section 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, 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 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 Generating Facility based upon an Emergency with respect to the Generating Facility.

## **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 Generating Facility or reducing the capability of the Generating 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 Generating Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, or as 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 upcoming calendar year or Contract Year, as applicable. The proposed schedule will designate the hours and amount (in MWs) in which the Energy will be reduced in whole or in part. Each proposed schedule shall include all applicable information, including the following: month, day and time of requested outage, facilities impacted, duration of outage, purpose of outage and other relevant information. The total combined 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 and either require modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. Product not delivered to Buyer during periods of Planned Outages, up to the MWs 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 MWs exceed its approved schedule, or is not approved by Buyer. Supplier shall make reasonable efforts to accommodate proposed revisions to the approved Planned Outage(s) schedule by Buyer.
- 11.2.3 Regardless of any prior approval of a Planned Outage, Supplier shall not start a Planned Outage on the Generating 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 institute a Planned Outage as scheduled, for reasons other than Force Majeure or Emergency, Supplier may present a reasonable estimate of costs expected to be incurred as a result of the Supplier not instituting the Planned Outage. If Buyer agrees to the estimated costs, Supplier shall not institute the Planned Outage, and Buyer shall reimburse Supplier for its documented out-of-pocket costs actually incurred by Supplier in connection with not instituting such Planned Outage (not to exceed the estimated costs presented 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 operation or maintenance of the Generating Facility. Supplier shall keep Buyer apprised of the status of any such matters.
- 12.2 Notification of Generating Facility Regulatory Status. Supplier shall notify Buyer of the regulatory status of the Generating 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 regulatory 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 Generating Facility, and will provide Buyer with evidence documenting receipt of the required regulatory approvals related to such changed regulatory status (as such approvals are set forth in Exhibit 10).

12.3 Notices of Change in Generating 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 Generating Facility. Such notice shall describe any changes, expected or otherwise, to the total capacity of the Generating Facility, the rate of production and delivery of Net Energy, 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 approvals or certificates 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 previous calendar 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 Commercial Operation Date on 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 Generating 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 calendar quarter throughout the Term of this Agreement, in electronic format, a report which shall include all pertinent information in connection with the Generating Facility, including: all weather data from any collection device measuring data with respect to the Generating Facility (such as a met tower or similar measurement device); any available site condition reports; all reporting information maintained in the operational log and any other SCADA data from the Generating Facility; and any reports pertaining to the Generating Facility fuel source or 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 Generating 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 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 Generating Facility or the delivery of Net Energy. 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 [audited/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 Generating 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. 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 Generating Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge. 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 Law. The information provided to Buyer under this Section 14.2.5 shall be treated as Confidential Information if at the time of disclosure Supplier provides written notice that the information is Confidential Information. 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 14.2.5 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 Generating 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 Generating Facility. Supplier shall further provide Buyer with information relating to environmental impact mitigation measures it is taking in connection with the Generating 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 or regulations arising out of the construction or operation of the Generating Facility, or the actual or alleged presence of Environmental Contamination at the Generating 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 Generating 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 Generating 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, 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.

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 the Supply Amount or any Delivery Hour for which Excess Energy is expected.

14.2.4 In the event of a Derating, 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 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. 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 Permits material to the maintenance of its facilities and the performance of 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 state or federal 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.

## **16. APPROVALS**

- 16.1 Condition Precedent. Unless Buyer waives its right to terminate this Agreement pursuant to Section 16.3, 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 Approval; Conditions of Approval. If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline, including all items provided in Section 16.2, then Buyer shall have the right to terminate this Agreement upon ten (10) Business Days written notice to Supplier. If PUCN grants the PUCN Approval and the conditions of such approval are not acceptable to Buyer in its sole discretion, then Buyer shall have the right to terminate this Agreement within thirty (30) days of such PUCN Approval and upon written notice to Supplier.
- 16.4 Cooperation. If requested by Buyer, Supplier shall cooperate with Buyer as Buyer may deem necessary in order to obtain any regulatory approval (including PUCN Approval and any FERC approval) in connection with this Agreement, including providing affidavits, providing timely responses to data requests of such regulatory bodies, 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 approval in connection with achieving Commercial Operation of the Generating Facility, including the PUCN Approval. Each Party shall use reasonable efforts to obtain



such required approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each 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 in the form attached hereto as Exhibit 17 or (b) a cash deposit, in either case, in an amount equal to \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert the Expected Nameplate Capacity Rating in kW times \$15/kW*] (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 \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert the Expected Nameplate Capacity Rating in kW times \$60/kW*]. The revised Development Security shall be posted within five (5) Business Days after the PUCN Approval Date. Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion, (1) as a non-exclusive remedy available to Buyer under Article 24, (2) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline, (3) if Supplier fails to make any payments owing under this Agreement, or (4) 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. Any such drawing on the Development Security by Buyer (except for a drawing in full for Supplier's failure to achieve Commercial Operation by the Commercial Operation Date that results in termination of this Agreement) shall give rise to an obligation of Supplier to replenish the Development Security to its required amount within two (2) Business Days of the drawing. 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 (15<sup>th</sup>) Business Day after the Generating 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 in the form attached hereto as Exhibit 17 or (b) a cash deposit, in either case, in an amount equal to \_\_\_\_\_ and \_\_\_\_/100 U.S. Dollars (\$\_\_\_\_\_) [*insert one year of revenue based on the Initial Product Rate and the Annual Supply Amount*] or (c) a Guaranty substantially in the form of Exhibit 20 if the guarantor meets Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion (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 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 under this Agreement. 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 two (2) 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 (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 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 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 Section 17.2. If at any time after the Effective Date, any guarantor providing a guaranty pursuant to Section 17.2 fails to meet Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion, then Buyer shall notify Supplier in writing and Supplier

shall cause a letter of credit or cash in the amount of the Operating Security to be delivered to Buyer within five (5) Business Days of such notice. Failure to provide the Operating Security 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 the Supplier. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the 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, but not limited to, 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. 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 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 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 any termination, cancellation, expiration, or suspension 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 which would affect its business or operations in any materially adverse manner;

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 to 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, 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 negligence or willful misconduct, 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 other provisions of this Agreement, except for Replacement Costs, PC Replacement Costs or payment made by either Party to satisfy Penalties or payments owing under Sections 3.6, 3.7, 7.5, 8.4, 8.5, 15.1, 17.1, 17.2, 18.1, 19.1, 21.4, 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 any termination, cancellation, expiration, or suspension 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 date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such 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 tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; 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 court or government action).
- 20.3 Exclusions. Notwithstanding the foregoing, none of the following 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;
  - 20.3.3 A Party’s failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, except to the extent it is caused by an act of God or civil disturbance;
  - 20.3.4 A Party’s failure to meet a Project Milestone, except to the extent it is caused by an event listed in Section 20.2;
  - 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 owner, Transmission Provider unless due to a Force Majeure event;
  - 20.3.7 Supplier’s ability to sell, or Buyer’s ability to purchase energy or capacity at a more advantageous price than is provided hereunder;

- 20.3.8 Any breakdown or malfunction of the Generating 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, 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 event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem (subject to the provisions of Section 2.3.3); 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; and
  - 20.4.5 Provides prompt notice to the other Party of the cessation of the event or condition 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 arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof ("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.
- 21.4 Jurisdiction, Venue. Each Party hereto irrevocably (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Clark, State of Nevada; (b) waives any objection which it may have to the laying of 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, then 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 service provided under this Agreement to the public.

## **23. ASSIGNMENT**



Except as stated below, neither this Agreement nor any of the rights, interests, 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.

22.1 Buyer Assignment. Buyer may assign this Agreement as follows:

23.1.1 Buyer may assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or in part, without Supplier's consent, if such assignment is made to: (a) Nevada Power Company; (b) where such assignment does not occur by operation of Law, any successor to Buyer provided such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704; (c) a legally authorized governmental or quasi-governmental agency charged with providing retail electric service in Nevada; or (d) as otherwise required by Law.

23.1.2 Buyer also may assign this Agreement, in whole or in part, without Supplier's consent, to a Person whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment.

23.1.3 Buyer shall provide Supplier with written notice of any such assignment.

23.2 Supplier Assignment. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder) (a) transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds hereof in connection with any financing or other financial arrangements for the Generating Facility and (b) transfer or assign this Agreement to any of its Affiliates in connection with a transfer of the Generating Facility to such Affiliate; provided, that Supplier provides Buyer prior notice of any such transfer or assignment and, with respect to any transfer to an Affiliate of Supplier, (i) the creditworthiness of such Affiliate is equal to or superior to the creditworthiness of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, and (ii) 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 assignment of this Agreement by Supplier, together with information supporting the permissible nature of the assignment, prior to the effective date of any such 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 said Party from any liability and financial responsibility for the performance thereof arising after any such transfer or assignment, provided 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 Generating 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, and (c) Buyer's prior written approval, not to be unreasonably withheld, of such third party. Without limiting the foregoing, any such sale, transfer, assignment or disposal shall be to a Qualified Transferee. Subject to the provisions of Article 6, this Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Generating Facility to an Affiliate of Supplier so long as the requirements for the assignment of the Agreement to an Affiliate in Section 23.2 are satisfied.
- 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, of the transferee with respect to such Controlling Interest. Without limiting the foregoing, any such sale, transfer, or assignment shall be to a Qualified Transferee.
- 23.6 Assignee Obligations. Supplier shall procure and deliver to Buyer an undertaking, enforceable by Buyer, from each party possessing a security interest in the Generating Facility to the effect that, if such party forecloses on its security interest, (a) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (b) it will not sell, transfer or otherwise dispose of its interest in the Generating Facility to any third party absent an agreement from such third party to assume Supplier's obligations under and otherwise be bound by the terms of this Agreement.
- 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. In the event that Supplier intends to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide written notice to Buyer of such intended transfer, pledge, encumbrance or assignment, 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, Buyer and Supplier and Supplier's Lenders shall have agreed upon the terms of a consent to collateral assignment of this Agreement, which consent to collateral assignment shall be in form and substance of the Collateral Assignment Agreement 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:

- 24.1.1 failure to comply with any material obligations imposed upon it by this Agreement or failure of any representation or warranty of a Party to be true in any material respect;
- 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 Generating Facility in accordance with Good Utility Practice;
- 24.1.6 in the case of Supplier, its failure to timely complete any of the Critical Project Milestones (including Commercial Operation) before the scheduled date and as set forth in Exhibit 6, unless excused by an event of Force Majeure;
- 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 in the case of Supplier, its 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; and
- 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 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).

24.1.11 in the case of Supplier, if Supplier (a) relinquished all possession and control of the Generating Facility, other than pursuant to a transfer permitted under this Agreement, or (b) after commencement of the construction, testing, and inspection of the Generating Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Generating 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.

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. 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 in default.

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, had a period of ten (10) Business Days from the date the applicable payment was due; and (b) for purposes of Section 24.1 (other than Sections 24.1.2, 24.1.6, or 24.1.10 which are addressed above), had a period of fifteen (15) days from the date of receipt of written notice of the occurrence of any of the events described in Section 24.1 (as applicable a "Cure Period") to cure such potential Event of Default.

24.4 Remedies. If an Event of Default is not cured by the Defaulting Party during a Cure Period, 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 a default by Supplier, neither Supplier nor Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Generating Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Generating Facility or any electric generation facility constructed on the Project Site, under 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 Generating Facility Product. In the event of any termination hereof by Buyer, in addition to Buyer's rights to collect Delay Damages and its remedies under the Development Security and the Operating Security, Buyer shall have a right of first offer (the "Output Right of First Offer") on the Product of any generation facility (a "Covered Facility") that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site in an amount equal to the Supply Amount at the Product Rate. The Output Right of First Offer shall be exercisable by Buyer through the fifth (5th) anniversary date of Buyer's notice of termination. Supplier shall provide Buyer with no less than twelve (12) months' prior written notice of the anticipated commercial operation date for any of a Covered Facility and not previously subject to Buyer's Output Right of First Offer. Buyer shall notify Supplier within sixty (60) days as to whether Buyer elects to purchase such Product. If Buyer elects to purchase such Product, the same shall be sold to Buyer for the Product Rate that would have applied to Product purchased by Buyer hereunder had this Agreement remained in effect, at the rates and for the periods indicated in this Agreement.

#### 24.6 Step-In Rights.

24.6.1 Failure to Achieve Commercial Operation. If Supplier fails to achieve Commercial Operation of the Generating Facility by the Commercial Operation Deadline, and Buyer has not terminated this Agreement, without limiting its other rights hereunder, Buyer shall have the right to enter the Generating Facility and do all such things as Buyer may consider necessary or desirable to complete the Generating Facility and cause Commercial Operation to occur. Buyer shall following the Commercial Operation Date (a) return the Generating Facility to Supplier upon execution of an indemnity and release by Supplier of all claims arising out of the period of Buyer's entry on the Generating Facility in a form reasonably acceptable to Buyer, or (b) failing the execution of such release or indemnity, (i) operate the Generating Facility for the Term pursuant to the license granted in Section 24.6.2 or (ii) terminate this Agreement without 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 Premises, operate the Facility for the Term during the continuance of and following any Event of Default by Supplier, or if Supplier fails to achieve Commercial Operation of the Generating Facility by the Commercial Operation Deadline. During any period in which Buyer is operating the Generating 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 operate and maintain the Generating Facility.

- 24.6.3 Records and Access. Supplier shall collect and have available at a convenient, central location at the Generating Facility all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Generating 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 Generating Facility for the purpose of constructing or operating the Generating Facility. Upon the exercise by Buyer of its rights under this Section 24.6, Supplier shall cause the Generating Facility operator (and any Person within the control of Supplier) to give Buyer access to and control of the operation and maintenance of the Generating Facility to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6 in respect of the part of the Generating Facility to be operated by Buyer, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of operational responsibility 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, 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 Generating 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 measures necessary to resume possession of the Generating 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 Generating 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 Generating 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 Generating Facility 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 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 [\_\_\_\_\_] duly organized, validly existing and in good standing under the Laws of the State of [\_\_\_\_\_] and has all requisite 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 as a [\_\_\_\_\_] 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 have a Material Adverse Effect.
- 25.2 Authority Relative to this Agreement. Supplier has full authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of 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 applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 25.3 Consents and 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 consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect 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 as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by

the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

- 25.5 Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all obligations under this Agreement and to consummate the obligations contemplated pursuant thereto.
- 25.6 Interconnection Process; Transmission. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Generating 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 necessary to interconnect the Generating Facility to and at the Delivery Point and all such costs are covered by the Product Rates depicted in Exhibit 2A.
- 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, but not limited to, all material authorizations, rights and entitlements) necessary to construct, own and operate the Facility and to deliver Net Energy to Buyer in accordance with this Agreement. The anticipated use of the Generating Facility complies with all applicable restrictive covenants affecting the Generating Facility or the Project Site. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material consent or approval that is required for the operation and maintenance of the Facility promptly after Supplier makes any such determination.
- 25.9 Permits, Authorizations, Licenses, Grants, etc. Supplier has applied or will apply for or has received the permits, authorizations, licenses and grants listed in Exhibits 10 and 11, and that no other permits, authorizations, licenses or grants are required by Supplier to construct and operate the Generating Facility or fulfill its obligations under this Agreement.
- 25.10 Related Agreements. Supplier has entered into or will enter into all necessary and material agreements as listed in Exhibit 12 related to Supplier's 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 Generating 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 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 deemed repeated as of the Commercial Operation Date. If at any time during the Term, Supplier obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time given, Supplier shall provide the other Party with written notice of the 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 25.13 shall be given as soon as practicable after the occurrence of each such event.

## **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 as a corporation 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 have a Material Adverse Effect.
- 26.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings 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 applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 26.3 Consents and Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of 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 consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except

(i) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (ii) for those consents, authorizations, approvals, permits, filings and notices 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 consents, approvals, authorizations, permits, filings and notices 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 and deemed repeated as of the Commercial Operation Date. If at any time during the Term, a Party obtains actual knowledge of any event or information that would have caused any of the representations and warranties to be materially untrue or misleading at the time given, such Party shall provide the other Party with prompt written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct.

## **27. INSURANCE**

- 27.1 General Requirements. 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 herein from the Effective Date of this Agreement. 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 expiration 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 expiration, 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, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, 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 maintaining such policy; and

27.3.3 A statement indicating that Buyer shall receive at least thirty (30) days prior notice of cancellation or expiration of a policy or of a reduction of liability limits with respect to a policy.

27.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certifications, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true copy 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: (1) one million dollars (\$1,000,000.00) per each bodily injury by accident; (2) one million

dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and (3) 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 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 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 Generating Facility for educational, promotional or informational purposes. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Generating Facility and authorizing the use of pictures of the Generating 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 Regulatory Approvals or otherwise.

## **29. MISCELLANEOUS**

29.1 Notices.

- 29.1.1 All notices hereunder 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 or as modified from time to time by the receiving Party by notice to the other Party. Any changes to Exhibit 4 shall not constitute an amendment to this Agreement.
- 29.1.2 All notices or submittals required by this Agreement shall be sent either 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 or submittals will be effective upon receipt by the addressee, except that notices or submittals 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 or submittal sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective 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 the other provisions of this Section 29.1.
- 29.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 20 or pursuant to 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), or 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 or submittals will be effective upon receipt by the addressee; except that notices or submittals 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, overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.
- 29.1.4 Any payments required to be made under this Agreement shall be made pursuant to the instructions in Exhibit 4, as such instructions may be changed by any Party from time to time by written notice.

- 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 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,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (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” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Law or statute mean that Law or statute as amended 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” shall be calendar days, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises, 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 federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.
- 29.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and should 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 provisions 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.
- 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 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, obligations and conditions hereof.
- 29.11 Choice of Law. This Agreement and the rights and obligations of the Parties 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 hereto 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 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. 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 the other Party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of Buyer's remedies in equity to cause Supplier to perform its obligations hereunder. Supplier agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Buyer's obligations hereunder that the amounts payable or paid by Supplier in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Supplier 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 Generating 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 COMPNAY/SIERRA  
PACIFIC POWER COMPANY]**

**SUPPLIER:**

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

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

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

## **EXHIBIT 1**

### **DESCRIPTION OF GENERATING FACILITY**

1. Name of Facility: \_\_\_\_\_

(a) Location: \_\_\_\_\_

(b) Delivery Point: \_\_\_\_\_

2. Supplier: \_\_\_\_\_

3. Parent: \_\_\_\_\_

4. Operator: \_\_\_\_\_

5. Equipment:

(a) Type of Facility: Photovoltaic Solar

(b) Installed Capacity (each unit):

(i) Total nameplate capacity: [\_\_\_\_\_] MVA

(ii) Expected Nameplate Capacity Rating: [\_\_\_\_\_] MW [AC]/[DC] @ \_\_ PF

(iii) Total gross output capacity: [\_\_\_\_\_] MW

(iv) Total capacity net of Station Usage: [\_\_\_\_\_] MW

(c) Additional Technology Specific Information:

(i) \_\_\_\_\_

(d) Number of generating units: \_\_\_\_\_

(e) Nameplate of each generating unit: \_\_\_\_\_

6. Operating Characteristics (FERC Order 890)

(a) VAR, leading: \_\_\_\_\_

(b) VAR, lagging (-): \_\_\_\_\_

(c) Ramp Rate (MW/minute): \_\_\_\_\_

(d) Minimum Operating Capacity (MW): \_\_\_\_\_

(e) Power Factor: \_\_\_\_\_

## **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 \$ \_\_\_\_\_ 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 [\_\_\_\_] percent ([\_\_]%) 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:

Product Rate = Initial Product Rate \* [1 + ([\_\_\_\_]\* FCM/12)];

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

## **EXHIBIT 2B**

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

#### **Supplier Letterhead**

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

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

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

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

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

#### **CURRENT MONTHLY BILLING DATA INPUT**

**Pricing** **\$/MWh**  
Product Rate \_\_\_\_\_

**Monthly Supply Amount (kWh)** **On-Peak**  
Supply Amount \_\_\_\_\_

**Excused Product**  
Planned Outages \_\_\_\_\_  
Force Majeure \_\_\_\_\_  
Emergencies \_\_\_\_\_  
Curtailed Product \_\_\_\_\_  
**Total Excused Product** \_\_\_\_\_

<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	_____	x	_____	=	\$ _____
b. Excess Energy	_____	x	_____	=	\$ _____
c. Shortfall/Replacement Cost	(from page 2B-2)				\$ _____

**d. Total Product Payment (a + b - c)** \$ \_\_\_\_\_

f. Adjustments (+/-) \$ \_\_\_\_\_

**TOTAL AMOUNT DUE (d + e)** \$ \_\_\_\_\_

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

## **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 Index \_\_\_\_\_ \$/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 j or f \* i) \$ \_\_\_\_\_

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

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

l. Total Supply Amount \_\_\_\_\_ kWh  
m. Excused Product \_\_\_\_\_ 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 Mead Index \_\_\_\_\_ \$/MWh  
t. Product Rate \_\_\_\_\_ \$/MWh  
u. Difference (max s – t or zero) \_\_\_\_\_ \$/MWh  
  
v. Replacement Cost (r \* u) \$ \_\_\_\_\_

**EXHIBIT 2B**

**FORM OF MONTHLY ENERGY INVOICE**

# FORM OF MONTHLY ENERGY INVOICE DETAIL

2B-4

## FORM OF PC REPLACEMENT INVOICE

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



**EXHIBIT 3A**

**DESCRIPTION OF PROJECT SITE**

**EXHIBIT 3B**

**MAP DEPICTING PROJECT SITE**

## **EXHIBIT 4**

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

#### **SUPPLIER:**

[Supplier Name]

Contact	Mailing Address	Phone	E-mail
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#### **Contract Representative:**

Name and/or Title	[Mailing & Physical Address if different]		
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#### **Operating Representative:**

Name and/or Title	[Mailing & Physical Address if different]		
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#### **Operating Notifications:**

Prescheduling

Real-Time

Monthly Checkout

#### **Invoices:**

Name and/or Title	[Mailing & Physical Address if different]		
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#### **PAYMENT INSTRUCTIONS**

#### **Payment by Check:**

Name and/or Title/Department

Address [inc. Mail/Suite #s]

City, ST & Zip

**OR**

#### **Payment by Wire Transfer:**

Bank Name

Bank Address

Bank City, ST & Zip

Account Name	[usually Supplier Name/reference]
--------------	-----------------------------------

ABA

Account Number

Reference

## **EXHIBIT 4**

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

#### **BUYER:**

##### **NV ENERGY**

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<b>Contact</b>	<b>Mailing Address</b>	<b>Phone</b>	<b>E-mail</b>
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##### **Contract Representatives**

Prior to Commercial Operation Date  
Manager, Renewable Energy Procurement

From and after Commercial Operation Date  
Manager, Contract Administration

##### **Operating Representatives**

###### **Scheduling**

Short-term Analysis  
Generation Dispatch

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

Grid Reliability  
Transmission – NPC  
Transmission – SPPC  
Short-term Analysis

###### **Planned Outages – NPC**

###### **Planned Outages – SPPC**

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

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

##### **Invoices**

Renewables Contracts Accountant

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

Renewables Contracts Agent

## **EXHIBIT 5**

### **ONE-LINE DIAGRAM OF GENERATING FACILITY**

See attached one-line diagram of the Generating Facility, which indicates the Delivery Point, ownership and the location of Meters. In accordance with Section 8.1, if agreed to by Buyer, in its sole discretion, Supplier may provide an update to Exhibit 5.

## **EXHIBIT 6**

### **PROJECT MILESTONE SCHEDULE**

1. All time periods are in months after the PUCN Approval Date. As stated below for convenience of drafting after PUCN Approval will be shown as “AA”. Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit 6 with actual dates after 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 Generating Facility, including UEPA permit.

Completion Date: [\_\_\_\_\_] months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from the Persons certifying that Required Facility Documents to **construct** the Generating Facility as listed in Exhibit 12 have been obtained, together with the metering system design for the Generating Facility (submitted for the 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 Generating Facility’s construction site

Completion Date: [\_\_\_\_\_] months AA.

Documentation: Supplier shall provide Buyer with documentation that the major equipment has been delivered to the Generating Facility’s construction site.

- C) Project Milestone: Supplier shall obtain all Required Facility Documents to **operate** the Generating Facility, including UEPA permit and registration with PC Administrator.

Completion Date: [\_\_\_\_\_] months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from the Persons certifying that Required Facility Documents to **operate** the Generating Facility as listed in Exhibit 12 have been obtained, together with reasonable documentation evidencing registration with PC Administrator.

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

Completion Date: [\_\_\_\_\_] months AA.

Documentation: Buyer’s Meters shall record Energy being delivered from the Generating Facility to Buyer and the Generating Facility provides written notice to Buyer that the Generating Facility satisfies the definition of Operation Date in the Agreement

## **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 Generating Facility.

Completion Date: [\_\_\_\_\_] months AA.

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

- F) Project Milestone: **Notice to Proceed** has been issued to the construction contractor under the EPC Contract and **construction** of the Generating Facility has commenced.

Completion Date: [\_\_\_\_\_] 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 on-site regarding the construction of the Generating Facility, as well as an ALTA Survey for the Project Site.

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

Completion Date: the 1<sup>st</sup> day of the month following [\_\_\_\_\_] 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 EPC Contract.
2. Other such tests as required to document resource supply.
4. [Any additional tests as required by Supplier, subject to Buyer's approval, with a completed version attached to the Agreement prior to execution.]



## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

<b>UNIT NAME</b>	<b>DATE</b>	<b>MEASURE</b>	<b>HE 01</b>	<b>HE 02</b>	<b>HE 03</b>	<b>HE 04</b>	<b>HE 05</b>	<b>HE 06</b>	<b>HE 07</b>	<b>HE 08</b>	<b>HE 09</b>	<b>HE 10</b>	<b>HE 11</b>	<b>HE 12</b>	<b>HE 13</b>	<b>HE 14</b>	<b>HE 15</b>	<b>HE 16</b>	<b>HE 17</b>	<b>HE 18</b>	<b>HE 19</b>	<b>HE 20</b>	<b>HE 21</b>	<b>HE 22</b>	<b>HE 23</b>	<b>HE 24</b>
Facility Name	Day1	BASEMW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day2	BASEMW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day3	BASEMW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day1	MAX CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day2	MAX CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day3	MAX CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day1	MIN CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day2	MIN CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day3	MIN CAPABILITY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day1	ON AGC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day2	ON AGC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Facility Name	Day3	ON AGC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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.

## **EXHIBIT 8**

### **FORM OF AVAILABILITY NOTICE**

Date For Notice: 04/02/09

Supplier: Supplier XYZ

Name of Suppliers Representative: Supplier Rep name here

Buyer: NPC

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: Initial Form of Availability Notice to be provided by Buyer in Excel format. 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 approvals may be added on a case by case basis*].

## **EXHIBIT 10**

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

1. Renewable Energy System certification.
2. PUCN Approval of this Agreement.
3. If the Generating Facility is an EWG: Notice of Self Certification as an EWG, or an order from FERC granting the Generating Facility EWG status, and FERC authorization under section 205 of the Federal Power Act to make sales from the Generating Facility.
4. If the Generating Facility is a QF: Notice of Self Certification as a QF or an order from FERC granting the Generating Facility QF status.
5. If the Generating Facility is a QF with a generating capacity greater than 20 MW: FERC authorization under section 205 of the Federal Power Act to make sales from the Generating Facility.

*[Supplier to list all other required approvals]*

**EXHIBIT 11**

**OMITTED**

## **EXHIBIT 12**

### **REQUIRED FACILITY DOCUMENTS**

1. This Agreement.
2. [*Supplier to list all required documents.*]

**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.

Hour Ending		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Off-Peak												
0200													
0300													
0400													
0500													
0600													
0700	On Peak												
0800													
0900													
1000													
1100													
1200													
1300													
1400													
1500													
1600													
1700													
1800													
1900													
2000													
2100													
2200													
2300	Off-Peak												
2400													
Daily Supply Amount (MWh)													
Daily On-Peak Supply Amount (MWh)													
Monthly Supply Amount (MWh)													
Annual Supply Amount (MWh)													
Maximum Amount (MW)													

The Monthly Supply Amount for February and the Annual Supply Amount shown above represent a non-leap year.

## **EXHIBIT 14**

### **DIAGRAM OF GENERATING FACILITY**

In accordance with Section 8.1, Supplier shall provide (a) not later than the Supplier's completion of the Project Milestone relating to obtaining of construction permits, 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 Generating Facility as built.

The diagram of the Generating Facility to be attached as Exhibit 14 will include a detailed solar panel and inverter layout, 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**

**SUB-LEASE**

**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:

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

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

Beneficiary:

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 [ ] 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 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 reinstated pursuant to the terms hereof 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 is set forth below.

## **EXHIBIT 17**

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

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.

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 hand delivered 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” 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.

## **EXHIBIT 17**

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

This Letter of Credit is transferable, in its entirety upon presentation to us of a signed transfer certificate in the form of Annex 3 accompanied by this Letter of Credit, in which a 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.

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

All banking charges are for the account of the Applicant.

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]

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 Applicants have 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:

cc:

[Applicant name and address]



**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 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**

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 \$[\_\_\_\_\_] to \$[\_\_\_\_\_].

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	[_____]
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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 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), 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). Qualified Transferee" means a Person that is at least as financially and operationally qualified as Borrower and, at a minimum, has a tangible net worth of at

## **EXHIBIT 19**

### **FORM OF LENDERS CONSENT**

least thirty million dollars (\$30,000,000) and 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 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 credit support 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 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 same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:



## **EXHIBIT 19**

### **FORM OF LENDERS 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, 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. 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

**EXHIBIT 19**

**FORM OF LENDERS CONSENT**

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: \_\_\_\_\_

\_\_\_\_\_,  
a \_\_\_\_\_

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

Name: \_\_\_\_\_

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 full and prompt performance and payment by Subsidiary of each and every 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 perform (or promptly procure the payment or performance of) the same in accordance with, and up to the limitations set forth in the Agreement.

(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 any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment and performance 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:

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

(i) this Guarantee is a guarantee of payment and performance 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 or performance 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 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,

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

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 or performance 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 or performance 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

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

(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.

(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

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

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.

(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.

(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, certified mail or facsimile, to the following addresses:

(a) If to Guarantor:

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

(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  
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 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



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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, 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, and (ii) except in respect of claims hereunder notified prior to such date, one year following the expiration of the Warranty Period (as such Warranty Period may be extended under the Agreement), 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 forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor. Except with respect to (x) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given under the Agreement and (y) claims arising out of Subsidiary's fraud or willful misconduct, all as provided in Section 29.2 of the Agreement, the maximum aggregate liability of Guarantor hereunder shall be the Contract Price.

**FORM OF GUARANTEE**

**(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 CLARK 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.

**(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

## **EXHIBIT 20**

### **FORM OF GUARANTEE**

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:

# **2016 ERCR RE Request for Proposals**



## **Attachment D**

**THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. PURCHASER RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO MODIFY THIS DRAFT AT ANY TIME. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL PURCHASER HAS COMPLETED ITS DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED BY MANAGEMENT, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.**

### **ASSET PURCHASE AGREEMENT**

Between

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

as Seller

and

NEVADA POWER COMPANY d/b/a NV ENERGY

[OR SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY]

as Purchaser

Dated as of [\_\_\_\_\_]

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of [\_\_\_\_\_] (the “Effective Date”), by and between Nevada Power Company d/b/a/ NV Energy [or Sierra Pacific Power Company d/b/a NV Energy], a Nevada corporation (“Purchaser”), and [\_\_\_\_\_] a [\_\_\_\_\_] (“Seller”). Purchaser and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, Purchaser desires to acquire a renewable power generation facility<sup>1</sup> in the State of Nevada having an electric output of [\_\_\_\_\_] MW;<sup>2</sup>

WHEREAS, Seller desires to develop, permit, design, engineer, supply, construct, install, test and commission a [\_\_\_\_\_] MW<sup>3</sup> renewable power generation facility in [\_\_\_\_\_] County, Nevada (as further defined in Section 1.1, the “Facility”);

WHEREAS, Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase and acquire from Seller, the Purchased Assets, subject to and in accordance with the terms and conditions of this Agreement; and

WHEREAS, as a condition to the sale and transfer to Purchaser and the purchase and acquisition by Purchaser of the Purchased Assets, Seller and Purchaser will enter into an Engineering, Procurement and Construction Agreement in the form attached hereto as Exhibit A (the “EPC Agreement”), pursuant to which Seller will design, engineer, supply, construct, install, test and commission the Facility.

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

### **ARTICLE I** **DEFINITIONS AND RULES OF INTERPRETATION**

#### 1.1. Defined Terms.

As used in this Agreement, the following terms shall have the meanings ascribed to them below:

“Acceptable Security” means a Guaranty or Letter of Credit.

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<sup>1</sup> This assumes that the eligible types of renewable facilities will be defined RFP bid protocols.

<sup>2</sup> Should we mention that the APA is being entered into with the winning bidder(s) of the ERCR RFP?

<sup>3</sup> Did not define as 35 MW or any particular size to leave open possibility for multiple smaller facilities or potentially larger facilities.

“Acceptable Security End Date” means the date which is ninety (90) days after the earlier of (a) the termination of this Agreement in accordance with its terms and (b) three (3) years after the Closing Date.

“Acquisition Transaction” has the meaning set forth in Section 4.21.

“Action” means any suit, claim, proceeding, arbitration, audit or investigation by or before any Governmental Authority.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Person. The term “control”, “controlled by” and “under common control with” means, with respect to any Person, 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 partnership interests, by Contract or otherwise. Notwithstanding the foregoing, Affiliates of Purchaser shall extend only to Berkshire Hathaway Energy Company and such subsidiaries it directly or indirectly controls.

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

“Agreed Amount” has the meaning set forth in Section 8.4.

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

“Applicable Tax Years” means the calendar years [\_\_\_\_\_] through [\_\_\_\_\_].

“Approval Cut-Off Date” has the meaning set forth in Section 10.1.6.

“Assigned Contracts” means the Contracts listed on Schedule 1.1(a).

“Assignment and Assumption Agreement” means that certain Assignment and Assumption Agreement between Seller and Purchaser, substantially and in all material respects in the form of Exhibit B.

“Assumed Liabilities” has the meaning set forth in Section 2.4.

“BCP” means the Nevada Office of the Attorney General, Bureau of Consumer Protection.

“Bill of Sale” means that certain Bill of Sale from Seller, substantially and in all material respects in the form of Exhibit C.

“Books and Records” means any and all books, records, files, documents, instruments, papers, data, reports, correspondence, maps, surveys, environmental studies, environmental reports, construction reports, purchase orders, safety and maintenance manuals, incident reports, engineering design plans, blue prints and as-built plans, drawings, specifications, test reports, quality documentation and reports, hazardous waste disposal records and other business records relating to the Project that are generated or obtained by Seller or any of its Affiliates prior to Closing, but excluding: (a) any documents related to bids received to construct the Project; and (b) documents subject to attorney-client privilege or information from third parties subject to confidentiality restrictions binding on Seller or its Affiliates; provided, that Seller has used commercially reasonable efforts to procure waivers of such confidentiality provisions.

“Business Day” means any day that is not a Saturday, Sunday or legal holiday (or observed as a legal holiday) for Nevada state governmental offices under the Nevada Revised Statutes.

“Casualty Loss” has the meaning set forth in Section 6.4.1.

“Certificate of Amount Due” means a certificate issued by the Nevada Department of Taxation pursuant to Nevada Revised Statute 360.525 setting forth the outstanding Tax liabilities of Seller which Purchaser is required to withhold.

“Claim” has the meaning set forth in Section 8.3.

“Claim Notice” has the meaning set forth in Section 8.3.

“Claimed Amount” has the meaning set forth in Section 8.3.

“Close of Real Estate Escrow” has the meaning set forth in Section 6.1.6(b).

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time.

“Condemnation Action” has the meaning set forth in Section 6.4.2.

“Condemnation Value” has the meaning set forth in Section 6.4.2.

“Confidential Information” has the meaning set forth in Section 7.2.

“Contested Amount” has the meaning set forth in Section 8.4.

“Contract” means any legally binding contract, agreement, license, assignment, purchase agreement, indenture, lease, instrument of Indebtedness, security agreement, purchase order, sales order, offer to sell, option or right of first refusal or undertaking or instrument of any kind, obligation or other arrangement or agreement, in each case, whether oral or written, including any amendments and other modifications thereto.

“Creditworthy Person” means a Person whose senior unsecured debt (or issuer rating if such Person has no senior unsecured debt rating) is rated at least BBB- by S&P, at least Baa3 by Moody’s or at least BBB- by Fitch where such Person has a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of such foregoing rating agencies. While a Person is not required to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from each of S&P, Moody’s and Fitch, a Person shall no longer be a “Creditworthy Person” if such Person ceases to have a senior unsecured debt rating (or issuer rating if such Person has no senior unsecured debt rating) from at least one of S&P, Moody’s and Fitch or if any such rating is below the rating stated above, provided that if the Person has no public debt or senior unsecured ratings from S&P, Moody’s and Fitch, then such Person must have a tangible net worth greater than One Hundred Million Dollars (\$100,000,000).

“Default Rate” means the lesser of (a) the rate published by the *Wall Street Journal* as the “prime rate” on the Business Day preceding the date on which such interest begins to accrue plus two percent (2%) and (b) the maximum rate allowed under applicable Law.

“Disclosing Party” has the meaning set forth in Section 7.1.

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

“Environmental Attributes” means any and all attributes of the Project (including all Renewable Energy Credits associated with such attributes) that are created or otherwise arise (whether before, on or after the Closing) from the Project’s generation of electricity using solar generation technologies, including any avoided, reduced, displaced or off set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), mercury (Hg), carbon dioxide (CO<sub>2</sub>), any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth’s climate, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control laws, regulations or ordinances, including those implemented under the federal Clean Air Act, 42 U.S.C. § 7401 et seq. and any equivalent state laws, or any voluntary rules, guidelines or programs. Forms of Environmental Attributes include any and all environmental air quality credits, green credits, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of renewable energy generated or use of renewable generation technologies by the Project, or otherwise attributable to the Project. Environmental Attributes include those currently existing or after-arising under local, state, regional, federal, or international legislation or regulation or voluntary program, including any such legislation,

regulation or program administered by the United Nations Framework Convention on Climate Change, the United States Environmental Protection Agency, the State of Nevada or any other Governmental Authority.

“Environmental Condition” means the presence or Release to the environment of Hazardous Materials, including any migration of Hazardous Materials through air, soil or water.

“Environmental Law” means any federal, Indian tribe (including any agency, council or political subdivision thereof), state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment and human health, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; and any other law that governs: (a) the existence, removal, or remediation of Hazardous Materials on real property; (b) the emission, discharge, release, or control of Hazardous Materials into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Materials.

“EPC Agreement” has the meaning set forth in the recitals.

“EPC Contractor” means Seller, in its capacity as “Contractor” under the EPC Agreement.

“Escrow Agent” means the Person, mutually acceptable to the Parties, who shall serve as the Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means that certain Escrow Agreement among Seller, Purchaser and Escrow Agent, substantially and in all material respects in the form of Exhibit D.

“Escrow Amount” has the meaning set forth in Section 2.6.

“Excluded Assets” means the assets, properties, interests and rights listed on Schedule 1.1(b).

“Excluded Liabilities” has the meaning set forth in Section 2.5.

“Facility” means the [\_\_\_\_\_] MW renewable power generation facility to be located on the Real Property and to be designed, engineered, supplied, constructed, installed, tested and commissioned by the EPC Contractor pursuant to the EPC Agreement, including the foundations, inverters, solar photovoltaic panels, electrical collection system, solar tracking systems, access roads and other equipment, materials and improvements associated therewith, all as further described in the EPC Agreement.

“Fitch” means Fitch Ratings Inc.

“GAAP” means the generally accepted accounting principles in the United States of America, as in effect from time to time, consistently applied.

“Governance Documents” means, with respect to any Person, the certificate or articles of incorporation, bylaws, certificate of formation or articles of organization, the limited partnership agreement, the partnership agreement or the limited liability company agreement, or any other organizational documents of the Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of the Person and that establish or govern the existence of the Person as a legal entity.

“Governmental Authority” means any national, federal, Indian tribe (including any agency, council or political subdivision thereof), state, regional, province, town, city, county, local or municipal government, whether domestic or foreign or other administrative, regulatory or judicial body of any of the foregoing and all agencies, authorities, departments, instrumentalities, courts and other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing. For clarity, each of the Federal Energy Regulatory Commission, North American Electric Reliability Corporation, Western Electricity Coordinating Council, PUCN and BCP shall be a Governmental Authority.

“Guarantor” means a Creditworthy Person reasonably acceptable to Purchaser.

“Guaranty” means an unconditional guaranty of Seller’s full and timely performance and payment obligations under this Agreement in the form of Exhibit G from a Creditworthy Person reasonably acceptable to Purchaser.

“Hazardous Material” means (a) any regulated substance, hazardous constituent, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, radioactive substance, contaminant, pollutant, toxic pollutant, pesticide, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any friable asbestos or friable asbestos-containing material; (c) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids; (d) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; and (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability under any Environmental Laws.

“Improvements” means all buildings, structures, fixtures and improvements located on the Real Property.

“Indebtedness” means, in respect of any Person: (a) all obligations of such Person for borrowed money or with respect to deposits, overdrafts or advances of any kind, and all accrued but unpaid redemption or prepayment premiums or penalties and any other fees and expenses paid to satisfy such obligations; (b) all obligations of such Person evidenced by bonds, debentures, notes, mortgages, deeds of trust or similar instruments; (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business); (d) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed; (e) all obligations of such Person guaranteeing any Indebtedness or other obligation of any other Person in any manner, whether



directly or indirectly; (f) all liabilities under capital leases; (g) all reimbursement obligations for letters of credit and financial guarantees; and (h) any other amounts properly categorized as indebtedness according to GAAP. The Indebtedness of any Person shall include all accrued but unpaid interest and the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Party" has the meaning set forth in Section 8.3.

"Indemnifying Party" has the meaning set forth in Section 8.3.

"Indemnity Period" has the meaning set forth in Section 8.5.2.

"Independent Accountant" has the meaning set forth in Section 2.7.2.

"Intellectual Property" means: (a) patents and industrial designs (including any continuations, divisionals, continuations-in-part, renewals, reissues and applications for any of the foregoing); (b) copyrights (including any registrations and applications for any of the foregoing); (c) trademarks, service marks, trade names, logos, slogans, trade dress and applications for registration of the foregoing; and (d) trade secrets and confidential information, including confidential know-how, processes, formulae, algorithms, models or methodologies.

"Investment Tax Credit" means the federal income Tax credit described under Section 48 of the Code.

"Laws" means all foreign, federal, Indian tribe, state, local, county or municipal laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, Permits and requirements of all Governmental Authorities, including all Environmental Laws.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, in form and substance reasonably acceptable to Purchaser, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as its "corporate credit rating" by S&P, or the "long-term issuer rating" assigned by Moody's of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both.

"Liability" or "Liabilities" means, in respect of a Person, any Indebtedness, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, undisputed, unsecured, executory, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability and including Tax), regardless of whether such Indebtedness, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such Indebtedness, obligation, duty or liability is immediately due and payable.

“Lien” means any mortgage, pledge, deed of trust, hypothecation, assignment, deposit arrangement, charge, security interest, encumbrance, lien (statutory or other) or preference, priority or other security agreement of any kind or nature whatsoever, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing or the filing of any financing statement or similar instrument under the Uniform Commercial Code as in effect in any relevant jurisdiction or comparable Law of any jurisdiction, domestic or foreign.

“Losses” has the meaning set forth in Section 8.1.

“Moody’s” means Moody’s Investors Service, Inc.

“MW” means megawatts.

“Notice” has the meaning set forth in Section 12.1.1.

“O&M Agreement” means that certain Operation and Maintenance Agreement between Purchaser and the Operator, substantially and in all material respects in the form of Exhibit E.

“Obtained Permits” has the meaning set forth in Section 4.11.2.

“Operator” means [Seller] or such other experienced operator acceptable to Purchaser.

“Outside Date” has the meaning set forth in Section 10.1.10.

“Outstanding Permits” has the meaning set forth in Section 4.11.2.

“Overlap Period” means any taxable period beginning on or before and ending after the Closing Date.

“Overlap Period Taxes” means any taxes (other than Seller Income Taxes) imposed on or with respect to the Purchased Assets or Seller for an Overlap Period.

“Party” and “Parties” have the meanings set forth in the preamble.

“Permit Applications” means, in respect of a Permit, any application, petition or request made to any Governmental Authority in order to obtain such Permit.

“Permits” means registrations, permits, licenses, authorizations, consents, approvals, grants, franchises, variances, certificates of authority, letter rulings, orders, decrees, judgments, writs, injunctions or similar rights and privileges granted by or obtained from any Governmental Authority, as well as applications for any of the foregoing.

“Permitted Encumbrances” has the meaning set forth in Section 6.1.6(a).

“Permitted Liens” means: (a) those Liens set forth on Schedule 1.1(c); (b) Liens for Taxes and other governmental charges and assessments which are not yet due and payable or which are being contested in good faith by appropriate proceedings; (c) Liens expressly granted under, or created by, existing or pursuant to, the terms and conditions of the Assigned

Contracts; (d) Liens created pursuant to, or as a result of the existence of, this Agreement or any Transaction Document; (e) any Liens approved or consented to in writing by Purchaser; (f) Permitted Encumbrances; and (g) Liens relating to any Excluded Liability.

“Person” means any natural person, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

“Post-Closing Tax Period” means any taxable period ending after the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period that begins the day after the Closing Date.

“Pre-Closing Books and Records” has the meaning set forth in Section 2.8.2(a).

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date, or with respect to any Overlap Period, the portion of such Overlap Period ending on the Closing Date.

“Pre-Closing Taxes” has the meaning set forth in Section 9.4.

“Project” means the development, permitting, design, engineering, supply, construction, installation, testing, commissioning, ownership, use, operation and maintenance of the Facility in accordance with applicable Laws, Prudent Utility Practice, the Transferred Permits, the Assigned Contracts, the EPC Agreement, the O&M Agreement and the terms and conditions of this Agreement.

“Property Taxes” has the meaning set forth in Section 9.3.

“Prudent Utility Practice” has the meaning set forth in the EPC Agreement.

“PUCN” means the Public Utilities Commission of Nevada.

“PUCN Approval” means a final order issued by the PUCN, in form and substance acceptable to Purchaser in its sole discretion.

“Purchase Price” has the meaning set forth in Section 2.2.

“Purchase Price Allocation Schedule” has the meaning set forth in Section 2.7.1.

“Purchased Assets” means all of Seller’s and its Affiliates’ right, title and interest in and to all assets, properties, rights and interests of any kind, nature, character and description whether tangible or intangible, real or personal, owned (or hereafter acquired) by Seller or any of its Affiliates or in which Seller or any of its Affiliates has (or hereafter acquires) any interest whatsoever in connection with the Project, including all of Seller’s and its Affiliates’ right, title and interest in and to all of the assets, properties, rights and interests in the following: (a) the Real Property; (b) the Assigned Contracts; (c) the Warranty Rights; (d) the Transferred Permits; (e) the Transferred Intellectual Property; and (f) the Books and Records, but excluding (i) any corporation, limited liability company or other legal entity formed by or constituting Seller or its

Affiliates, qualifications to conduct business as a foreign corporation or other entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, and other documents relating to the organization, maintenance and existence of Seller or its Affiliates as business entities, (ii) any of the rights of Seller under this Agreement or any Transaction Document, and (iii) the Excluded Assets.

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

“Purchaser Conditions Precedent” has the meaning set forth in Section 3.3.2.

“Purchaser Indemnified Party” has the meaning set forth in Section 8.1.

“Purchaser Material Adverse Effect” means any event, result, occurrence, development, fact, change or effect of whatever nature or kind that is or would reasonably be expected to be materially adverse to: (a) the ability of Purchaser to perform its covenants, agreements or obligations under this Agreement or any Purchaser Transaction Document or to consummate the Transactions; or (b) the validity or enforceability of the rights and remedies of Seller under this Agreement or any of the Seller Transaction Documents.

“Purchaser Permits” means the Permits identified on Schedule 1.1(d) to be obtained by Purchaser in connection with the use, ownership and operation of the Facility on the Real Property pursuant to applicable Law and Prudent Utility Practice.

“Purchaser Required Consents” has the meaning set forth in Section 5.5.

“Purchaser Transaction Documents” means the Transaction Documents to which Purchaser is or will be a party in connection with the transactions contemplated by this Agreement.

“Purchaser’s Disclosure Schedule” means the schedule prepared by Purchaser and delivered to Seller herewith and dated as of the Effective Date, containing all lists, descriptions, exceptions and other information and materials as are required to be included therein by Purchaser pursuant to this Agreement.

“Purchaser’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Section 1.1(a) of Purchaser’s Disclosure Schedule.

“Qualified Firm” has the meaning set forth in Section 6.4.2.

“Real Property” means the real property legally described in Section 4.9.1 of Seller’s Disclosure Schedule, including all appurtenances, rights, entitlements, interests and benefits relating to it and the interests of Seller in all public and private streets, roadways and rights-of-way on that real property or contiguous to that real property commonly known as {insert address}, {insert city} {insert county name} {insert state}{insert zipcode} and further identified as APN {insert}, consisting of {insert} acres (+/-).

“Real Property Escrow Agreement” means that certain Real Property Escrow Agreement among Seller, Purchaser and Title Company, substantially and in all material respects in the form of Exhibit H.

“Real Property Deed” means that certain grant, bargain, sale deed, with respect to the Real Property, substantially and in all material respects in the form of Exhibit F.

“Real Property Purchase Price” has the meaning set forth in Section 2.7.1.

“Real Property Settlement Statement” has the meaning set forth in Section 3.2.1(q).

“Real Property Transfer Taxes” has the meaning set forth in Section 9.2.

“Receiving Party” has the meaning set forth in Section 7.1.

“Related Person” means, in respect of a Party, such Party’s Affiliates and the employees, officers and directors of such Party and its Affiliates.

“Release” means the release, threatened release, discharge, deposit, injection, dumping, spilling, leaking or placing of any Hazardous Material into the environment so that such Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under applicable Law and applicable Permits.

“Remediation” means actions required under Environmental Laws or by a Governmental Authority to address an Environmental Condition, including any monitoring, investigation, assessment, characterization, treatment, cleanup, containment, removal, mitigation, response or restoration work.

“Renewable Energy Credit” means any credit, certificate, renewable energy certificate, allowance or similar right that is related to the Environmental Attributes of the Project, whether arising pursuant to Law, certification, markets, trading, offset, private transaction, renewable portfolio standards, voluntary programs or otherwise, including portfolio energy credits as defined in Nevada Revised Statute 704.7803.

“Renewable Energy Incentives” means: (a) the credits available under Section 48 of the Code; (b) accelerated depreciation; (c) Nevada renewable energy tax partial abatements as described in Nevada Revised Statutes 701A.360 to .390; and (d) portfolio energy credits as defined in Nevada Revised Statute 704.7803.

“Reports” means a Phase I environmental assessment, an environmental impact study, a geotechnical report, an interconnection system impact study, and [\_\_\_\_], in each case, in form and substance reasonably acceptable to Purchaser.

“Reports Cut-Off Date” has the meaning set forth in Section 10.1.8.

“Required Consents” means the Seller Required Consents and the Purchaser Required Consents.

“Response Notice” has the meaning set forth in Section 8.4.

“Retained Information” has the meaning set forth in Section 2.8.2(b).

“S&P” means Standard & Poor’s Financial Services, LLC.

“Sales Taxes” means all sales, use, transfer, documentary or other similar Taxes assessed, levied or imposed by any Taxing Authority.

“Schedule Update” has the meaning set forth in Section 6.5.

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

“Seller Conditions Precedent” has the meaning set forth in Section 3.3.3.

“Seller Income Taxes” means any income, franchise or other Taxes imposed on, or measured by reference to, the net income or net worth of, Seller or any Affiliate of Seller.

“Seller Indemnified Party” has the meaning set forth in Section 8.2.

“Seller Material Adverse Effect” means any event, result, occurrence, development, fact, change or effect of whatever nature or kind that: (a) is or would reasonably be expected to be materially adverse to: (i) the ability of Seller to perform its covenants, agreements or obligations under this Agreement or any Seller Transaction Document or to consummate the Transactions, (ii) the ability of Guarantor or any other Person providing Acceptable Security pursuant to Section 2.3.1) to perform its covenants, agreements or obligations under the Acceptable Security, or (iii) the validity or enforceability of the rights and remedies of Purchaser under the Acceptable Security, this Agreement or any of the Purchaser Transaction Documents; or (b) has or would reasonably be expected to have a material and adverse effect on the Project or the Purchased Assets.

“Seller Required Consents” has the meaning set forth in Section 4.5.

“Seller Transaction Documents” means the Transaction Documents to which Seller is or will be a party in connection with the transactions contemplated by this Agreement.

“Seller’s Disclosure Schedule” means the schedule prepared by Seller and delivered to Purchaser herewith and dated as of the Effective Date, containing all lists, descriptions, exceptions and other information and materials as are required to be included therein by Seller pursuant to this Agreement.

“Seller’s Knowledge” means the actual knowledge, after due inquiry, of the Persons listed on Section 1.1(a) of Seller’s Disclosure Schedule.

“Survey” has the meaning set forth in Section 6.1.6(a).

“Tax” or “Taxes” means any and all taxes, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any foreign, federal,

state or local government or any agency or political subdivision of any such government, which taxes shall include all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation taxes and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and charges of the same or of a similar nature to any of the foregoing.

“Tax Claim” has the meaning set forth in Section 9.6.

“Tax Returns” means any return, report, rendition, information return, claim for refund or other document (including any related or supporting information) supplied to or required to be supplied to any Taxing Authority with respect to Taxes, including any attachments, amendments and supplements thereto.

“Taxing Authority” means, with respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax and the agency, if any, charged with the collection of such Tax for such entity or subdivision.

“Third-Party Claim” has the meaning set forth in Section 8.10.1.

“Third-Party Claim Response Period” has the meaning set forth in Section 8.10.1.

“Title and Survey Objection Notice” has the meaning set forth in Section 6.1.6(a).

“Title Company” means that certain title company licensed in the state where the Real Property is located as determined by Purchaser is its sole discretion.

“Title Insurance Commitment” has the meaning set forth in Section 6.1.6(a).

“Title Insurance Policy” has the meaning set forth in Section 6.1.6(a).

“Transaction Documents” means those other documents, instruments, certificates or agreements as may be executed and delivered in connection with this Agreement and the transactions contemplated hereby and thereby, including the Assignment and Assumption Agreement, Bill of Sale, EPC Agreement, Escrow Agreement, O&M Agreement, the Real Property Escrow Agreement and Real Property Deed.

“Transactions” means all of the transactions provided for in, or contemplated by, this Agreement and the Transaction Documents.

“Transfer Taxes” has the meaning set forth in Section 9.2.

“Transferred Intellectual Property” means the Intellectual Property and licenses to use such Intellectual Property owned or held by Seller and its Affiliates and used in the Purchased Assets to the extent identified on Schedule 1.1(e).

“Transferred Permits” has the meaning set forth in Section 4.11.1.

“Treasury Regulations” (or any abbreviation thereof used herein) means temporary or final regulations promulgated under the Code.

“Warranty Rights” means all warranties regarding the Facility that are or were made for the benefit of Seller or any of its Affiliates in any of the Assigned Contracts.

1.2. Construction. In this Agreement:

1.2.1 Headings and the rendering of text in bold and/or italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement.

1.2.2 A reference to an Exhibit, Schedule, Article, Section or other provision shall, unless otherwise specified, be deemed to be a reference to exhibits, schedules, articles, sections or other provisions of this Agreement, which exhibits and schedules are incorporated herein by reference.

1.2.3 Any reference in this Agreement to another Contract or document shall be a reference to that other Contract or document as the same may be amended, modified, supplemented or replaced from time to time.

1.2.4 Any reference in this Agreement to “this Agreement,” “herein,” “hereof,” “hereunder” or “herewith” shall be a reference to this Agreement as a whole and not limited to the particular Article, Section, Exhibit, Schedule or provision in which the relevant reference appears and to this Agreement as amended, modified, supplemented or replaced from time to time.

1.2.5 References to any Party shall include any successors and assigns of the Party but, if applicable, only if such successors and assigns are permitted by this Agreement.

1.2.6 References to the term “includes” or “including” shall mean “includes, without limitation” or “including, without limitation.”

1.2.7 Words importing the singular shall include the plural and vice versa and the masculine, feminine and neuter genders shall include all genders.

1.2.8 The word “or” shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”).

1.2.9 “Shall” and “will” have equal force and effect.

1.2.10 Relative to the determination of any period of time, “from” shall mean “including and after,” “to” shall mean “to but excluding,” and “through” shall mean “through and including.”



1.2.11 If the time for performing an obligation under this Agreement occurs or expires on a day that is not a Business Day, the time for performance of such obligation shall be extended until the next succeeding Business Day.

1.2.12 References to Laws shall be references to the same as amended, modified, supplemented or reenacted and in effect from time to time, and shall include references to all bylaws, instruments, orders, rules and regulations for the time being made thereunder or deriving validity therefrom, unless the context otherwise requires.

1.2.13 References to any amount of money shall mean a reference to the amount in United States dollars.

1.2.14 Reference in this Agreement to the "discretion" of a Party means the Party's sole and absolute discretion. Such discretion is not subject to any external standard, including any standard of custom, "good faith" or reasonableness.

1.2.15 Any reference in this Agreement to time of day refers to local time in Nevada.

1.2.16 Unless specifically stated to the contrary, all references to days in this Agreement refer to calendar days.

## **ARTICLE II PURCHASE AND SALE**

2.1. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, at the Closing Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, all of the Purchased Assets, free and clear of all Liens, other than Permitted Liens and, in the case of the Real Property included in the Purchased Assets, Permitted Encumbrances.

2.2. Purchase Price. The total consideration for the Purchased Assets which Purchaser shall pay or cause to be paid to Seller, shall be an amount equal to [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) (the "Purchase Price"), plus the assumption by Purchaser of the Assumed Liabilities.

2.3. Acceptable Security; Setoff.

2.3.1 Acceptable Security. Seller shall deliver or cause to be delivered to Purchaser contemporaneously with the execution of this Agreement, and maintain in full force and effect until the Acceptable Security End Date, a Guaranty from Guarantor. If at any time prior to the Acceptable Security End Date the Guaranty or other Acceptable Security delivered to Purchaser pursuant hereto fails to be in full force and effect or to satisfy the requirements of the definition of Acceptable Security, then within three (3) Business Days thereof Seller shall deliver or cause to be delivered to Purchaser, and thereafter shall maintain in full force and effect until the Acceptable Security End Date, substitute Acceptable Security.

2.3.2 Setoff. Purchaser shall be entitled to set off the amount of any Liability that is owed by Seller to Purchaser, or to a Purchaser Indemnified Party, under this Agreement or

any Transaction Document, including the EPC Agreement and the O&M Agreement, or any other Contract between Purchaser and Seller or any of its Affiliates, against any Liability that is owed by Purchaser to Seller, or to a Seller Indemnified Party, under this Agreement or any Transaction Document.

2.4. Assumed Liabilities. Except as provided in Section 2.5, as of the Closing Date Purchaser shall assume the following Liabilities, and no other Liabilities, of Seller (the “Assumed Liabilities”):

2.4.1 all Liabilities arising after the Closing Date under the Assigned Contracts; provided, that such Liabilities: (a) arise after the Closing Date; (b) do not arise out of, relate to or result from or are caused by any failure to perform, improper performance, warranty, breach, default or other violation by Seller or any of its Related Persons of any provision of any of the Assigned Contracts prior to the Closing Date; (c) do not arise out of, relate to or result from any event, circumstance or condition occurring or existing on or prior to the Closing Date that, with notice or lapse of time or both, would constitute or result in a breach or violation of, or default under, any of the Assigned Contracts; and (d) are ascertainable (in nature and amount) solely by reference to the express terms of the Assigned Contracts; and

2.4.2 all Taxes for which Purchaser is required to indemnify Seller pursuant to Section 9.5.

2.5. Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, and regardless of whether such liability is disclosed in this Agreement, in any of the Transaction Documents or on any schedule or exhibit hereto or thereto, including Seller’s Disclosure Schedule, except for the Assumed Liabilities, Purchaser shall not assume and shall not be responsible to pay, perform, satisfy or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, including any Liabilities of Seller or any of its Affiliates arising out of, relating to, resulting from, or caused by any transaction, status, event, condition, occurrence or situation relating to, arising out of or in connection with the Project, the Purchased Assets or Seller or any of its Related Persons existing, arising or occurring on or prior to the Closing Date (collectively, the “Excluded Liabilities”). On and after the Closing, Seller shall, and shall cause each of its Affiliates to, retain, pay, perform, satisfy and discharge all Excluded Liabilities for which it or they are respectively obligated, including:

2.5.1 all Liabilities arising from any violation of applicable Environmental Law by Seller or any of its Affiliates or any other Person acting on behalf of Seller or any of its Affiliates, in each case, in connection with the Purchased Assets or the development or permitting of the Facility or the Real Property prior to the Closing;

2.5.2 all Liabilities arising from any Environmental Condition on, under or near the Real Property to the extent existing prior to the Closing, including Liabilities related to Remediation, natural resource damages, bodily injury or property damage;

2.5.3 all Liabilities arising from the off-site transportation, disposal, recycling or storage, or arrangement for same, of Hazardous Materials, from the Real Property prior to the

Closing, including Liabilities related to Remediation, natural resource damages, bodily injury or property damage;

2.5.4 all Liabilities of Seller and any of its Affiliates under the Assigned Contracts which are not Assumed Liabilities and all Liabilities of Seller and any of its Affiliates under Contracts which are not Assigned Contracts;

2.5.5 all Pre-Closing Taxes, Seller Income Taxes, Real Property Transfer Taxes and Sales Taxes with respect to the transfer of the Purchased Assets pursuant to this Agreement, but not any Taxes for which Purchaser is required to indemnify Seller pursuant to Section 9.5; and

2.5.6 all Liabilities in any way relating to any Excluded Assets.

2.6. Method of Payment of Purchase Price; Escrow Amount. Payment of the Purchase Price shall be made in United States Dollars, as follows: (a) [\_\_\_\_\_] percent ([\_]%) of the Purchase Price by wire transfer of immediately available funds from Purchaser (and from Title Company pursuant to the Real Property Escrow Agreement as to the Real Property) to an account located in the United States as Seller may specify by notice; and (b) [\_\_\_\_\_] percent ([\_]%) of the Purchase Price (the “Escrow Amount”), by wire transfer to the Escrow Agent to be held in escrow subject to the terms set forth in Escrow Agreement. The Escrow Amount shall be held and distributed in accordance with the terms of the Escrow Agreement and shall be used to satisfy any amounts owed to a Purchaser Indemnified Party by Seller pursuant to this Agreement, including Seller’s performance of its indemnification obligations as set forth in Article VIII. At the Closing, Purchaser shall withhold from the Purchase Price any amount set forth as owing to the applicable Taxing Authority in a Certificate of Amount Due with respect to Seller and shall remit such withheld amount to the applicable Taxing Authority.

2.7. Allocation of Purchase Price.

2.7.1 After the Effective Date and prior to Closing, Purchaser shall, in its reasonable discretion, determine the portion of the Purchase Price allocated to the Real Property (the “Real Property Purchase Price”). Not later than forty-five (45) days after the Closing, Purchaser shall provide Seller with an allocation of the Purchase Price, plus any liabilities deemed assumed for U.S. federal income Tax purposes, among the Purchased Assets as of the Closing Date using the allocation method provided by Section 1060 of the Code and the Treasury Regulations thereunder (the “Purchase Price Allocation Schedule”). The allocation made pursuant to this Section 2.7 is intended to comply with the allocation method required by Section 1060 of the Code and the Parties shall cooperate to comply with all procedural requirements of Section 1060 and the regulations thereunder. Within fifteen (15) days after its receipt of Purchaser’s proposed Purchase Price Allocation Schedule, Seller shall propose to Purchaser any changes thereto, or otherwise shall be deemed to have agreed with Purchaser’s proposed Purchase Price Allocation Schedule, provided that Seller may not propose changes to the portion of the Purchase Price allocated to the Real Property.

2.7.2 If Seller proposes changes to Purchaser’s proposed Purchase Price Allocation Schedule within the fifteen (15)-day period described above, Purchaser and Seller

shall cooperate in good faith to mutually agree upon a revised Purchase Price Allocation Schedule as soon as practicable and in any event within fifteen (15) days of receipt of Seller's proposed changes. If, after such fifteen (15)-day period, the Parties are unable to agree on a revised Purchase Price Allocation Schedule, the Parties shall refer such dispute to a firm of independent public accountants that is mutually acceptable to Purchaser and Seller (the "Independent Accountant"), which firm shall make a final and binding determination as to all matters in dispute with respect to the Purchase Price Allocation Schedule (and only such matters) on a timely basis and shall promptly notify the Parties in writing of its resolution. The Independent Accountant shall not have the power to modify or amend any term or provision of this Agreement. Each Party shall bear and pay fifty percent (50%) of the fees and other costs for services rendered by the Independent Accountant pursuant to this Section 2.7.2.

2.7.3 The Parties shall cooperate to comply with all substantive and procedural requirements of Section 1060 of the Code and the Treasury Regulations thereunder, and except for any adjustment to the Purchase Price pursuant to the terms of this Agreement, the Purchase Price Allocation Schedule shall be adjusted only if and to the extent necessary to comply with such requirements. Purchaser and Seller agree that they will not take nor will they permit any Affiliate to take, for Tax purposes, any position inconsistent with such Purchase Price Allocation Schedule; provided, however, that (a) Purchaser's costs may differ from the total amount allocated hereunder to reflect the inclusion in the total cost of items not included in the total amount so allocated, and (b) the amount realized by Seller may differ from the amount allocated to reflect transaction costs that reduce the amount realized for federal income Tax purposes. Each Party shall notify the other Party within twenty (20) days after notice or commencement of an examination, audit or other proceeding regarding the allocation determined under this Section 2.7.

## 2.8. Further Assurances; Post-Closing Cooperation.

2.8.1 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information, and take such other actions as such Party may reasonably deem necessary or desirable in order more effectively: (a) to transfer, convey and assign to Purchaser, and to confirm Purchaser's title to, the Purchased Assets; (b) to effectuate the assignment to Purchaser of the Assigned Contracts, the Transferred Permits and the Warranty Rights; and (c) otherwise to consummate the transactions contemplated by this Agreement and the Transaction Documents. Purchaser shall provide to Seller all invoices and supporting documentation received with respect to the Assigned Contracts, which relate to any Excluded Liabilities arising thereunder.

## 2.8.2 Pre-Closing Books and Records.

(a) Following the Closing, Seller and its Affiliates will afford Purchaser and its counsel and accountants, during normal business hours, reasonable access to the Books and Records of Seller and its Affiliates with respect to periods prior to Closing (the "Pre-Closing Books and Records") and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by Purchaser in connection with: (i) the

preparation of Tax Returns; (ii) compliance with the requirements of any Governmental Authority; (iii) any Assumed Liabilities or Excluded Liabilities; or (iv) any rights and obligations arising under Article VIII, Article IX or Article XI. Seller shall maintain Pre-Closing Books and Records reasonably expected to be required in connection with the matters described in items (i) through (iv) of the preceding sentence in accordance with the ordinary course document retention policies of Seller and, in any event, for at least three (3) years after Closing.

(b) Purchaser acknowledges and consents to the retention by Seller of information made available to Purchaser relating to the Purchased Assets (the “Retained Information”). From and after the Closing Date, Seller shall, and shall cause its Related Persons to, treat the Retained Information as Confidential Information subject to Article VII.

2.8.3 Delivery of Books and Records. No later than the Closing Date Seller shall deliver any Books and Records (to the extent providing such to Purchaser does not violate any Law) that are not located at the Real Property to Purchaser at Purchaser’s offices in Las Vegas, Nevada or another location as designated by Purchaser in or near Las Vegas, Nevada.

### **ARTICLE III CLOSING; CONDITIONS PRECEDENT**

3.1. The Closing. The closing of the transactions contemplated herein (the “Closing”) will take place at the offices of Nevada Power Company, located at 6226 W. Sahara, Las Vegas, Nevada, at 10:00 a.m. Pacific Prevailing Time on the date as soon as practicable but in no event later than the fifth (5th) Business Day after the satisfaction or waiver of the conditions set forth in Section 3.3 (other than those conditions to be satisfied or waived at the Closing) or such other date, time and place as the Parties shall mutually agree (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. Pacific Prevailing Time on the Closing Date. Except for any documents to be recorded in connection with Real Property or any original documents required by the Title Company pursuant to the Real Estate Escrow Agreement, documents to be delivered at the Closing may be delivered to the place of the Closing by electronic transmission on the Closing Date. Each of Purchaser and Seller shall further deliver such other evidence, instruments, documents and certificates required to be delivered by such Party pursuant to this Agreement.

#### **3.2. Closing Deliveries.**

3.2.1 Seller’s Closing Deliveries. At the Closing, Seller will execute, deliver or pay, or will cause to be executed, delivered or paid, as applicable, to Purchaser or Title Company pursuant to the Real Property Escrow Agreement, as applicable, the following:

(a) a counterpart signature page to the Bill of Sale executed by an authorized representative of Seller;

(b) a counterpart signature page to the Assignment and Assumption Agreement executed by an authorized representative of Seller;

(c) counterpart signature pages to the Escrow Agreement executed by authorized representatives of Seller and the Escrow Agent;

(d) a counterpart signature page to the EPC Agreement executed by an authorized representative of Seller;

(e) a counterpart signature page to the O&M Agreement executed by an authorized representative of the Operator;

(f) a counterpart signature page to the Real Property Deed, in recordable form, properly executed and acknowledged, and executed by an authorized representative of Seller;

(g) true, accurate and complete copies of the Assigned Contracts and the Reports, including all amendments, supplements, schedules and exhibits thereto;

(h) true, accurate and complete copies of the Transferred Permits and associated Permit Applications, including all amendments, supplements, schedules and exhibits thereto;

(i) true, accurate and complete copies of the Seller Required Consents;

(j) a certificate, dated as of the Closing Date, executed by an authorized representative of Seller, certifying that attached thereto: (i) is a true, accurate and complete copy of a certificate of good standing with respect to Seller, issued by the Secretary of State of [\_\_\_\_\_] as of a date not more than thirty (30) days prior to the Closing Date; (ii) are true, accurate and complete copies of the resolutions of Seller, authorizing the execution, delivery and performance by Seller of this Agreement and the Seller Transaction Documents, and the consummation of the transactions contemplated hereby and thereby; and (iii) is the name, title and signature of each of the authorized representatives of Seller authorized to execute and deliver this Agreement and the Seller Transaction Documents;

(k) a certificate, dated as of the Closing Date, executed by an authorized representative of Seller, certifying as to the matters set forth in Section 3.3.3(a) and Section 3.3.3(b);

(l) a counterpart of the State of Nevada Declaration of Value Form, executed by an authorized representative of Seller, with respect to the Real Property;

(m) any amounts for which Seller is responsible pursuant to Section 6.1.6;

(n) an Owner's affidavit and related documentation, with respect to the Real Property, executed by an authorized representative of Seller, in form and substance satisfactory to Title Company;

(o) certifications of non-foreign status of Seller or, if Seller is a disregarded entity for federal income tax purposes, the respective owners of Seller, in the form and manner which complies with the requirements of Section 1445(b)(2) of the Code and

Treasury Regulation Section 1.1445-2(b)(2) and in form and substance reasonably satisfactory to Purchaser;

(p) such other documents and instruments as are expressly provided for herein, including pursuant to Sections 4.9.1, 4.12.1, 4.18 or 4.19, or as may be reasonably requested by Purchaser and/or Title Company to consummate the transactions contemplated by this Agreement and the Transaction Documents, including those that may be required for issuance of the Title Insurance Policy; and

(q) a counterpart signature page to the settlement statement agreed to by Purchaser and Seller, and approved by Title Company, in connection with the Close of Real Estate Escrow (the "Real Property Settlement Statement").

3.2.2 Purchaser's Closing Deliveries. At the Closing, Purchaser will pay to Seller or the Escrow Agent, as applicable, the Purchase Price in accordance with Section 2.2 (provided, however, the Real Property Purchase Price shall be deposited with the Title Company pursuant to the Real Property Escrow Agreement and paid in accordance with Section 6.1.6(b) and the Real Property Settlement Statement), and will execute, deliver or pay, or cause to be executed, delivered or paid, as applicable, to Seller or Title Company, as applicable, the following:

(a) a counterpart signature page to the Bill of Sale executed by an authorized representative of Purchaser;

(b) a counterpart signature page to the Assignment and Assumption Agreement executed by an authorized representative of Purchaser;

(c) a counterpart signature page to the Escrow Agreement executed by an authorized representative of Purchaser;

(d) a counterpart signature page to the EPC Agreement executed by an authorized representative of Purchaser;

(e) a counterpart signature page to the O&M Agreement executed by an authorized representative of Purchaser;

(f) a counterpart signature page to the Real Property Deed, in recordable form, properly executed and acknowledged, and executed by an authorized representative of Purchaser;

(g) true, accurate and complete copies of the Purchaser Required Consents;

(h) a certificate, dated as of the Closing Date, executed by an authorized representative of Purchaser, certifying that attached thereto: (i) is a true, accurate and complete copy of a certificate of good standing with respect to Purchaser, issued by the Secretary of State of Nevada as of a date not more than thirty (30) days prior to the Closing Date; (ii) are true, accurate and complete copies of the resolutions of Purchaser, authorizing the

execution, delivery and performance by Purchaser of this Agreement and the Purchaser Transaction Documents, and the consummation of the transactions contemplated hereby and thereby; and (iii) is the name, title and signature of each of the authorized representatives of Purchaser authorized to execute and deliver this Agreement and the Purchaser Transaction Documents;

(i) a certificate, dated as of the Closing Date, executed by an authorized representative of Purchaser, certifying as to the matters set forth in Section 3.3.2(a) and Section 3.3.2(b);

(j) a counterpart of the State of Nevada Declaration of Value Form, executed by an authorized representative of Purchaser, with respect to the Real Property;

(k) a copy of the Certificate of Amount Due received from the Taxing Authority with respect to Seller;

(l) a counterpart signature page to the Real Property Settlement Statement; and

(m) such other documents and instruments as are expressly provided for herein or as may be reasonably requested by Seller to consummate the transactions contemplated by this Agreement and the Transaction Documents.

### 3.3. Conditions Precedent.

3.3.1 Generally. For purposes of this Agreement, there shall be conditions which must be satisfied or waived on or prior to the Closing. Purchaser's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by Purchaser, of each of the Purchaser Conditions Precedent, and Seller's obligation to cause the Closing to occur is subject to the satisfaction, or waiver in writing by Seller, of each of the Seller Conditions Precedent. Seller and Purchaser expressly acknowledge and agree that each of the conditions in the Purchaser Conditions Precedent are for the sole benefit of and may only be waived by Purchaser in writing and each of the conditions in the Seller Conditions Precedent are for the sole benefit of and may only be waived by Seller in writing.

3.3.2 Purchaser Conditions Precedent to the Closing. Unless and until the following conditions precedent (the "Purchaser Conditions Precedent") are satisfied, or waived in writing by Purchaser in its sole discretion, Purchaser shall not be obligated to effect the Closing hereunder:

(a) Representations and Warranties. The representations and warranties made by Seller in this Agreement that are qualified with respect to materiality (including Seller Material Adverse Effect) shall be true and accurate in all respects, and the representations and warranties made by Seller in this Agreement that are not so qualified shall be true and accurate in all material respects, on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) as though made on and as of the Closing Date.



(b) Performance. Seller shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

(c) No Material Adverse Effect. Between the Effective Date and the Closing Date, there shall have been no Seller Material Adverse Effect, nor shall any event, result, occurrence, development, fact, change or effect of whatever nature or kind have occurred that, individually or in the aggregate, with or without notice or the lapse of time or both, could reasonably be expected to result in a Seller Material Adverse Effect.

(d) Closing Deliveries. Seller shall have delivered, or caused to be delivered, to Purchaser all items required to be delivered pursuant to Section 3.2.1, in form and substance satisfactory to Purchaser.

(e) PUCN Approval. The PUCN Approval shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance satisfactory to Purchaser in its sole discretion.

(f) Required Consents. The Required Consents shall have been duly obtained, made or given, shall be in full force and effect, and shall be in form and substance reasonably satisfactory to Purchaser.

(g) Transferred Permits. The Transferred Permits shall have been duly obtained, successfully transferred to Purchaser, shall be in full force and effect, and shall be in form and substance reasonably satisfactory to Purchaser.

(h) Reports. Seller shall have delivered, or caused to be delivered, to Purchaser true, accurate and complete copies of the Reports, which Reports shall be in form and substance reasonable acceptable to Purchaser and shall not, individually or in the aggregate, indicate any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect.

(i) No Injunction. No order, injunction, judgment, decree or ruling of any Governmental Authority shall be in effect which restrains or prohibits the completion of the Transactions or Seller's ownership, use, operation and maintenance of the Facility and there shall not have been threatened, nor shall there be pending, any action or proceeding by or before any Governmental Authority which is reasonably likely to prohibit, delay or successfully challenge the validity of any of the Transactions or Seller's ownership, use, operation and maintenance of the Facility.

(j) Legislation. No statute, rule or regulation shall have been enacted which prohibits or restricts the consummation of the Transactions or Seller's ownership, use, operation and maintenance of the Facility.

(k) Real Estate. All real estate conditions set forth in this Agreement, including those set forth in Section 6.1.6, shall have been satisfied, and all of the conditions to the Close of Real Estate Escrow shall have been satisfied or waived by the respective Parties pursuant to the Real Property Escrow Agreement.

3.3.3 Seller Conditions Precedent to the Closing. Unless and until the following conditions precedent (the “Seller Conditions Precedent”) are satisfied, or waived in writing by Seller in its sole discretion, Seller shall not be obligated to effect the Closing hereunder:

(a) Representations and Warranties. The representations and warranties made by Purchaser in this Agreement that are qualified with respect to materiality (including Purchaser Material Adverse Effect) shall be true and accurate in all respects, and the representations and warranties made by Purchaser in this Agreement that are not so qualified shall be true and accurate in all material respects, on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date) as though made on and as of the Closing Date.

(b) Performance. Purchaser shall have performed and complied with, in all material respects, the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

(c) Closing Deliveries. Purchaser shall have delivered, or caused to be delivered, to Seller all items required to be delivered pursuant to Section 3.2.2 in form and substance satisfactory to Seller.

(d) Required Consents. The Required Consents shall have been duly obtained, made or given and shall be in full force and effect.

(e) No Injunction. No order, injunction, judgment, decree or ruling of any Governmental Authority shall be in effect which restrains or prohibits the completion of the Transactions, and there shall not have been threatened, nor shall there be pending, any action or proceeding by or before any Governmental Authority which is reasonably likely to prohibit, delay or successfully challenge the validity of any of the Transactions.

(f) Legislation. No statute, rule or regulation shall have been enacted which prohibits or restricts the consummation of the Transactions.

(g) Real Estate. All of the conditions to the Close of Real Estate Escrow shall have been satisfied or waived by the respective Parties pursuant to the Real Property Escrow Agreement.

3.4. Satisfaction of Conditions. Subject to the terms and conditions of this Agreement, each of the Parties shall, and shall cause its Affiliates as appropriate, to use commercially reasonable efforts to take, or to cause to be taken, all action and to do, or to cause to be done, all things necessary, proper or advisable to complete, as promptly as practicable, the Transactions, including the satisfaction of the conditions listed in Sections 3.3.1 or 3.3.2 that are within the control of such Party or its Affiliates and the obtaining of all consents, waivers, authorizations, orders and approvals of third parties, including Governmental Authorities, required of it by this Agreement. Each Party shall, and shall cause its Affiliates as appropriate, to cooperate fully with the other Party in assisting such Party to comply with this Section 3.4.

## ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents, warrants and covenants to Purchaser that, subject to such exceptions as are disclosed in Seller's Disclosure Schedule supplied by Seller to Purchaser and dated as of the Effective Date (it being acknowledged and agreed that an item disclosed in one particular section of Seller's Disclosure Schedule shall apply to each other representation and warranty of Seller to the extent that it is readily apparent that such item applies to such other representations and warranties), all of the following are true and correct as of the Effective Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date):

### 4.1. Existence.

4.1.1 Seller is a [\_\_\_\_], duly formed, validly existing and in good standing under the Laws of the State of [\_\_\_\_] and has full [\_\_\_\_] power and authority to conduct its business as it is now being conducted and to own, lease and operate its assets and properties. Seller is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not be reasonably expected to have a Seller Material Adverse Effect.

4.1.2 Guarantor is a [\_\_\_\_], duly formed, validly existing and in good standing under the Laws of the State of [\_\_\_\_] and has full [\_\_\_\_] power and authority to conduct its business as it is now being conducted and to own, lease and operate its assets and properties. Guarantor is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not be reasonably expected to have a Seller Material Adverse Effect.

### 4.2. Authority.

4.2.1 Seller has full [\_\_\_\_] power and authority to execute and deliver this Agreement and the Seller Transaction Documents, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the Seller Transaction Documents, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary [\_\_\_\_] action.

4.2.2 Guarantor has full [\_\_\_\_] power and authority to execute and deliver the Guaranty, to perform its obligations thereunder and to consummate the transactions contemplated thereby. The execution and delivery by Guarantor of the Guaranty, and the performance by Guarantor of its obligations thereunder, have been duly and validly authorized by all necessary [\_\_\_\_] action.

### 4.3. Binding Agreement.

4.3.1 This Agreement and the Seller Transaction Documents have been or will be when delivered duly and validly executed and delivered by Seller and, assuming due and valid authorization, execution and delivery thereof by Purchaser and each other party thereto, this Agreement and the Seller Transaction Documents are or will be when delivered valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

4.3.2 The Guaranty has been duly and validly executed and delivered by Guarantor and the Guaranty is valid and binding obligations of Guarantor enforceable against Guarantor in accordance with its terms.

4.4. No Conflicts.

4.4.1 Subject to the receipt of the Seller Required Consents, the execution, delivery and performance of this Agreement and the Seller Transaction Documents by Seller, and the consummation of the transactions contemplated hereby and thereby by Seller, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Seller's Governance Documents;

(b) 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 material Contract or other material obligation (with or without notice or lapse of time or both) to which Seller is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, accurate and correct copies of which waivers and consents have been furnished to Seller); or

(c) conflict with or result in a violation or breach in any material respect of any term or provision of any Law applicable to Seller or any of its assets and properties.

4.4.2 The execution, delivery and performance of the Guaranty by Guarantor, and the consummation of the transactions contemplated thereby by Guarantor, shall not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of Guarantor's Governance Documents;

(b) 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 material Contract or other material obligation (with or without notice or lapse of time or both) to which Guarantor is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, accurate and correct copies of which waivers and consents have been furnished to Seller); or

(c) conflict with or result in a violation or breach in any material respect of any term or provision of any Law applicable to Guarantor or any of its assets and properties.

4.5. Approvals and Filings. Except as set forth in Section 4.5 of Seller's Disclosure Schedule (the "Seller Required Consents"), no consent or approval of, filing with or notice to, any Governmental Authority or other Person is required in connection with the execution, delivery and performance by Seller of this Agreement or any of the Seller Transaction Documents or the consummation by Seller of the transactions contemplated hereby or thereby.

4.6. Legal Proceedings. Except as set forth in Section 4.6 of Seller's Disclosure Schedule, there are no Actions: (a) outstanding or pending to which Seller or any of its Affiliates is a party; or (b) to Seller's Knowledge, threatened against Seller or any of its Affiliates or any of their respective assets and properties, including the Purchased Assets, in each case, which would be reasonably expected: (i) to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement or any of the Seller Transaction Documents; or (ii) individually or in the aggregate, to have a Seller Material Adverse Effect.

4.7. Compliance with Laws. Each of Seller and its Affiliates (solely with respect to the Purchased Assets and the Project) has complied in all material respects and is in material compliance with all applicable Laws (excluding any Environmental Laws which are addressed in Section 4.12) relating to its business and operations, including with respect to the Purchased Assets and the Project. Neither Seller nor any of its Affiliates has received notification alleging that it is in violation of or in default under any Law (excluding any Environmental Laws which are addressed in Section 4.12) applicable to it, the Project or the Purchased Assets.

4.8. Title to Purchased Assets. As of the Effective Date, Seller has good and marketable title to the Purchased Assets (other than the Real Property), free and clear of all Liens, except for Permitted Liens. At the Closing, Purchaser will acquire good and marketable title to the Purchased Assets (other than the Real Property), free and clear of all Liens, except for Permitted Liens. As of the Effective Date and the Closing, Seller has not created or allowed any possessory or non-possessory right of interest in favor of any person or entity in the Real Property that is not of record as of the Effective Date, including easements, codes, covenants and restrictions, and special and/or local improvement district assessments.

4.9. Real Property.

4.9.1 Section 4.9.1 of Seller's Disclosure Schedule sets forth a true and complete description of all real property used or needed for the Project (collectively, the "Real Property"). The Project is capable of being located, developed, constructed (pursuant to the EPC Agreement) and operated (pursuant to the O&M Agreement) pursuant to the Real Property to be acquired by Purchaser pursuant hereto. Seller has delivered to Purchaser copies of (a) all deeds and other instruments (as recorded) for the Real Property and (b) all title insurance policies, opinions, abstracts and surveys with respect to the Real Property, that are in the possession or control of Seller or its Affiliates.

4.9.2 As of the Effective Date, Seller is the fee simple owner of the Real Property, free and clear of all Liens other than Permitted Liens. At the Closing, Purchaser will acquire good and marketable title to the Real Property, free and clear of all Liens other than Permitted Liens, and subject to Permitted Encumbrances.

4.9.3 Neither Seller nor any of its Affiliates has received any written notice that the whole or any portion of the Real Property is subject to any governmental decree or order to be sold or is being condemned, expropriated or otherwise taken by any Governmental Authority with or without payment of compensation therefor, nor, to Seller's Knowledge, has any such condemnation, expropriation or taking been proposed. Neither Seller nor any of its Affiliates has received any written notice of any material requirements or recommendations by any insurance company that has issued a policy covering any part of the Real Property or by any board of fire underwriters or other body exercising similar functions, requiring or recommending any repairs or work to be done on any part of the Real Property, which repair or work has not been completed and accepted.

4.9.4 Other than Permitted Liens and as set forth in Section 4.9.4 of Seller's Disclosure Schedule, there are no Contracts between Seller or any Affiliate of Seller and any Governmental Authority affecting the use or ownership of the Real Property and, to Seller's Knowledge, there are no Contracts between any other party and any Governmental Authority affecting the use or ownership of the Real Property.

4.9.5 Except for this Agreement, Permitted Liens or as set forth in Section 4.9.5 of Sellers' Disclosure Schedule, neither Seller nor any of its Affiliates is a party to any Contract for the sale, exchange, encumbrance, lease or transfer of or otherwise affecting or relating to all or any portion of the Real Property.

4.9.6 Except as set forth in Section 4.9.6 of Seller's Disclosure Schedule, to Seller's Knowledge, Seller is in compliance with all applicable conditions, covenants and restrictions that encumber the Real Property.

4.10. Contracts. Schedule 1.1(a) of this Agreement contains a true, accurate and complete list of all Contracts that are included in the Purchased Assets. With respect to each Contract identified on Schedule 1.1(a) of this Agreement and except as expressly set forth on Schedule 4.10 of Seller's Disclosure Schedule:

4.10.1 Except for the Assigned Contracts, there are no Contracts that relate to, are associated with or concern the Project or by which any of the Purchased Assets may be bound. The Assigned Contracts, together with the EPC Agreement and the O&M Agreement, are all of the material Contracts that are needed for the development, permitting, design, engineering, supply, construction, installation, testing, commissioning, use, operation and maintenance of the Facility in accordance with applicable Laws, Prudent Utility Practice and the Transferred Permits.

4.10.2 Prior to or on the Effective Date, Seller has provided Purchaser with true, accurate and complete copies of all Assigned Contracts, including all amendments, supplements, schedules and exhibits thereto. No written or oral waiver of any term or condition of any Assigned Contract is currently in effect. Seller has not assigned, and to Seller's Knowledge no other counterparty has assigned, any of its respective right, title or interest in and to, the Assigned Contracts, and Seller's interest in the Assigned Contracts is not subject to any Liens (other than Permitted Liens).

4.10.3 Neither Seller or any of its Affiliates, nor, to Seller's Knowledge, any counterparty to an Assigned Contract, (a) has indicated its intention to amend or terminate any Assigned Contract, (b) has made any claims against, or sought indemnification as to any matter arising under or with respect to any Assigned Contract, or (c) is in breach or default of the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or notice or both, would result in such a breach or default under, or permit the termination, modification or acceleration of, any Assigned Contract. Each Assigned Contract is in full force and effect, and constitutes a legal, valid and binding agreement of Seller and, to Seller's Knowledge, of each other party thereto, enforceable in accordance with its terms. Neither Seller nor, to Seller's Knowledge, any counterparty, has repudiated any provision of any Assigned Contract.

4.10.4 Neither Seller nor any of its Affiliates has sold or transferred, agreed or committed to sell or transfer, or granted any options or rights to purchase electric power, Environmental Attributes, Renewable Energy Credits, or Renewable Energy Incentives in connection with or related to the Project.

4.10.5 The consummation of the Transactions will not affect the legality, validity, binding nature, enforceability or force and effect of any of the Assigned Contracts except with respect to the identity of the parties thereto as a result of the Assignment and Assumption Agreement.

#### 4.11. Permits.

4.11.1 Section 4.11.1 of Seller's Disclosure Schedule sets forth a list of all Permits (other than Purchaser Permits) required for the development, design, engineering, supply, construction, installation, testing, commissioning and use of the Facility on the Real Property, including any special use permit or variance necessary for the Project, or as necessary to establish the Real Property as a standalone tax parcel, as further set forth in Section 6.1.6(g), all pursuant to applicable Law and Prudent Utility Practice (the "Transferred Permits"). Other than the Transferred Permits and Purchaser Permits, no other Permits are necessary for the Project.

4.11.2 Section 4.11.2 of Seller's Disclosure Schedule sets forth a list of all Transferred Permits that have been obtained as of the Effective Date (the "Obtained Permits"). All Transferred Permits that are not Obtained Permits are hereinafter referred to as "Outstanding Permits."

4.11.3 As of the Effective Date, Seller has delivered to Purchaser a true, accurate and complete copy of each Obtained Permit and the Permit Application therefor. As of the Closing Date, Seller has delivered to Purchaser a true, accurate and complete copy of each Transferred Permit, including each Outstanding Permit, and the Permit Application therefor.

4.11.4 All Transferred Permits have been obtained on or prior to the date required under applicable Law, but in any event before the Closing Date.

4.11.5 With respect to each of the Transferred Permits, and except as set forth in Section 4.11.5 of Seller's Disclosure Schedule: (a) each Transferred Permit that has been

obtained is legal, valid, binding and in full force and effect; (b) the consummation of the transactions contemplated by this Agreement and the Transaction Documents will not affect the legality, validity, binding nature or force and effect of each Transferred Permit being transferred pursuant to the Assignment and Assumption Agreement, except with respect to the identity of the parties thereto as a result of the Assignment and Assumption Agreement; (c) Seller is in compliance with the terms and conditions of each Transferred Permit that has been obtained, and, to Seller's Knowledge, no event has occurred which with the giving of notice or lapse of time, or both, would constitute non-compliance with such terms and conditions; (d) each Transferred Permit that has been obtained is properly in the name of the Facility or Seller, as applicable; (e) no action, suit, proceeding, hearing, charge, complaint, claim, or demand is pending or, to Seller's Knowledge, threatened in writing, nor to Seller's Knowledge is there an investigation, in each case, which challenges the legality, validity or enforceability of, or threatens to revoke, suspend or modify, any Transferred Permit that has been obtained; (f) no notice of noncompliance or default has been received by Seller or any of its Affiliates in respect of Transferred Permit that has been obtained, and no information has been received by Seller or any of its Affiliates that would reasonably be expected to prevent Seller from maintaining any Transferred Permit that has been obtained or from transferring to Purchaser on the Closing Date any Transferred Permit that has been obtained; and (g) no condition or requirement exists in any of the Transferred Permits which does or could reasonably be expected to adversely affect the ownership, use, operation and maintenance of the Facility by or on behalf of Purchaser after the Closing.

4.12. Environmental Matters. Except as set forth in Section 4.12 of Seller's Disclosure Schedule:

4.12.1 Seller has made available to Purchaser all of the environmental site assessment reports and other environmental assessments, studies, audits and reports, including reports, assessments, studies, audits and reports relating to wetlands, air and emissions or discharges, or threatened or endangered species, that are in the possession or control of Seller or any of its Affiliates and which relate to environmental, health and safety matters in connection with the Project or the Purchased Assets, including the Real Property. Seller has made available to Purchaser copies of all other material documents and records in its or its Affiliates' possession or control concerning any condition of the environment with respect to the Real Property. To Seller's Knowledge, there are no conditions, facts or circumstances that could result in the imposition of Liabilities under, or noncompliance with, any Environmental Laws at the Real Property.

4.12.2 Seller and its Affiliates have not and, to Seller's Knowledge, no other Person has entered into or agreed to any judicial or administrative consent decree or order or is subject to any judgment, decree, or judicial or administrative order, relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Materials or Environmental Conditions, in each case, relating to the Project or the Purchased Assets, including the Real Property.

4.12.3 No action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice has been filed or commenced or, to Seller's Knowledge threatened or contemplated against, Seller (with respect to the Project or the Purchased Assets, including the



Real Property), the Project or the Purchased Assets, including the Real Property, under any Environmental Law or alleging any failure to comply with any Environmental Law.

4.12.4 Seller and each of its Affiliates are and have been in compliance with all Environmental Laws with respect to the Project and the Real Property.

4.12.5 No Hazardous Materials exist on, or to Seller's Knowledge, have been Released or are in imminent threat of Release at, on, into or from the Real Property. Except to the extent allowed under, and then in full compliance with, applicable Law, Seller and its Affiliates have not and, to Seller's Knowledge no other Person has, used, stored, disposed of or released, or caused or authorized third parties to use, store, dispose of or release, on or to the Real Property any Hazardous Materials.

4.12.6 Neither Seller nor any of its Affiliates (with respect to the Project or the Purchased Assets, including the Real Property) has ever received from any Person any notice of, or has any knowledge of, any past, present or anticipated future events, conditions, circumstances, activities, practices, incidents, actions, agreements or plans that could: (a) materially interfere with, prevent, or increase the costs of compliance or continued compliance with any Permits or any renewal or transfer thereof or any Environmental Law, (b) make materially more stringent any restriction, limitation, requirement or condition under any Environmental Law or any Permit in connection with the construction, use and operation of the Facility on the Real Property, or (c) give rise to any Liability, or form the basis of any civil, criminal or administrative action, suit, summons, citation, complaint, claim, notice, demand, request, judgment, order, Lien, proceeding, hearing, study, inquiry or investigation involving the Real Property, based on or related to any Permit or any Environmental Law or to the presence, manufacture, generation, refining, processing, distribution, use, sale, treatment, recycling, receipt, storage, disposal, transport, handling, emission, discharge, release or threatened release of any Hazardous Materials. Neither Seller nor any of its Affiliates (with respect to the Project or the Purchased Assets, including the Real Property) has ever received from any Person any notice of, or has any knowledge of, any civil, criminal or administrative action, suit, summons, citation, complaint, claim, notice, demand, request, judgment, order, Lien, proceeding, hearing, study, inquiry or investigation alleging that the Project or the Transferred Permits violate any Environmental Law.

4.13. Insurance. Section 4.13 of Seller's Disclosure Schedule sets forth a true and complete list and description of all material insurance policies in force on the Effective Date with respect to the Purchased Assets, together with a statement of the aggregate amount of claims paid out and claims pending under each such insurance policy, in each case, relating to the Purchased Assets. All such policies are in full force and effect, all premiums due thereon have been paid and Seller is in compliance in all material respects with the terms and provisions of such policies. With respect to all such policies as they relate to the Purchased Assets: (a) neither Seller nor any of its Affiliates has received any notice of cancellation or non-renewal of any of such policies; (b) to Seller's Knowledge, there is no claim pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies; (c) neither Seller nor any of its Affiliates has received any notice from any of its insurance carriers that any insurance premiums in respect of such policies will be increased in the future or that any insurance coverage presently provided for will not be available to Seller in the future on substantially the same terms

as now in effect; and (d) neither Seller nor any of its Affiliates has received any notice that all or any component of the Facility or the operation thereof, will not be insurable or will be subject to exclusions arising from actual or potential defects in the Purchased Assets.

4.14. Intellectual Property. Except as set forth on Section 4.14 of Seller's Disclosure Schedule: (a) Seller owns or has the right to use all the Transferred Intellectual Property; (b) to Seller's Knowledge, no Person has or is infringing or misappropriating (whether directly or indirectly) any Transferred Intellectual Property; and (c) no Person has asserted against Seller or any of its Affiliates a claim in writing that any Transferred Intellectual Property infringes or misappropriates the Intellectual Property of such or any other Person and, to Seller's Knowledge, there is no valid basis for any such claim.

4.15. No Seller Material Adverse Effect. No Seller Material Adverse Effect exists and, to Seller's Knowledge, no event, result, occurrence, development, fact, change or effect of whatever nature or kind exists that would be reasonably expected to have a Seller Material Adverse Effect.

4.16. Sufficiency of Purchased Assets.

4.16.1 Seller has, or will have at the Closing, the power and right to sell, convey, deliver, transfer and assign to Purchaser, the Purchased Assets free and clear of all Liens, other than Permitted Liens and, in the case of the Real Property included in the Purchased Assets, Permitted Encumbrances.

4.16.2 Other than the Purchased Assets, including the Real Property, there are no other material assets or rights of any kind, whether tangible or intangible, real or personal, owned or held by Seller or any of its Affiliates relating to, associated with or concerning the Project.

4.16.3 To Seller's Knowledge, there are no adverse claims of ownership to the Purchased Assets and neither Seller nor any of its Affiliates has received any notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Purchased Assets.

4.16.4 Except as set forth in Section 4.16.4 of Seller's Disclosure Schedule, the Purchased Assets, together with the EPC Agreement and the O&M Agreement and the Purchaser Permits, constitute all of the material Contracts, Permits, assets and properties necessary to develop, permit, design, engineer, supply, construct, install, test, commission, use, operate and maintain the Facility in accordance with applicable Law, Prudent Utility Practice, the Transferred Permits and the Assigned Contracts.

4.17. Construction of the Facility. To Seller's Knowledge, there exist no facts or circumstances that reasonably could be expected to hinder, delay, restrict or prevent: (a) the ability of the Facility to be developed, permitted, designed, engineered, supplied, constructed, installed, tested and commissioned in all material respects in accordance with the terms and conditions of the EPC Agreement, applicable Laws, the Transferred Permits and Prudent Utility Practice; (b) the Facility from achieving Availability Completion on or prior to the Guaranteed Availability Completion Date (as such terms are defined in the EPC Agreement); (c) the Facility from achieving Substantial Completion on or prior to the Guaranteed Substantial Completion

Date; or (d) the Facility from achieving Final Completion on or prior to the Guaranteed Final Completion Date (as such terms are defined in the EPC Agreement).

4.18. Reports. Seller has delivered to Purchaser a true, accurate and complete copy of each Report. The Reports neither individually nor in the aggregate indicate any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect. To Seller's Knowledge, there has been no material change in any findings or conclusions of any Report delivered by Seller to Purchaser other than for which Seller has redelivered such Report to Purchaser in final form as revised to address such change pursuant to Section 6.1.8.

4.19. Due Diligence. Seller has made available for Purchaser's review all material information relating to the Purchased Assets and the Project in connection with Purchaser's due diligence examination conducted with respect to the Transactions. To Seller's Knowledge, none of the information provided by Seller to Purchaser contains any untrue or incorrect statement of fact, or omits to state any fact necessary to make the information, in light of the circumstances in which it was provided, not misleading.

4.20. Disclosure. No representation or warranty by Seller in this Agreement or any Seller Transaction Document contains or, as of the Closing Date, will contain any untrue statement of a material fact, or omits or, as of the Closing Date, will omit any material fact necessary to make the statements or facts contained herein or therein not misleading.

4.21. No Other Agreements to Sell the Purchased Assets. Seller has not entered into any Contract with any Person (other than Purchaser) to sell or effect a sale of all or any material portion of the Project or the Purchased Assets or to enter into any Contract or cause the entering into of any Contract with respect to the foregoing ("Acquisition Transaction").

4.22. Brokers. All negotiations relative to this Agreement and the Transactions have been carried out by Seller directly with Purchaser without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim by any Person against Purchaser for a finder's fee, brokerage commission or similar payment.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents, warrants and covenants to Seller that, subject to such exceptions as are disclosed in Purchaser's Disclosure Schedule supplied by Purchaser to Seller and dated as of the Effective Date (it being acknowledged and agreed that an item disclosed in one particular section of Purchaser's Disclosure Schedule shall apply to each other representation and warranty of Purchaser to the extent that it is readily apparent that such item applies to such other representations and warranties), all of the following are true and correct as of the Effective Date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date):

5.1. Existence. Purchaser is a corporation, duly formed, validly existing and in good standing under the Laws of the State of Nevada and has full corporate power and authority to conduct its business as it is now being conducted and to own, lease and operate its assets and

properties. Purchaser is duly qualified or licensed to do business and is in good standing in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes qualification necessary, except where the failure to be so qualified, licensed or in good standing would not be reasonably expected to have a Purchaser Material Adverse Effect.

5.2. Authority. Purchaser has full corporate power and authority to execute and deliver this Agreement and the Purchaser Transaction Documents, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and the Purchaser Transaction Documents, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action.

5.3. Binding Agreement. This Agreement and the Purchaser Transaction Documents have been or will be when delivered duly and validly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery thereof by Seller and each other party thereto, this Agreement and the Purchaser Transaction Documents are or will be when delivered valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

5.4. No Conflicts. Subject to the receipt of the Purchaser Required Consents and the PUCN Approval, the execution, delivery and performance of this Agreement and the Purchaser Transaction Documents by Purchaser, and the consummation of the transactions contemplated hereby and thereby by Purchaser, shall not:

5.4.1 conflict with or result in a violation or breach of any of the terms, conditions or provisions of Purchaser's Governance Documents;

5.4.2 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 material Contract or other material obligation (with or without notice or lapse of time or both) to which Purchaser is a party or by which any of its assets and properties may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained in writing (true, accurate and complete copies of which waivers and consents have been furnished to Seller); or

5.4.3 conflict with or result in a violation or breach in any material respect of any term or provision of any Law applicable to Purchaser or any of its assets and properties.

5.5. Approvals and Filings. Except for the PUCN Approval and as set forth in Section 5.5 of Purchaser's Disclosure Schedule (the "Purchaser Required Consents"), no material consent or approval of, filing with or notice to, any Governmental Authority or other Person is required in connection with the execution, delivery and performance by Purchaser of this Agreement or any of the Purchaser Transaction Documents or the consummation by Purchaser of the transactions contemplated hereby or thereby.

5.6. Legal Proceedings. Except as set forth in Section 5.6 of Purchaser's Disclosure Schedule, there are no Actions: (a) outstanding or pending to which Purchaser is a party; or (b) to

Purchaser's Knowledge, threatened against Purchaser or any of its Affiliates or any of their respective assets and properties, in each case, which would be reasonably expected: (i) to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement or any of the Purchaser Transaction Documents; or (ii) individually or in the aggregate, to have a Purchaser Material Adverse Effect.

5.7. Brokers. All negotiations relative to this Agreement and the Transactions have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller for a finder's fee, brokerage commission or similar payment.

## **ARTICLE VI COVENANTS**

6.1. Efforts to Close and Fulfillment of Conditions. After the Effective Date and prior to Closing:

6.1.1 Each Party shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under Law to consummate and make effective the Transactions. Such actions shall include each Party using its commercially reasonable efforts to ensure satisfaction of the conditions precedent to its obligations hereunder in Section 3.3, as soon as practicable after the Effective Date.

6.1.2 Each Party shall provide reasonable cooperation to the other Party in obtaining consents, approvals or actions of, making all filings with and giving all notices to Governmental Authorities or other Persons required of the other Party to consummate the Transactions. The Parties shall use their commercially reasonable efforts to respond promptly and accurately to any requests for additional information made by any such Governmental Authority or other Person. The Parties agree that they shall consult with each other with respect to the PUCN Approval, the Transferred Permits and the Required Consents; provided that for the avoidance of doubt, the PUCN filings and attachments thereto need not be exchanged with, or preapproved by, Seller.

6.1.3 Purchaser shall file with the PUCN all documents reasonably required to obtain the PUCN Approval. Purchaser shall use commercially reasonable efforts to respond promptly and accurately to any requests for additional information made by the PUCN, and Seller shall use commercially reasonable efforts to cooperate with Purchaser in connection therewith.

6.1.4 Seller shall file with the applicable Governmental Authority all documents reasonably required to obtain the Outstanding Permits. Seller shall use commercially reasonable efforts to respond promptly and accurately to any requests for additional information made by such Governmental Authorities, and Purchaser shall use commercially reasonable efforts to cooperate with Seller in connection therewith.

6.1.5 Each Party shall prepare, as soon as is practical following the Effective Date, all necessary filings in connection with the transactions contemplated by this Agreement

and the Transaction Documents that may be required by any Governmental Authority or under any federal, state or local Laws, including Required Consents required by Governmental Authorities. Each Party shall use commercially reasonable efforts to submit such filings promptly as practicable and, in any event, not later than sixty (60) days after the Effective Date. The Parties shall promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority, shall promptly make any appropriate or necessary subsequent or supplemental filings, and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate.

#### 6.1.6 Real Estate Covenants and Conditions.

(a) Within ten (10) days following the Effective Date, Title Company, at Seller's direction, shall provide Seller and Purchaser with a preliminary title report for the Real Property. Within twenty (20) days following the Effective Date, Title Company, at Seller's direction, shall provide Seller and Purchaser with a commitment for title insurance issued by Title Company (the "Title Insurance Commitment"), to issue on the Closing Date, at Seller's own cost and expense, a title insurance policy insuring Purchaser's ownership interest in the Real Property and the Improvements in the full amount of the Purchase Price allocated to the Real Property and such Improvements, subject only to the Permitted Encumbrances and the Permitted Liens (the "Title Insurance Policy"). Seller shall use commercially reasonable efforts to obtain and provide to Purchaser on or before thirty (30) days after Purchaser's receipt of the Title Insurance Commitment, a current or updated ALTA/ACSM survey (the "Survey") of the Real Property prepared by a surveyor mutually acceptable to the Parties. The premium for the Title Insurance Policy shall be paid at Closing. Seller shall be responsible for all costs of the Title Insurance Commitment, resulting Title Insurance Policy and the Survey. Purchaser may request in writing that Seller correct an exception to title or shown on the Survey prior to the Closing Date other than the liens set forth in Schedule 1.1(c) and the standard pre-printed exceptions that appear in the Title Insurance Commitment, including, without limitation, objections to any covenants, conditions, restrictions, or associations encumbering the Real Estate (the "Title and Survey Objection Notice"). Seller has the right, but not the obligation, before Closing to correct the particular defect claimed in a manner satisfactory to Purchaser, which may consist of title insurance against all loss or damage that may arise by virtue of the defects. Within ten (10) days of receiving the Title and Survey and Objection Notice, Seller must give written notice to Purchaser stating whether Seller elects or declines to cure the exceptions specified in the Title and Survey Objection Notice. Purchaser will then have the option (a) to waive any of the objections in writing and to proceed with this Agreement, in which event the conveyance of the Real Property shall be subject to those defects; or (b) to terminate this Agreement without liability to Seller. Real property tax installments not due and payable at Closing and any title exceptions listed in the Title Insurance Commitment and either not objected to by Purchaser in the Title and Survey Objection Notice or waived by Purchaser in writing shall be "Permitted Encumbrances". Ten (10) days prior to Closing, Title Company, at Seller's direction, shall provide Seller and Purchaser with an updated Title Insurance Commitment.

(b) Within twenty (20) days following the Effective Date, Seller, Purchaser, and Title Company shall agree upon and execute the Real Property Escrow Agreement, which shall be substantially and in all material respects in the form of Exhibit H. Unless otherwise extended as set forth herein or otherwise agreed by written agreement executed

by both Purchaser and Seller, the close of escrow for the sale and acquisition of the Real Property and the Improvements thereon shall occur by depositing (i) all funds as set forth on the Real Property Settlement Statement, (ii) all real estate documents required by this Agreement, and (iii) any other documents or information required by the Title Insurance Commitment into escrow on or before the Closing Date, with the applicable documents to be recorded and funds to be disbursed on the Closing Date (the “Close of Real Estate Escrow”). At the Close of Real Estate Escrow, Seller shall (i) convey to Purchaser (or its assignee, designee, or nominee) good, unencumbered, marketable, and insured title to the Real Property pursuant to the Real Property Deed, and (ii) deliver possession of the Real Property to Purchaser. Upon the Close of Real Estate Escrow, the funds deposited with Title Company by Purchaser shall be used by Title Company to pay the real estate costs and prorations set forth in this Agreement pursuant to a settlement statement prepared by Title Company, with the balance of those funds to be disbursed to Seller upon recording of the Real Property Deed.

(c) At the Close of Real Estate Escrow, and as a condition to the Closing, and at Seller’s expense (provided the costs of endorsements shall be Purchaser’s responsibility), Title Company shall issue the Title Insurance Policy, which shall be an ALTA extended coverage owner’s policy of title insurance that, in each case: (i) is in form and substance and contains such requirements, modifications and endorsements as Purchaser may reasonably approve; (ii) contains such additional affirmative coverage as Purchaser may reasonably request; (iii) provides coverage in an amount the Purchaser may reasonable request; (iv) insures (or commits to insure, as applicable) that Purchaser is the owner of fee title to the Real Property; (v) names Purchaser as the insured; (vi) is issued as of the Close of Real Estate Escrow by Title Company; and (vii) shows as exceptions to title only the Permitted Encumbrances and Permitted Liens.

(d) At or prior to the Close of Real Estate Escrow, Purchaser shall have received and approved the Survey, which shall be form sufficient for issuance of the Title Insurance Policy.

(e) At least five (5) business days prior to the Close of Real Estate Escrow, Seller or Title Company shall provide Purchaser with a draft of the Real Property Deed for Purchaser’s review and revision. Before Seller executes the Real Property Deed, Purchaser must approve the Real Property Deed. Prior to the Close of Real Estate Escrow, Seller shall execute, acknowledge, and deposit the Real Property Deed with Title Company.

(f) In addition to the allocation of the Real Property Transfer Taxes and Property Taxes set forth in Section 9.2 and Section 9.3 below, Seller shall pay the premium for the Title Insurance Policy; provided, however, Purchaser shall pay for any endorsements to the Title Insurance Policy requested by Purchaser, but Seller shall satisfy any requirements of Title Company for the endorsements. At or prior to the Close of Real Estate Escrow, Seller shall pay all water, sewer, irrigation, utility, telephone, and other assessments applicable to the Property. Seller shall pay all escrow fees charged by Title Company. Seller shall be responsible for the costs to record all documents to be recorded in connection with the Close of Real Estate Escrow. Seller shall be responsible for all costs required to prepare the Survey.

(g) If a subdivision of the Real Property is necessary, the Parties acknowledge that Seller is conveying a portion of APN {insert} to Purchaser. Seller shall comply with all Laws that apply to the transfer and subdivision of APN {insert}. Seller shall diligently pursue and obtain, at its cost and expense, the approvals required to create a legally and separately transferable parcel as required by the appropriate governmental entity(ies) before Close of Real Estate Escrow, including, but not limited to a division of land by parcel map pertaining to APN {insert}, but Purchaser shall pay all filing fees related thereto. At Seller's expense, Seller shall prepare and record the document(s) that transfer and subdivide the Real Property. Before finalizing those documents, Seller shall obtain Purchaser's approval of them. Seller must sign the document(s) that transfer and subdivide the Real Property, as necessary.

(h) Environmental. Prior to the Closing, Purchaser shall have the right to assess the environmental condition of the Real Property ("Environmental Contingency Period"). Purchaser's satisfaction with the environmental condition of the Real Property is a condition precedent to Purchaser's obligation to purchase the Real Property.

(i) Phase I Environmental Site Assessment of the Real Property. Purchaser may, in its discretion and at its expense, conduct a Phase I environmental site assessment of the Real Property and obtain a report of the assessment be prepared ("Phase I Report"). The Phase I environmental site assessment will be performed in accordance with ASTM Standard E 1527. The Phase I environmental site assessment will include, at a minimum, records review and an inspection of the Real Property. Purchaser will provide a copy of the Phase I Report to Seller, but Purchaser makes no representation or warranty to Seller of any nature by providing the report to Seller.

(ii) Phase II Site Assessment of the Real Property. Within ten (10) Business Days after receiving the Phase I Report, Purchaser may, in its discretion and at its expense, cause a Phase II environmental site assessment to be performed in accordance with ASTM Standard E 1903. Purchaser will request that a report be prepared ("Phase II Report"). Purchaser will provide a copy of the Phase II Report to Seller, but Purchaser makes no representation or warranty to Seller of any nature by providing the report to Seller.

(iii) Purchaser's Option to Have Seller Remediate the Condition. Purchaser, in its discretion, may give notice to Seller of an unacceptable environmental condition and request that Seller remediate the condition ("Remediation Request"). If Purchaser requests remediation, Seller must notify Purchaser within ten (10) days after receipt of the Remediation Request whether or not Seller will remediate the condition at Seller's expense. If Seller elects not to remediate, then Purchaser will have the option, in its discretion, to either terminate this Agreement or waive the environmental condition specified in the Remediation Request. If Seller elects to remediate the Property, Seller must remediate the Property in accordance with Section 6.1.6(k)(iv) or Section 6.1.6(k)(v), as applicable.

(iv) Remediation When NDEP Involvement Is Required. When required by Law, Seller must notify the appropriate Governmental Authority(ies), such as the Nevada Division of Environmental Protection, (collectively, "NDEP") of the unacceptable environmental condition. Within twenty-one (21) days of receiving the Remediation Notice, Seller must develop a corrective action plan ("Corrective Action Plan"), submit its plan to the



NDEP, and provide a copy of the plan to Purchaser. Seller must complete remediation within sixty (60) days after receiving approval of the Corrective Action Plan from the NDEP. If the remediation work cannot be completed in such period and Seller is using commercially reasonable efforts to accomplish the remediation, the period for performing the remediation work will be extended until remediation is completed, but remediation must be completed before the earlier of the Outside Date and Close of Real Estate Escrow. Promptly after completing remediation, Seller must notify Purchaser in writing that Seller believes remediation is complete (“Remediation Notice”). Seller’s obligation to remediate the Real Property is not complete until after Seller obtains a “no further action letter” from the NDEP.

(v) Remediation When NDEP Involvement Is Not Required. Within twenty-one (21) days of receiving the Remediation Notice, Seller must develop a remediation plan (“Remediation Plan”) and provide a copy of this plan to Purchaser. Seller must complete remediation within sixty (60) days of developing the plan. If the remediation work cannot be completed in such period and Seller is using commercially reasonable efforts to accomplish the remediation, the period for performing the remediation work will be extended until remediation is completed, but remediation must be completed before the earlier of the Outside Date and Close of Real Estate Escrow. Promptly after completing remediation, Seller must notify Purchaser in writing that Seller believes remediation is complete (“Remediation Notice”). Seller’s obligation to remediate the Real Property is not complete until after Seller obtains a “no further action letter” from a Certified Environmental Manager (CEM), who is approved by Purchaser.

(vi) Termination Option at the End of the Environmental Contingency Period. Within ten (10) Business Days after receiving the Phase I Report, or within ten (10) Business Days after receiving the Phase II Report, or within ten (10) Business Days after receiving a Remediation Notice, whichever date is later, or if Seller does not remediate the condition ten (10) days before the Close of Real Estate Escrow, Purchaser (if dissatisfied with the environmental condition of the Real Property in its discretion) may notify Seller in writing that the Agreement is terminated (“Environmental Termination Option”). The termination of this Agreement pursuant to this Section 6.1.6(h)(vi) eliminates any rights or interest that Purchaser has in the Real Property.

(vii) Seller’s Liability. Seller is solely responsible and assumes all liability for all costs associated with remediation of the Property and associated waste streams.

(viii) Seller’s Removal and Disposal Obligation. Seller must remove and dispose of all Hazardous Materials or contaminated soil at a qualified disposal facility according to regulatory requirements.

(ix) Seller’s Indemnification of Purchaser. In addition to and without limiting the indemnities set forth in Section 8.1, Seller must indemnify, protect, defend and hold Purchaser and its agents, employees and lenders, harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties and attorneys’ and consultants’ fees arising out of or involving: (a) any contamination of the Property with Hazardous Materials resulting from any cause whatsoever and occurring before the Close of Real Estate

Escrow or before Seller completes remediation of the Real Property under this Section 6.1.6(h), including any such contamination caused by Seller or by anyone under Seller's control (including, without limitation, Seller's employees, agents and contractors) but excluding any contamination caused by Purchaser, its employees, agents and contractors; (b) any failure by Seller or its employees, agents or contractors to perform any remediation of any contamination of the Real Property with Hazardous Materials required by Section 6.1.6(h) in full compliance with the Corrective Action Plan or Remediation Plan, as applicable, and otherwise in full compliance with all applicable laws and regulations; and (c) any contamination of the Real Property with Hazardous Materials resulting, directly or indirectly, from the performance by Seller or its employees, agents or contractors of any such remediation required by Section 6.1.6(h).

(i) In addition to and without limiting the indemnities set forth in Section 8.1, Seller's obligations to indemnify Purchaser in Section 6.1.6(h)(ix) include the effects of any contamination or injury to person, property or the environment, and the cost of investigation (including consultants' and attorneys' fees and testing), removal, remediation, restoration and/or abatement of any contamination of the Real Property described above. Seller's obligations to indemnify Purchaser in Section 6.1.6(h)(ix) shall survive termination of this Agreement.

(j) At any time, and from time to time, after Close of Real Estate Escrow, at Purchaser's request, and without further consideration, Seller shall (i) deliver to Purchaser other fully executed assignments, title documents, instruments of sale, transfer, conveyance, assignment and confirmation; (ii) provide materials and information and (iii) take other actions as Purchaser may deem necessary or desirable in order to more effectively transfer, convey and assign the Real Property to Purchaser and confirm Purchaser's ownership of the Real Property.

6.1.7 Each Party agrees to use commercially reasonable efforts to refrain from taking any action which could reasonably be expected to materially delay the consummation of the transactions contemplated by this Agreement; provided, however, that Purchaser's inclusion in its application for PUCN Approval requests or action plan items unrelated to the Purchased Assets shall not be deemed to be an action which could reasonably be expected to materially delay the consummation of the transactions contemplated by this Agreement.

6.1.8 Prior to the Reports Cut-Off Date, Seller shall deliver to Purchaser a true, accurate and complete copy of each Report in respect of the Project and Real Property in final form or such other form as received by Seller. Each such Report (and all Reports in the aggregate) shall not indicate any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect. If after delivery to Purchaser, there is a material change in any findings or conclusions of a Report delivered by Seller to Purchaser, Seller shall redeliver such Report to Purchaser in final form as revised to address such change. Purchaser shall have twenty (20) Business Days after receipt of any such Report to notify Seller whether it has determined, in the exercise of Purchaser's reasonable discretion, that such changes in such Report has or would reasonably be expected to have a Material Adverse Effect, in which case Purchaser shall have the rights set forth in Section 10.1.8.

6.1.9 Notwithstanding the foregoing, nothing in this Section 6.1 shall require, or be construed to require, Purchaser or Seller or any of their respective Affiliates to agree to: (a) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Purchaser or Seller or any of their respective Affiliates (other than pursuant to this Agreement); (b) waive their respective conditions to Closing set forth in Section 3.3; or (c) any modification or waiver of the terms and conditions of this Agreement.

6.2. Purchaser's Inspection Right. After the Effective Date and prior to Closing, Purchaser and its Affiliates and their respective, officers, employees, agents and representatives shall have reasonable access, upon reasonable prior notice, to the Real Property and to the Books and Records, all for purposes of inspection, review, borings, surveys, studies, and tests; provided, however, that: (a) Purchaser shall require each Person conducting or participating in any such investigation to comply with Seller's reasonably adopted procedures relating to safety and security (written copies of which Seller has provided to Purchaser); (b) Purchaser shall indemnify Seller for any damage to property or persons resulting from any such investigation that is the result of the negligence or willful misconduct of Purchaser or its Affiliates or any of their respective officers, employees, agents or representatives and is not covered by insurance; (c) Seller shall be entitled to have a representative present during the course of any such investigation; and (d) Seller shall not be required to take any action that would constitute a waiver of the attorney-client privilege. Within thirty (30) days after the Effective Date, Seller shall provide Purchaser with copies of all maps, plans, studies, reports, inspection results, and all other documentation and information in Seller's possession, under the control of Seller or to which Seller has access, related to the following: (i) any easements (including prescriptive easements), claims of easement, rights, rights-of-way, licenses, restrictions, covenants, interests, discrepancies, conflicts in boundary lines, estoppel certificates, encroachments, leases, parties in possession (or with possessory rights) or other rights relative to the Real Property that are not of record in the Official Records of {insert county name} County, Nevada; (ii) any threatened or pending condemnation proceedings, administrative proceedings or litigation of any kind relating to the Real Property or title to it; (iii) any Hazardous Materials on, about, or under the Real Property; and (iv) soil conditions and any landfill area on any portion of the Real Property. Within fifteen (15) days of Purchaser's request, Seller shall provide Purchaser with copies of additional documents requested by Purchaser.

6.3. Development of the Facility. After the Effective Date and prior to Closing:

6.3.1 Seller shall use commercially reasonable efforts: (a) to apply for and obtain all Outstanding Permits on or before such Transferred Permits are required by applicable Law and, in any event, no later than the Approval Cut-Off Date; and (b) to take all such other actions as are necessary in accordance with Prudent Utility Practice to develop and permit the Facility in accordance with this Agreement.

6.3.2 Seller shall not, without the prior written consent of Purchaser:

(a) dispose of, remove or assign any of the Purchased Assets except for obsolete and unneeded assets in the ordinary course of business and in accordance with Prudent Utility Practice and which could not reasonably be expected to cause a Seller Material Adverse Effect;

(b) incur or permit to exist any Lien on any of the Purchased Assets, other than the Permitted Liens and Permitted Encumbrances;

(c) settle or compromise any litigation or other Action which could result in any cost or Liability to Purchaser or which could constrain or limit the future ownership, use, operation or maintenance of the Facility by or on behalf of Purchaser;

(d) amend or modify in any material respect, or terminate, any  
Obtained Permit;

(e) amend, modify, terminate, or grant any waiver under, any  
Assigned Contract which materially increases the costs or Liabilities, or materially decreases or diminishes the rights and remedies, of Seller thereunder; or

(f) enter into any Contract to do or engage in any of the foregoing.

#### 6.4. Casualty; Condemnation.

6.4.1 Casualty. If any part of the Purchased Assets is damaged, lost or destroyed (whether by fire, theft, vandalism or other casualty) in whole or in part prior to the Closing (a "Casualty Loss"), Seller shall provide Purchaser prompt written notice of the Casualty Loss and the details thereof. Within fifteen (15) Business Days of receipt of notice from Purchaser of the Casualty Loss, Purchaser may elect, in its sole discretion, either: (a) to terminate this Agreement; (b) to have Seller repair the damage or destruction and restore any such loss ; or (c) to have Seller assign any and all insurance proceeds to Purchaser, and to reduce the Purchase Price by an amount equal to the reasonable value of the property so destroyed, damaged, lost, condemned, or otherwise adversely changed, less any insurance proceeds actually received by Purchaser. This Section 6.4.1 is intended to supersede any applicable provisions of the Nevada Uniform Vendor and Purchaser Risk Act. For purposes of this Section 6.4.1, "material" destruction, damage, loss, condemnation or adverse change means destruction, damage, loss, condemnation or adverse change of any portion of the Purchased Assets with a value (or having a likely adverse impact) of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_] ) or more.

6.4.2 If any part of the Purchased Assets becomes subject to or is threatened with any condemnation action, eminent domain proceeding or other similar action (each, a "Condemnation Action"), Seller shall provide Purchaser prompt written notice of the Condemnation Action and the details thereof. Within fifteen (15) Business Days of receipt of notice from Purchaser of the Condemnation Action, Purchaser may elect, in its sole discretion, either: (a) to terminate this Agreement; (b) to take an assignment from Seller of all of its right, title and interest in and to the Condemnation Value (including all rights to contest the amount of, and to collect, the Condemnation Value), provided that Seller may not agree to or accept any compromise or condemnation award without Purchaser's prior written approval, such approval not to be unreasonably withheld or delayed; or (c) to require a reduction in the Purchase Price in an amount equal to the Condemnation Value. For purposes of this Section 6.4.2, "Condemnation Value" means, with respect to any Purchased Asset, the amount payable (whether by condemnation award or otherwise) with respect to the Purchased Asset that is subject to a Condemnation Action after the Effective Date and prior to the Closing, as estimated by a

qualified firm reasonably acceptable to the Parties (a “Qualified Firm”). If the Condemnation Value is not known as of the Closing and Purchaser elects to require a reduction in the Purchase Price, then for purposes of the Closing, the Purchase Price shall not be adjusted and the reduction in Purchase Price will be effected by the assignment from Seller to Purchaser of all right, title and interest in and to the Condemnation Value (including all rights to contest the amount of, and to collect, the Condemnation Value), provided that Seller may not agree to or accept any compromise or condemnation award without Purchaser’s prior written approval, such approval not to be unreasonably withheld or delayed.

6.5. Update of Seller’s Disclosure Schedule. Prior to Closing, Seller shall promptly supplement or amend Seller’s Disclosure Schedule previously delivered by Seller, with respect to any matter which Seller becomes aware after the Effective Date which, if existing, occurring or known on or before the Effective Date, would have been required to be set forth or described in Seller’s Disclosure Schedule (each, a “Schedule Update”). Seller shall deliver any such Schedule Update to Purchaser promptly and, in any event, no later than ten (10) Business Days after becoming aware of any such matter. Any disclosure in a Schedule Update shall not be deemed to have amended the Seller’s Disclosure Schedule, cured any breach of any representation, warranty, covenant, agreement or obligation or affect any right or remedy of Purchaser under this Agreement, including for purposes of the indemnification or termination rights contained in this Agreement or of determining whether or not the Purchaser Conditions Precedent have been satisfied.

6.6. No Solicitation of Acquisition Transaction. After the Effective Date and prior to Closing, Seller shall not, and shall cause its Related Persons not to: (a) directly or indirectly, solicit, initiate or participate in discussions or negotiations with any Person or Persons (other than Purchaser or any of its Affiliates) concerning any Acquisition Transaction; or (b) enter into any Contract with respect to any Acquisition Transaction. Seller shall promptly notify Purchaser of any offer or proposal of an Acquisition Transaction received by Seller or any of its Related Persons.

## **ARTICLE VII CONFIDENTIAL INFORMATION**

7.1. Prohibited Disclosure. Neither Party (the “Receiving Party”) shall (a) use for any purpose other than performing its obligations under this Agreement or (b) divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any Confidential Information of the Disclosing Party. Notwithstanding the foregoing, Purchaser shall be permitted to disclose Confidential Information related to the Project or Project Assets to any Person after the Closing

7.2. Confidential Information Defined. “Confidential Information” means proprietary information concerning the business, operations or assets of Seller or Purchaser, as the case may be, this Agreement and the Exhibits and Schedules hereto and all information or materials prepared in connection with this Agreement, designs, drawings, specifications, techniques, models, data, documentation, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, strategies and development plans, customer, supplier or personnel names and other information

related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets; provided, however, that Confidential Information shall not include: (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party; (d) information approved for public release by express prior written consent of an authorized officer of the Disclosing Party; or (e) information independently developed by the Receiving Party without use of the information provided by the Receiving Party or in breach of this Article VII. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, but only to the extent, that, based upon reasonable advice of counsel, the Receiving Party is required to do so by the disclosure requirements of any applicable Laws and prior to making or permitting any such disclosure, the Receiving Party shall, to the extent legally permitted, provide the Disclosing Party with prompt notice of any such requirement so that the Disclosing Party (with the Receiving Party's assistance, if requested) may seek a protective order or other appropriate remedy; (ii) as otherwise required by applicable Law; (iii) in connection with any government or regulatory filings, including filings with any state energy regulatory commission; (iv) to any Contractor or prospective Contractor (or advisors retained on their behalf) or their successors and permitted assigns, in each case, bound by confidentiality obligations; (v) to banks, investors and other financing sources and their advisors, in each case, bound by confidentiality obligations; or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall, to the extent legally permitted, and except as provided in the preceding sentence, give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure and it shall make such disclosure only to the extent that, based upon reasonable advice of counsel, the Receiving Party is required to do so by the disclosure requirements of any applicable Law. The Parties acknowledge that the PUCN and the BCP, have the power to examine Purchaser's books, records, minutes, papers and property and may, from time to time, request or require Purchaser to disclose or report to the PUCN and/or BCP (or any representatives thereof), as the case may be, any Confidential Information so requested or required without any requirement of notice to or consultation with Seller.

7.3. Return of Confidential Information. Except for Confidential Information necessary for either Party to perform its obligations under this Agreement, at any time upon the request of the Disclosing Party, the Receiving Party shall promptly deliver to the Disclosing Party or destroy (as determined by the Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by the Receiving Party that contain Confidential Information and all other documents in Receiving Party's possession that contain any such Confidential Information; provided that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies and may retain such Confidential Information if required by applicable Law; provided, further, that all such retained Confidential Information shall be held subject to

the terms and conditions of this Agreement. Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to Confidential Information until the date that is two (2) years after the earlier of (a) the Closing Date or (b) the termination of this Agreement.

7.4. Public Announcements. Prior to the Closing, neither Party will issue or make any press releases or similar public announcements concerning the Transactions without the prior written consent of the other Party. If either Party is unable to obtain the approval of its press release or similar public statement from the other Party and such press release or similar public statement is required by applicable Law in order to discharge such Party's disclosure obligations, then such Party may make or issue the legally required press release or similar public statement and promptly furnish the other Party with a copy thereof. Each Party will also obtain the other Party's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed) of any press release to be issued on or following the Closing announcing the completion of the Transactions.

## **ARTICLE VIII INDEMNIFICATION**

8.1. Indemnity by Seller. Seller shall, on an After-Tax Basis, indemnify, defend, reimburse and hold harmless Purchaser and Purchaser's Affiliates, together with their respective members, shareholders, managers, directors, officers, employees, agents, advisors, attorneys, accountants and consultants (each, a "Purchaser Indemnified Party"), from and against any and all claims, damages, penalties, awards, settlement payments, losses, Liabilities, costs, deficiencies and expenses (including reasonable investigative costs, settlement costs and any reasonable outside legal, accounting or other expenses for investigating or defending any Actions or threatened Actions) (collectively, the "Losses") to which any Purchaser Indemnified Party becomes subject, which Losses arise out of or in connection with any of the following:

8.1.1 the breach of any representation or warranty made by Seller in this Agreement or any Seller Transaction Document delivered by Seller at the Closing;

8.1.2 the breach by Seller of, or failure to perform or fulfill, any covenant, agreement or obligation of Seller contained in this Agreement; or

8.1.3 the Excluded Liabilities.

8.2. Indemnity by Purchaser. Purchaser shall, on an After-Tax Basis, indemnify, defend, reimburse and hold harmless Seller and Seller's Affiliates, together with their respective members, shareholders, managers, directors, officers, employees, agents, advisors, attorneys, accountants and consultants (each, a "Seller Indemnified Party"), from and against any and all Losses to which any Seller Indemnified Party becomes subject, which Losses arise out of or in connection with any of the following:

8.2.1 the breach of any representation or warranty made by Purchaser in this Agreement or any Purchaser Transaction Document delivered by Purchaser at the Closing;

8.2.2 the breach by Purchaser of, or failure to perform or fulfill, any covenant, agreement or obligation of Purchaser contained in this Agreement; or

8.2.3 the Assumed Liabilities.

8.3. Claims for Indemnification. If Purchaser or Seller seeks indemnification under this Article VIII (in either case, the “Indemnified Party”) from the other Party (the “Indemnifying Party”), the Indemnified Party shall give written notice (a “Claim Notice”) to the Indemnifying Party as soon as practicable after the Indemnified Party becomes aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article VIII (a “Claim”). The failure of the Indemnified Party to give a Claim Notice to the Indemnifying Party hereunder shall not affect such Indemnified Party’s rights to indemnification hereunder, except to the extent that the Indemnifying Party is materially prejudiced by such failure. Each Claim Notice shall state that such Indemnified Party believes that such Indemnified Party is entitled to indemnification, compensation or reimbursement under Article VIII and contain a brief description of the circumstances supporting such belief that such Indemnified Party is so entitled to indemnification, compensation or reimbursement and shall, to the extent possible, contain a good faith, non-binding, preliminary estimate of the amount of Losses such Indemnified Party claims to have incurred or suffered (the “Claimed Amount”).

8.4. Response Notice; Uncontested Claims. Within five (5) Business Days after receipt by the Indemnifying Party of a Claim Notice, such Indemnifying Party may deliver to the Indemnified Party a written response (the “Response Notice”) in which such Indemnifying Party: (a) agrees that the Indemnified Party is entitled to the full Claimed Amount; (b) agrees that the Indemnified Party is entitled to part, but not all, of the Claimed Amount (such amount agreed to under (a) or (b), the “Agreed Amount”); or (c) indicates that the Indemnifying Party disputes all or a portion of the entire Claimed Amount. Any part of the Claimed Amount that is not agreed to pursuant to the Response Notice shall be the “Contested Amount.” If a Response Notice is not received within such five (5) Business Day period, then the Indemnifying Party shall be conclusively deemed to have agreed that the Indemnified Party is entitled to the full Claimed Amount (such amount, also an “Agreed Amount”). If the Parties are unable to resolve the dispute relating to any Contested Amount within thirty (30) days after the delivery of the Response Notice, then the Parties shall be entitled to resort to any legal remedy available to such Parties to resolve such dispute.

8.5. Survival.

8.5.1 Each covenant, agreement and obligation of the Parties that is contained in this Agreement will survive the Closing pursuant to the terms of such covenant, agreement or obligation, if specified, or if not so specified until the later of: (a) full performance of the covenant, agreement or obligation; or (b) for the period of six (6) months following the expiration of the statute of limitations period (giving effect to any extensions or waivers thereof) applicable to that covenant, agreement or obligation.

8.5.2 The representations and warranties set forth by each Party in this Agreement (unless otherwise expressly set forth herein) shall survive until two (2) years



after the Closing Date; provided, however, that: (a) the representations, warranties, covenants, agreements and obligations contained in Article IX, shall survive the Closing as provided in Section 9.10; (b) the representations and warranties made by Seller in Section 4.12 shall survive the Closing until six (6) months following the expiration of the statute of limitations period applicable to any Claim; (c) the representations and warranties made by Seller in Sections 4.1, 4.2, 4.3, 4.4, 4.8, 4.9, 4.19 and 4.20 shall survive the Closing indefinitely; and (d) the representations and warranties made by Purchaser in Sections 5.1, 5.2, 5.3, 5.4 and 5.7 shall survive the Closing indefinitely, (each, an “Indemnity Period”).

8.5.3 No Claim for indemnification under this Article VIII for an inaccuracy in or breach of a representation or warranty by a Party may be asserted following the expiration of the relevant Indemnity Period related to such representation or warranty; provided, however, that as to any matters with respect to which a *bona fide* Claim Notice shall have been given or an action at law or in equity shall have commenced before the end of the relevant Indemnity Period, survival shall continue (but only with respect to, and to the extent of, such Claim) until the date of the final resolution of such Claim or action, including all applicable periods for appeal.

8.5.4 The covenants, agreements, obligations, representations, and warranties contained in this Agreement shall not merge into or with the Real Property Deed or any other documents delivered to effectuate the Closing.

8.6. Limitation of Liability. The aggregate amount of Losses to which Seller or Purchaser shall be entitled to under Section 8.1.1 or Section 8.2.1, as the case may be, shall be limited to one hundred percent (100%) of the Purchase Price, except for Claims based on fraud, intentional misrepresentation or willful misconduct, for which no such limitation shall be applicable.

8.7. Exclusive Remedy. Except for Claims based on fraud, intentional misrepresentation or willful misconduct, after the Closing, the rights of any Purchaser Indemnified Party or Seller Indemnified Party under this Article VIII shall be the exclusive remedy of each such Indemnified Party with respect to any monetary claims resulting from or relating to any inaccuracy in or breach of any representation or warranty or breach of or failure to perform or fulfill any covenant, agreement or obligation contained in this Agreement; provided, however, that the foregoing shall not limit the availability to any Party of injunctive and other equitable relief, including a claim for specific performance. In that regard, Seller acknowledges that the Purchased Assets are unique and have special benefit and value to Purchaser; that Purchaser’s legal remedies in the event of any breach by Seller of any obligation or warranty of Seller under this Agreement are inadequate; that this Agreement is feasible to enforce; and that Purchaser is entitled to seek and obtain specific performance of this Agreement, with a reduction of the Purchase Price for any damages caused by Seller’s default.

8.8. Knowledge of Breach. The right of any Party to indemnification, reimbursement or other remedy under this Agreement shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before, on or after the Effective Date or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any

representation, warranty, covenant, agreement or obligation contained in this Agreement or otherwise with respect to the Transactions.

8.9. Materiality Qualifiers. For purposes of this Article VIII, the amount of Losses resulting from or relating to any inaccuracy in or breach of any representation or warranty or breach of or failure to perform or fulfill any covenant, agreement or obligation in this Agreement shall be calculated as if such materiality qualification (including terms such as “material,” “Seller Material Adverse Effect,” “Purchaser Material Adverse Effect,” and variations thereof) were omitted from such representation, warranty, covenant, agreement or obligation.

8.10. Third Person Claims.

8.10.1 If any claim or demand in respect of which an Indemnified Party might seek indemnity under this Article VIII is asserted against such Indemnified Party by a Person other than a Party hereto (a “Third Party Claim”), the Indemnified Party shall give a Claim Notice, including copies of all relevant pleadings, documents and information, to the Indemnifying Party within ten (10) Business Days following the receipt of notice of the Third Party Claim by the Indemnified Party; provided that the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party shall have ten (10) Business Days after its receipt of such Claim Notice (the “Third Party Claim Response Period”), within which to give notice to the Indemnified Party, in writing, either denying its obligations to, or agreeing to fully, indemnify and defend the Third Party Claim under this Article VIII.

8.10.2 Subject to Section 8.10.3, if the Indemnifying Party notifies the Indemnified Party that it agrees to fully indemnify and defend the Indemnified Party against the Third Party Claim within the Third Party Claim Response Period, then the Indemnifying Party may assume the conduct and control through counsel reasonably acceptable to the Indemnified Party of the defense of such Third Party Claim and shall at its expense defend such Third Party Claim by all appropriate proceedings, which proceedings will be diligently prosecuted to a final conclusion or will be settled, and shall pay all Losses of the Indemnified Party incurred or accrued and paid and resulting or arising from such Third Party Claim; provided, that, unless consented to by the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), the Indemnifying Party shall not enter into any settlement that (a) does not fully, finally and unconditionally release the Indemnified Party from all Liability with respect to such Third Party Claims, or (b) requires a non-monetary commitment by the Indemnified Party, including compliance with an injunction or other equitable relief. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnifying Party shall be responsible for posting any bonds or other security required in connection with such Third Party Claim. The Indemnified Party will reasonably cooperate in such defense, including making available to the Indemnifying Party all records and documents within the Indemnified Party’s control or that it can reasonably obtain relating to the Third Party Claim, and all costs or expenses incurred or accrued and paid by the Indemnified Party at the request of the Indemnifying Party shall be paid by the Indemnifying Party promptly as statements are received.

An Indemnified Party, at its expense, may participate in, but not control, any defense or settlement of any Third Party Claim conducted by the Indemnifying Party pursuant to this Section 8.10.2 or take any other actions it reasonably believes to be necessary or appropriate to protect its interests.

8.10.3 If (a) the Indemnifying Party fails to assume the defense of a Third Party Claim in accordance with Section 8.10.2 within the Third Party Claim Response Period, (b) an Indemnified Party determines in good faith that an adverse determination with respect to the proceeding giving rise to such Claim for indemnification would be materially detrimental to or injure the Indemnified Party's reputation or future business prospects, (c) the Claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (d) the Third Party Claim seeks an injunction or equitable relief against the Indemnified Party, (e) under applicable standards of professional conduct, a conflict of interest on any significant issue related to such proceeding exists between the Indemnifying Party, on the one hand, and an Indemnified Party, on the other hand, or (f) the Indemnifying Party is failing to vigorously prosecute or defend such Third Party Claim, then, in each case, upon notice to the Indemnifying Party, the Indemnified Party may, in its sole discretion, retain counsel satisfactory to it to assume such defense on behalf of and for the sole account and risk of the Indemnifying Party, and in the case of clauses (a) through (f) the Indemnifying Party shall pay all reasonable fees and expenses of such counsel for the Indemnified Party, and the Indemnifying Party shall cooperate in the defense of any such matter. In the event that the Indemnified Party assumes the conduct and control of the defense of a Third Party Claim, then the Indemnifying Party shall not be liable for any settlement effected without its prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed).

8.10.4 If the Indemnifying Party notifies the Indemnified Party that it acknowledges its obligation to indemnify and defend the Indemnified Party with respect to a Third Party Claim, the Losses of the Indemnified Party incurred or accrued and paid and resulting from or arising out of such Third Party Claim in the amount finally determined will be conclusively deemed a Loss of the Indemnifying Party under this Article VIII, and the Indemnifying Party shall pay the full amount of such Losses to the Indemnified Party on demand.

8.11. Indemnification in Case of Strict Liability. THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE VIII AND ARTICLE IX SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED ON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LAWS (INCLUDING ANY PAST, PRESENT OR FUTURE ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OR PRODUCTS LIABILITY, SECURITIES OR OTHER LAW), AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES SOLE, JOINT, OR CONCURRENT STRICT LIABILITY IMPOSED ON THE PERSON SEEKING INDEMNIFICATION.

8.12. Order of Indemnification Payments. Any Losses for which Seller is obligated to indemnify a Purchaser Indemnified Party hereunder shall be satisfied first from the Escrow

Amount and, once the Escrow Amount is exhausted, then from Seller or pursuant to the Acceptable Security provided pursuant to Section 2.3.1.

8.13. Mitigation. Each Party agrees to take commercially reasonable steps to mitigate its Losses upon and after becoming aware of any fact, condition or event which may give rise to Losses for which indemnification may be sought under this Article VIII.

## **ARTICLE IX TAX MATTERS**

9.1. Representations and Warranties. Seller represents and warrants to Purchaser, except as set forth in Section 9.1 of Seller's Disclosure Schedule, that, solely with respect to the Purchased Assets:

9.1.1 (a) Seller has timely filed or will timely file when due with the proper Taxing Authority all required Tax Returns with respect to the Seller's business and the Purchased Assets that are required to be filed (i) on or before the Closing Date and (ii) after the Closing Date with respect to the Purchased Assets and the conduct of Seller's businesses through the Closing Date, and has timely paid or will timely pay in full all Taxes (whether or not due on such Tax Returns) required to be paid by Seller (with respect to the Purchased Assets, except for Property Taxes that are the responsibility of Purchaser pursuant to Section 9.3); and (b) such Tax Returns were prepared or will be prepared in the manner required by applicable Law and were or will be true, complete and correct in all material respects at the time of filing. Seller has not received any notice that any Taxes relating to any period prior to Closing are owing or delinquent that have not been paid. There are no liens for Taxes upon the Purchased Assets or the Project except for Permitted Liens.

9.1.2 No equity holder, director or officer (or employee responsible for Tax matters) of Seller expects any Taxing Authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of Seller either: (a) claimed or raised by any authority in writing; or (b) as to which any of the equity holders, directors and officers (and employees responsible for Tax matters) of Seller has Knowledge based upon personal contact with any agent of such Taxing Authority.

9.1.3 Seller is not a party to any Tax allocation or sharing agreement.

9.1.4 True, accurate and complete copies of all Tax Returns (including sales, use and property Tax Returns), relating to the Purchased Assets, and copies of all material written communications to or from any Taxing Authority relating to the Purchased Assets, for the Applicable Tax Years for sales and use Taxes and property Taxes have been made available to Purchaser for inspection.

9.1.5 Since the date of its inception, Seller has been treated either as a disregarded entity or a partnership for United States federal income Tax purposes.

9.1.6 Seller has not extended or waived the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax with respect to the Purchased Assets.

9.1.7 There are no audits, claims, assessments, levies, administrative or judicial proceedings pending, or to Seller's Knowledge, threatened, proposed or contemplated with respect to the Purchased Assets or the Project by any Taxing Authority.

9.1.8 With respect to the Purchased Assets, Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, member or other third party.

9.1.9 No claim has ever been made by a Taxing Authority in a jurisdiction where a Tax Return is not filed by, or with respect to, Seller or the Purchased Assets, that either Seller (with respect to the Purchased Assets) or any of the Purchased Assets is or may be subject to Tax in that jurisdiction.

9.1.10 Seller has not: (a) taken a position on any federal, state or local Tax Return that is inconsistent with the original use by Purchaser, for federal income tax purposes, of the Facility or any of the Purchased Assets; or (b) claimed with respect to the Facility or any of the Purchased Assets on any federal, state or local Tax Return, any depreciation or amortization deductions, Investment Tax Credit, or any other tax credits or deductions that are available with respect to the Facility or any of the Purchased Assets.

9.1.11 None of the property comprising any part of the Purchased Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code, property "used predominantly outside the United States" within the meaning of Section 50(b)(1) of the Code, "tax exempt bond financed property" within the meaning of Section 168(g) of the Code, or "public utility property" within the meaning of Section 168(f)(2) of the Code.

9.1.12 No Person other than Purchaser and its direct and indirect owners currently has, or has otherwise been granted a future right by Seller to have, an ownership interest, or a right to acquire an ownership interest, in the Facility.

9.1.13 There are no currently applicable sales, use, ad valorem, excise, property or similar Taxes due in respect of the Purchased Assets on the Closing Date and the transfer of title thereto under, or for which Purchaser may become liable as successor or derivatively as a result of the purchase of the Purchased Assets.

9.2. Transfer Taxes. The Tax on transfers of real property under chapter 375 of the Nevada Revised Statutes and Nevada Administration Code ("Real Property Transfer Taxes"), if any, shall be borne one hundred percent (100%) by Seller, and any Sales Taxes with respect to the transfer of the Purchased Assets pursuant to this Agreement shall be borne one hundred percent (100%) by Seller (the Real Property Transfer Taxes and Sales Taxes being referred to herein, collectively, as "Transfer Taxes"). For any Taxes not paid at or prior to Closing, Seller shall file all necessary documentation and Tax Returns with respect to the Real Property Transfer Taxes and cause such Taxes, if any, to be paid to the relevant Taxing Authorities on a timely basis. The Parties shall cooperate to comply with all Tax Return requirements for any and all Transfer Taxes and shall provide such documentation and take such other reasonable actions as may be necessary to minimize the amount of any Transfer Taxes.

9.3. Property Taxes. Real and personal property ad valorem taxes and similar Taxes and owners association fees with respect to the Purchased Assets (“Property Taxes”) for the period that includes the Closing Date shall be prorated on a daily basis to the Closing Date. Notwithstanding anything in this Agreement to the contrary, Seller shall pay all special/local improvement district assessments in full prior to Closing, and if the assessing authority will not accept the prepayment of such assessments, then Purchaser shall receive a credit against the Purchase Price at Closing for the amount of such assessments. Seller shall be liable for the portion of such Property Taxes attributable to the portion of such taxable period (or portion thereof) ending on and including the Closing Date and Purchaser shall be liable for such Property Taxes attributable to such taxable period (or portion thereof) after the Closing Date. Following the Closing, Seller and Purchaser shall cooperate and consult with each other with respect to the determination of such Property Taxes and Seller shall have the right to participate (at its own expense) in any proceedings or disputes with the applicable Taxing Authority concerning the determination of the amount of such Property Taxes (including the determination of the value of the property with respect to which such Property Taxes are assessed). Prior to the Close of Real Estate Escrow, Seller shall pay all special and/or local improvement district assessments in full. If the applicable city or county does not allow the special and/or local improvement district assessments to be paid in full, then at the Close of Real Estate Escrow, Seller shall pay the full amount of such assessments to Purchaser.

9.4. Seller’s Tax Indemnification. Seller shall indemnify and hold harmless Purchaser from and against: (a) any and all Seller Income Taxes; (b) any and all Taxes (other than Seller Income Taxes) imposed on or with respect to the Purchased Assets or Seller attributable to any Pre-Closing Tax Period (“Pre-Closing Taxes”); (c) any and all Transfer Taxes for which Seller is responsible pursuant to Section 9.2; and (d) any Taxes arising from a breach by Seller of its representations, warranties and covenants in this Article IX. For purposes of determining the amount of Taxes attributable to the period deemed to end on the Closing Date for an Overlap Period: (x) Property Taxes shall be apportioned in accordance with Section 9.3; (y) in the case of Taxes (other than Property Taxes) imposed on a periodic basis, such amount shall be equal to the product of such Taxes for the Overlap Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of days in the Pre-Closing Tax Period portion of the Overlap Period and the denominator of which is the number of days in the entire Overlap Period; and (z) in the case of all other Taxes, shall be the amount of such Taxes that would be payable if the Overlap Period ended on the Closing Date. Notwithstanding anything to the contrary in this Agreement, no claim for Taxes shall be permitted under this Section 9.4 unless such claim is first made not later than ninety (90) days after the expiration of the applicable statute of limitations (including extensions or waivers) with respect to such Taxes. For the avoidance of doubt, the limitations of liability contained in Section 8.6 shall not apply with respect to any indemnification claim under this Section 9.4.

9.5. Purchaser Tax Indemnification. Purchaser shall indemnify and hold harmless Seller from and against: (a) any Taxes with respect to the Purchased Assets attributable to the Post-Closing Tax Period; and (b) any Liability arising from a breach by Purchaser of its covenants set forth in this Article IX. Notwithstanding anything to the contrary in this Agreement, no claim for Taxes shall be permitted under this Section 9.5 unless such claim is first made not later than ninety (90) days after the expiration of the applicable statute of limitations

(including extensions or waivers) with respect to such Taxes. For the avoidance of doubt, the limitations of liability contained in Section 8.6 shall not apply with respect to any indemnification claim under this Section 9.5.

9.6. Contests. Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any judicial or administrative proceeding that involves Taxes relating to the Project and the Purchased Assets for the period either entirely prior to and including the Closing Date or both prior to and after the Closing Date (collectively, "Tax Claim"), Purchaser will reasonably cooperate in contesting any Tax Claim. Seller will control all proceedings taken in connection with any Tax Claim that pertains entirely to the period prior to the Closing Date, and Seller and Purchaser will jointly control all proceedings taken in connection with any Tax Claim pertaining to the period both prior to and after the Closing Date. Purchaser has no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Closing Date; and neither Party has the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the Closing Date without the other Party's prior written consent.

9.7. Assistance and Cooperation. After the Closing Date, Seller and Purchaser shall (and shall cause their respective Affiliates to) assist the other Party in preparing any Tax Returns which such Party is responsible for preparing and filing in accordance with the terms of this Agreement.

9.8. Information. After the Closing, Seller and Purchaser will make available to each other as reasonably requested all information, records or documents relating to Liability or potential Liability for Pre-Closing Taxes, Overlap Period Taxes, Transfer Taxes and any other Taxes arising out of the Transactions, and will preserve such information, records or documents until ninety (90) days after the expiration of the applicable statute of limitations (including extensions or waivers thereof) with respect to the particular Tax or Tax Return to which the information, records or documents relate.

9.9. Tax Returns. Seller shall be responsible for preparing and timely filing all Tax Returns with the appropriate Taxing Authority with respect to the Purchased Assets relating to Tax periods ending on or prior to the Closing Date. Purchaser shall be responsible for preparing and filing all other Tax Returns with respect to the Purchased Assets but, to the extent such Tax Returns relate to Taxes for which Seller is required to indemnify Purchaser pursuant to this Agreement, Purchaser shall not file such Tax Returns without the consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Purchaser shall not, without the prior written consent of Seller (not to be unreasonably withheld, conditioned or delayed), file, re-file or amend or cause to be filed, re-filed or amended any Tax Return as to the Purchased Assets that was due on or before the Closing Date or enter or cause to be entered into discussions regarding any voluntary disclosure involving Taxes for any Pre-Closing Tax Period or Overlap Period, or also for such periods, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes.

9.10. Survival of Obligations. The representations, warranties and obligations of the Parties set forth in this Article IX shall remain in effect until ninety (90) days after expiration of

the applicable statutes of limitation (giving effect to any extensions or waivers thereof) relating to the Tax or Tax Return in question.

9.11. Adjustments to Purchase Price. The Parties agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Law, be treated for all Tax purposes as an adjustment to the Purchase Price.

## **ARTICLE X TERMINATION**

10.1. Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Closing Date:

10.1.1 by the mutual written agreement of the Parties;

10.1.2 by Purchaser upon notice to Seller, if there has been a breach by Seller of any representation, warranty, covenant, agreement or obligation contained in this Agreement which would result in a failure of, or inability of Seller to satisfy, any condition set forth in Section 3.3.2, and such breach has not been cured to Purchaser's reasonable satisfaction within thirty (30) days following Seller's receipt of notice of such breach;

10.1.3 by Seller upon notice to Purchaser, if there has been a breach by Purchaser of any representation, warranty, covenant, agreement or obligation contained in this Agreement which would result in a failure of, or inability of Purchaser to satisfy, any condition set forth in Section 3.3.3, and such breach has not been cured to Seller's reasonable satisfaction within thirty (30) days following Purchaser's receipt of notice of such breach;

10.1.4 by either Party, if any Law shall become effective after the Effective Date or a Governmental Authority shall have issued a final and non-appealable order, injunction, judgment, decree or ruling, in each case, restraining, enjoining or otherwise prohibiting or making illegal the completion of the Transactions;

10.1.5 as provided in (a) Section 6.1.6 or (b) Section 6.4;

10.1.6 by either Party, if the PUCN Approval, in form and substance acceptable to Purchaser in its sole discretion, has not been obtained by Purchaser on or before [\_\_\_\_\_] (the "Approval Cut-Off Date"); provided, however, that the right to terminate this Agreement under this Section 10.1.6 shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of such condition to be satisfied;

10.1.7 by Purchaser, if Seller has not obtained all of the Transferred Permits on or before the Approval Cut-Off Date; provided, however, that the right to terminate this Agreement under this Section 10.1.7 shall not be available to Purchaser if its breach of this Agreement has been the cause of, or resulted in, the failure of such condition to be satisfied;

10.1.8 by Purchaser, (a) if Purchaser has not received from Seller by [\_\_\_\_\_] (the "Reports Cut-Off Date"), all of the Reports, in form and substance reasonably acceptable to Purchaser and which, in any event, individually or in the aggregate, do not disclose



any event, result, occurrence, development, fact, change or effect of whatever nature or kind that has or would reasonably be expected to have a Seller Material Adverse Effect; or (b) if Seller has redelivered a Report to Purchaser pursuant to Section 6.1.8 which Purchaser, in the exercise of Purchaser's reasonable discretion, has determined has or would reasonably be expected to have a Seller Material Adverse Effect;

10.1.9 by Purchaser, if it becomes apparent that any of the Purchaser Conditions Precedent will not be satisfied, or if any of the Purchaser Conditions Precedent become impossible to satisfy, by the Outside Date, other than if Purchaser's breach of this Agreement has been the cause of, or resulted in, such failure or impossibility to satisfy any of the Purchaser Conditions Precedent;

10.1.10 by either Party, if the Closing has not occurred by [\_\_\_\_\_] (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 10.1.10 shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Outside Date; or

10.1.11 by Purchaser, if Seller or any of its Affiliates is in breach or default under any Contract with Purchaser and as a result thereof Purchaser is entitled to terminate such Contract in accordance with its terms.

10.2. Notice of Termination. Any Party desiring to terminate this Agreement pursuant to Section 10.1 shall give written notice of such termination to the other Party.

10.3. Effect of Termination.

10.3.1 If this Agreement is terminated pursuant to Section 10.1, then in addition to any other right it may have under this Agreement or otherwise, all further obligations of the Parties under this Agreement (other than the provisions which by their terms are intended to survive the expiration or termination of this Agreement) shall be terminated without further Liability of any Party to the other Party and the exercise of such right of termination will not be an election of remedies; provided, however, that nothing herein shall relieve any Party from Liability for its breach of the terms or provisions of this Agreement, and the terminating Party shall be entitled to all rights and remedies available to it at law or in equity with respect to such breach. In addition, if this Agreement is terminated pursuant to Section 10.1 (other than pursuant to Sections 10.1.2, 10.1.3 or 10.1.11), then (a) Purchaser shall bear all costs, fees, and expenses incurred by Purchaser with and through Title Company; (b) Seller shall bear all costs, fees, and expenses incurred by Seller with and through Title Company; (c) Title Company shall return to the depositing party, all documents and monies that have been placed or deposited in escrow, as required in this Agreement; and (d) Seller shall promptly perform all acts and provide all written consents and agreements requested by Title Company and/or Purchaser to permit expeditious disbursement to Purchaser of all sums in escrow that have been deposited by Purchaser.

10.3.2 Notwithstanding anything to the contrary contained in Section 10.3.1, if this Agreement is terminated by Purchaser pursuant to Sections 10.1.2, 10.1.5(a), 10.1.7, 10.1.8, 10.1.9, or 10.1.10, then Seller shall be liable for an early termination fee in the amount of [\_\_\_\_\_] Dollars (\$[\_\_\_\_\_]). The Parties agree that

such early termination fee shall be Purchaser's sole and exclusive remedy for termination by Purchaser pursuant to Sections 10.1.2, 10.1.5(a), 10.1.7, 10.1.8, 10.1.9, or 10.1.10. The Parties agree that Purchaser's actual damages as a result of termination of this Agreement pursuant to Sections 10.1.2, 10.1.5(a), 10.1.7, 10.1.8, 10.1.9, or 10.1.10 would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the above liquidated damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Purchaser would incur as a result of such delays or failures, and do not represent a penalty.

## **ARTICLE XI DISPUTE RESOLUTION**

11.1. Dispute Resolution. Any dispute or claim arising under this Agreement which is not resolved in the ordinary course of business shall be referred to senior executives of the Parties, with authority to decide or resolve the matter in dispute, for review and resolution. Such senior executives shall meet and in good faith attempt to resolve the dispute within thirty (30) days. If the Parties are unable to resolve the dispute pursuant to this Section 11.1, such dispute shall be resolved in accordance with Section 11.2.

11.2. Venue. Each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Nevada and any federal court located in Clark County, Nevada (or if no such court will accept jurisdiction, in any state or federal court of general jurisdiction in the State of Nevada, or if no such court will accept jurisdiction, in any court of competent jurisdiction in the United States) with respect to any proceeding in connection with, arising out of, or in any way related to this Agreement or any Transaction Document. Each Party hereby irrevocably and unconditionally waives any objection or defense that it may have based on improper venue or forum *non conveniens* to the conduct of any such proceeding in any such courts. The Parties agree that any or both of them may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Each Party (on behalf of itself and its Affiliates) agrees that a final judgment in any such proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

11.3. Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY TRANSACTION DOCUMENT. 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.

11.4. Enforcement of Agreement. Each Party acknowledges and agrees that the other Party would be irreparably harmed if any of the provisions of this Agreement and the terms of the Transactions are not performed in accordance with their specific terms and that any breach of this Agreement by a Party could not be adequately compensated in all cases by monetary

damages alone. Accordingly, each Party agrees that, in addition to any other right or remedy to which such Party may be entitled at law or in equity, each Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to obtain temporary, preliminary, and permanent injunctive relief to prevent breaches or threatened breaches, without posting any bond or giving any other undertaking.

## **ARTICLE XII MISCELLANEOUS**

### **12.1. Notices.**

12.1.1 Notice Addresses. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall be in writing and may be given by any of the following methods: (a) personal delivery; (b) a writing in portable document format (PDF) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested; (c) overnight or certified mail, postage prepaid, return receipt requested; or (d) nationally recognized courier service. Notices shall be sent to the appropriate Party at its address or email address given below (or to such other Person or at such other addresses for such Party as shall be specified by Notice given hereunder).

If to Seller, to:

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

Email:

Attn:

With a copy to:

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

Email:

Attn:

If to Purchaser, to

Nevada Power Company d/b/a NV Energy
6226 W. Sahara Avenue
Las Vegas, Nevada 89146

Email:

Attn:

With a copy to:

Nevada Power Company d/b/a NV Energy  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Email:  
Attn: General Counsel

With a copy to (in the case of any Notice with respect to Real Property):

Nevada Power Company d/b/a NV Energy  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Email:  
Attn: Director of Land Resources

12.1.2 Effective Time. All Notices shall be deemed effective and received by the Party to whom it was addressed: (a) when delivered, if it is delivered personally; (b) on the third (3<sup>rd</sup>) Business Day after it is mailed if it is sent by certified mail; (c) on the first Business Day after the email transmission is sent, if it is sent by email transmission; or (d) on the date the courier officially records it as having been delivered, if it is delivered by a nationally recognized courier.

12.2 Payments. Except for payments due at Closing, if a Party is required to make any payment under this Agreement on a day other than a Business Day, the date of payment shall be extended to the next Business Day. If a Party does not make any payment required by the Parties under this Agreement on or before the due date, then interest on the unpaid amount shall be due and paid at the Default Rate from the date such payment is due until the date such payment is made in full. Any payment of such interest at the Default Rate pursuant to this Agreement shall not excuse or cure any default hereunder. All payments shall first be applied to the payment of accrued but unpaid interest.

12.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns, if any. No Party may assign any or all of its rights or obligations under this Agreement, in whole or in part, to any other Person without obtaining the prior written consent of the other Party.

12.4 Limitation of Liability; Exclusive Remedies.

12.4.1 NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF A PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH LOSSES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY; PROVIDED, HOWEVER, THAT SUCH LIMITATION OF LIABILITY SHALL NOT APPLY TO (A) THE FRAUD, INTENTIONAL MISREPRESENTATION, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A

PARTY, OR (B) THE INDEMNIFICATION OBLIGATIONS OF ANY PARTY PURSUANT TO ARTICLE VIII.

12.4.2 Any remedies noted in this Agreement are not intended to be exclusive of other remedies that would be available upon the occurrence of events giving rise to such remedies unless such exclusivity is expressly stated. Any remedies that are noted in this Agreement without mention of exclusivity are to be in addition to any and all other remedies available at law or in equity.

12.5 Waiver. No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

12.6 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party.

12.7 Entire Agreement. This Agreement and the Transaction Documents, including, in each case, all schedules and exhibits hereto and thereto, supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof, and contain the sole and entire agreement between the Parties with respect to the subject matter hereof and thereof.

12.8 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each Party will pay its own costs and expenses, including the fees and costs of its attorneys, consultants, contractors and representatives, incurred in connection with this Agreement and the Transaction Documents.

12.9 Severability. If any portion or provision of this Agreement is invalid, illegal, or unenforceable, or any event occurs that renders any portion or provision of this Agreement void, the other portions or provisions of this Agreement will remain valid and enforceable. Any void portion or provision will be deemed severed from this Agreement, and the balance of this Agreement will be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. Upon such determination that any portion or provision of this Agreement is invalid, illegal, unenforceable or void, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the Transactions are fulfilled to the fullest extent possible.

12.10 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in this Agreement or any Transaction Document), shall be governed by, and construed in accordance with, the laws of the State of Nevada without giving effect to any conflict or choice of law provision that would apply the laws of another jurisdiction.

12.11 No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein (including any Purchaser Indemnified Party or Seller Indemnified Party, to the extent set forth in Article VIII), no other Person shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Agreement.

12.12 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties.

12.13 Time of the Essence. Time is of the essence in this Agreement and each provision hereof.

12.14 No Construction Against Drafting Party. The language used in this Agreement is the product of both Parties' efforts and each Party hereby irrevocably waives the benefits of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific words in a contract.

12.15 Section Headings. The Section and Article headings are for the convenience of the Parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the Parties.

12.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties has caused this Asset Purchase Agreement to be duly executed by its respective duly authorized officer as of the day and year first above written.

**PURCHASER**

NEVADA POWER COMPANY  
d/b/a NV ENERGY

[OR SIERRA PACIFIC POWER COMPANY  
d/b/a NV ENERGY]

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

**SELLER**

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

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

## Exhibits

Exhibit A - Form of EPC Agreement

Exhibit B - Form of Assignment and Assumption Agreement

Exhibit C - Form of Bill of Sale

Exhibit D - Form of Escrow Agreement

Exhibit E - Form of O&M Agreement

Exhibit F - Form of Real Property Deed

Exhibit G – Form of Guaranty

Exhibit H – Form of Real Property Escrow Agreement



Exhibit A  
Form of EPC Agreement

Refer to the Pro Forma EPC Agreement included as Attachment E

Exhibit B

Form of Assignment and Assumption Agreement

Reserved

Exhibit C  
Form of Bill of Sale

Reserved

Exhibit D  
Form of Escrow Agreement

Reserved

Exhibit E

Form of O&M Agreement

Refer to the Pro Forma O&M Agreement included as Attachment F

Exhibit F  
Form of Real Property Deed

APN:

Affix R.P.T.T.

**WHEN RECORDED MAIL DEED  
AND TAX STATEMENTS TO:**

**GRANT, BARGAIN, SALE DEED**

**THIS INDENTURE WITNESSETH** that {insert Seller's legal name}, a {insert state} {insert type of entity}, for valuable consideration, receipt of which is hereby acknowledged, hereby does Grant, Bargain, Sell and Convey to NEVADA POWER COMPANY, d/b/a NV Energy, a Nevada corporation, all that real property situated in the County of {insert county name}, State of Nevada, bounded and described as follows:

**SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF**

**SUBJECT TO:**

1. Taxes for the current fiscal year, and any and all taxes (including supplemental taxes) and assessments levied or assessed after the recording date of this document.
2. Rights of way, reservations, restrictions, easements and conditions of record.

**Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or otherwise appertaining.**

Witness my/our hand(s) this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

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

**STATE OF NEVADA**

**COUNTY OF {insert county name}**

**This instrument was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.**

\_\_\_\_\_  
**Notary Public in and for said County and State**

**Exhibit A**  
**Legal Description**  
[to Form Grant, Bargain, Sale Deed]

Exhibit G  
Form of Guaranty

GUARANTEE OF [\_\_\_\_\_]

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 Section 2.3.1 of that certain Asset 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 full and prompt performance and payment by Subsidiary of each and every 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 perform (or promptly procure the payment or performance of) the same in accordance with, and up to the limitations set forth in the Agreement.

(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 any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment and performance 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 and performance 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 guarantees 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 or performance 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 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 or performance 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 or performance 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 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.

(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.

(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.

(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, 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
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, 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, and (ii) except in respect of claims hereunder notified prior to such date, three years following the Closing Date, 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 forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor. Except with respect to (x) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given under the Agreement and (y) claims arising out of Subsidiary's fraud, intentional misrepresentation or willful misconduct, the maximum aggregate liability of Guarantor hereunder shall be [one hundred] percent ([100]%) of the Purchase Price.

(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 Clark 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) 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.

(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.]

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 [OR SIERRA PACIFIC POWER  
COMPANY d/b/a NV ENERGY], A NEVADA  
CORPORATION**

---

Name:

Title:



Exhibit H  
Form of Real Property Escrow Agreement

**REAL PROPERTY ESCROW AGREEMENT**

**THIS REAL PROPERTY ESCROW AGREEMENT (“Agreement”)** made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (**“Escrow Effective Date”**), by and among \_\_\_\_\_, a \_\_\_\_\_ (**“Seller”**), **NEVADA POWER COMPANY d/b/a NV ENERGY [OR SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY]**, a Nevada corporation (**“Purchaser”**), and \_\_\_\_\_, a \_\_\_\_\_ (**“Title Company”**).

**Background**

A. Seller and Purchaser entered into an Asset Purchase Agreement dated \_\_\_\_\_, 201\_\_\_\_ (the **“APA”**), with respect to the purchase of, among other things, certain real property, together with improvements thereon and appurtenances thereto (the **“Real Property Transaction”**) located in \_\_\_\_\_, \_\_\_\_\_, as more particularly described in Exhibit A attached hereto (the **“Property”**).

B. Seller, Purchaser, and Title Company desire to set forth the terms, conditions, and provisions pursuant to which Title Company shall hold all documents and funds related to the close of escrow for the Real Property Transaction, and release the same pursuant to the terms, conditions, and provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, the parties hereto agree as follows:

1. **Timing for Close of Escrow.** Unless extended as provided in Section 2 or unless otherwise agreed by written agreement executed by both Purchaser and Seller, all funds and documents required under the APA for closing on the Real Property Transaction must be deposited with Title Company into escrow on or before \_\_\_\_\_, 201\_\_\_\_. Upon the satisfaction of the terms, conditions, and provisions of this Agreement, Title Company shall record documents to be recorded and disburse the applicable funds (**“Close of Escrow”**). This Agreement constitutes Title Company’s instructions. The Parties will execute and deliver to Title Company additional and supplemental instructions as Title Company may require in order to clarify Title Company’s duties under this Agreement; provided, however, if there is a conflict or inconsistency between this Agreement and any additional and supplemental instructions delivered to Title Company, the terms of this Agreement govern the duties of Title Company and the rights and obligations of the parties. If Close of Escrow does not occur by \_\_\_\_\_, 201\_\_\_\_ (the **“Outside Date”**), this Agreement will terminate and all documents and funds received by Title Company shall be promptly returned to the party from whom Title Company received the same. If the APA is terminated and Title Company receives notice of the same from both Seller and Purchaser, then Title Company shall return all documents and funds to the party from whom the Title Company received the same. Upon such a termination, Seller shall bear all costs, fees, and expenses incurred

by Seller with and through Title Company, and Purchaser shall bear all costs, fees, and expenses incurred by Purchaser with and through Title Company.

2. **Extension of Close of Escrow.** If, at the time established for Close of Escrow to occur, Seller or Purchaser has failed to perform an act or fulfill an obligation that is required of Seller or Purchaser at or before Close of Escrow, Purchaser has the right to extend the date for Close of Escrow by notice to Title Company and Seller for up to three (3) successive periods of thirty (30) business days each, until Seller or Purchaser, as applicable, has performed the act or fulfilled the obligation; provided, however, that in no event shall the extended date for Close of Escrow be after the Outside Date.

3. **Close of Escrow.** The Title Company shall hold all documents and funds received in connection with the Real Property Transaction (the “**Closing Items**”) and release only pursuant to the terms of this Agreement. The Title Company shall hold the Closing Items and not release them from escrow until Title Company is in a position to satisfy each of the following: (A) Title Company has satisfied all separate escrow instructions received from Purchaser and/or Seller; (B) Title Company has confirmed that all recordable documents included among the Closing Items are in proper form for recording, including dated as of the Close of Escrow; (C) Title Company has received a fully-executed settlement statement for the Real Property Transaction and all funds required to be deposited into escrow with Title Company pursuant to the settlement statement; (D) Title Company has updated the title search in Title Company’s commitment with file number \_\_\_\_\_ (the “**Commitment**”) by searching title in the land records where the insured property described in the Commitment is located and Title Company has found no exceptions to title other than those reported in the Commitment; (E) all requirements of the Commitment have been satisfied and Title Company is in a position to issue a title policy or title policies based on the Commitment, with no exceptions other than those reported in the Commitment and with the endorsements as required by Purchaser; and (F) Title Company has received express confirmation from and on behalf of Seller and Purchaser, in writing, that all conditions precedent to the Closing under and as defined in the APA have been satisfied and that Title Company is authorized to proceed with the Close of Escrow. Before Title Company records the deed conveying the Property from Seller to Purchaser, Title Company shall provide Purchaser with an executed copy of the same for review and approval. In connection with the transaction contemplated herein, the Title Company is hereby designated as the party responsible for filing a Form 1099 with the Internal Revenue Service promptly after Close of Escrow, to the extent required by the Internal Revenue Code and Treasury Regulations.

4. **Resignation of Title Company.** The Title Company may resign at any time upon giving the other parties hereto thirty (30) days’ notice to that effect. It is understood and agreed that the resignation of such Title Company shall be effective when a successor Title Company is designated and agrees to act hereunder or thirty-one (31) days after notice to resign, at which time the resigning Title Company shall deliver all materials in its possession relating to the Closing Items to such successor, and the duties of the resigning Title Company shall thereupon in all respects terminate, and it shall be released and discharged from all further liabilities or obligations hereunder.

5. **Notices.** Each notice, consent, request, or other communication required or permitted under this Agreement must be (A) in writing, (B) delivered personally, sent by certified mail (postage prepaid, return receipt requested), sent by facsimile (with electronic confirmation of receipt) or delivered by a nationally recognized courier and (C) addressed to a party as follows:

**If to Purchaser:**

{insert ROW Agent's name}  
{insert "Senior" if appropriate} Right of Way Agent  
NV Energy  
{insert}, MS {insert}  
{insert}, NV {insert}  
Facsimile: {insert}  
Phone: {insert}

NV Energy  
Attn.: Legal Department  
P.O. Box 98910, MS 3/A  
Las Vegas, Nevada 89151-0001  
Facsimile: (702) 402-2069  
Phone: (702) 402-5793

**If to Seller:**

{insert}  
Facsimile: {insert}  
Phone: {insert}

**If to Title Company:**

{insert}  
Facsimile: {insert}  
Phone: {insert}

Each notice, consent, request, or other communication is deemed to have been received by the party to whom it was addressed (W) when delivered if it is delivered personally; (X) on the third business day after it is mailed if it is sent by certified mail; (Y) on the first business day after the facsimile transmission is sent if it is sent by facsimile; or (Z) on the date the courier officially records it as having been delivered if it is delivered by a courier. Each party may change its address for purposes of the Agreement by giving written notice to the other Party in the manner set forth above in this **Section 8.**

6. **Effect of Headings.** The headings or sections of this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way effect or be considered in the interpretation hereof.

7. **Entire Agreement.** This Agreement and the Development Agreement contain the entire agreement among the parties with respect to the subject matter hereof. This Agreement may not be amended, supplemented or discharged, and no provision hereof may be modified or waived, except by an instrument in writing signed by all of the parties hereto. No waiver of any provision hereof by any party shall be deemed a continuing waiver of any matter by such party.

8. **Governing Law; Severability.** The Agreement is governed by and must be construed in accordance with the laws of the State of Nevada, without giving effect to its choice or conflicts of laws provisions. All actions must be initiated in the courts of {insert Washoe or Clark} County, Nevada or the federal district court with jurisdiction over {insert Washoe or Clark} County, Nevada. Seller agrees it will not initiate an action against Purchaser in any other jurisdiction. In the event that any provision hereof shall be deemed illegal or unenforceable, said provision shall be severed from this Agreement and the remainder of this Agreement shall be enforced in accordance with the intent of the parties as herein expressed.

9. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, and their respective successors, assigns and heirs.

10. **Counterparts; Facsimile and PDF.** This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same agreement. Facsimile and portable document format (PDF) signatures shall have the same force and effect as original signatures.

11. **Time of Essence; Weekends and Holidays.** Time is of the essence for this Agreement. All Parties must perform their obligations under this Agreement strictly within the required time frames. Any reference in this Agreement to time of day refers to local time in Nevada. Unless specifically stated to the contrary, all references to days in this Agreement refer to calendar days. Any reference in this Agreement to a "business day" refers to a day that is not a Saturday, Sunday or legal holiday (or observed as a legal holiday) for Nevada state governmental offices under the Nevada Revised Statutes. If the final date for payment of any amount or performance of any act required by this Agreement falls on a Saturday, Sunday or legal holiday, that payment is required to be made or act is required to be performed on the next business day.

12. **Title Company Fee.** Title Company shall be paid a fee of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00), to be paid fully by Seller, at the time of the Close of Escrow, for acting as the escrow agent under pursuant to this Agreement.

(Signatures on following page)

IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused it to be executed on its behalf by its duly authorized representatives, with the intention of creating a document under seal on the date first above written.

**Seller:**

\_\_\_\_\_, a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Purchaser:**

**Nevada Power Company d/b/a NV Energy, a**  
Nevada corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Approved:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**TITLE COMPANY:**

\_\_\_\_\_, a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**EXHIBIT A TO REAL PROPERTY ESCROW AGREEMENT**

Legal Description

## Seller's Disclosure Schedule

Section 1.1(a) – Sellers' Knowledge

Section 4.5 – Seller Required Consents

Section 4.6 – Legal Proceedings

Section 4.9.1 – Real Property

Section 4.9.4 – Real Property – Agreements with Governmental Authorities

Section 4.9.5 – Real Property – Agreements

Section 4.9.6 – Real Property – Compliance Exceptions

Section 4.10 – Contracts

Section 4.11.1 – Transferred Permits

Section 4.11.2 – Obtained Permits

Section 4.11.5 – Transferred Permits – Exceptions

Section 4.12 – Environmental Matters – Exceptions

Section 4.13 – Insurance Policies

Section 4.14 – Transferred Intellectual Property – Exceptions

Section 4.16.4 – Sufficiency of Purchased Assets

Section 9.1 – Tax Matters

## Purchaser's Disclosure Schedule

Section 1.1(a) – Purchaser's Knowledge

Section 5.5 – Purchaser Required Consents

Section 5.6 – Legal Proceedings



Schedules to Asset Purchase Agreement

Schedule 1.1(a) – Assigned Contracts

Schedule 1.1(b) – Excluded Assets

Schedule 1.1(c) – Permitted Liens

Schedule 1.1(d) – Purchaser Permits

Schedule 1.1(e) – Transferred Intellectual Property

# **2016 ERCR RE Request for Proposals**



## **Attachment E**

**THIS DRAFT DOES NOT CONSTITUTE A BINDING OFFER AND SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE PARTIES HAVE COMPLETED THEIR DUE DILIGENCE AND THIS AGREEMENT IS NEGOTIATED, APPROVED, EXECUTED AND DELIVERED, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS.**

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT  
([ ] Renewable Energy Project)**

**by and between**

**[ ]**

**Contractor's License No. [ ]<sup>1</sup>**

**and**

**NEVADA POWER COMPANY [OR SIERRA PACIFIC POWER COMPANY], a Nevada corporation doing business as NV Energy**

**Dated as of [ ]**

---

<sup>1</sup> Note to Bidders: A Nevada contractor's license is required prior to execution of the EPC agreement.

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- Exhibit 28 – FERC Electrical Plant Chart of Accounts
- Exhibit 29 – Owner's Code of Business Conduct
- Exhibit 30 – Major Facility Equipment Warranties

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<sup>2</sup> This exhibits and others (e.g., technical specifications) will need to be updated to accommodate non-solar PV technologies.

## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

This ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, dated as of [ ] (this “Agreement”), is entered into by and between NEVADA POWER COMPANY [OR SIERRA PACIFIC POWER COMPANY], a Nevada corporation doing business as NV Energy (“Owner”), and [ ], a [ ] formed under the laws of the State of [ ] (“Contractor”). Owner and Contractor are each hereinafter sometimes referred to as a “Party” and collectively as the “Parties.”

### RECITALS

**WHEREAS**, Owner intends to develop a [ ] MW AC at the Delivery Point (approximately [ ] MW DC nameplate capacity) renewable power generation facility (the “Facility”)<sup>3</sup> located in [ ], Nevada, as more fully described in and including all of the components set forth in Exhibit 1 and Exhibit 3 (collectively, the “Technical Specifications”), on the real property more fully described in Exhibit 2 (the “Site”);<sup>4</sup>

**WHEREAS**, Contractor designs, engineers, supplies, constructs and installs photovoltaic systems such as the Facility on a turn-key basis, to make available electrical energy to a transmission interconnection facility;

**WHEREAS**, Owner desires to engage Contractor to design, engineer, supply, construct, install, test and commission the Facility at the Site and perform all other Work under this Agreement and Contractor desires to carry out such work or services, all as further defined by and in accordance with the terms and conditions set forth in this Agreement; and

**WHEREAS**, on even date hereof, Owner, as purchaser, is acquiring all right, title and interest to certain Project Transaction Documents relating to the Facility from Contractor or an Affiliate thereof, as seller, pursuant to that certain Asset Purchase Agreement, dated as of [ ] (as the same may be modified, amended or supplemented from time to time in accordance with the terms thereof, the “APA”);

**NOW THEREFORE**, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1

#### CONTRACT INTERPRETATION AND EFFECTIVENESS

**1.1 Rules of Interpretation.** Unless the context requires otherwise or unless otherwise stated: (a) the singular includes the plural and vice versa, (b) terms defined in a given number, tense or form shall have the corresponding meanings when used with initial capitals in

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<sup>3</sup> Note to Bidders: If there are multiple facilities, it is contemplated that a separate EPC Agreement will be entered into for each facility.

<sup>4</sup> Consider whether to add recital that EPC agreement being entered with winning bidder pursuant to ERCR RFP.

another number, tense or form, (c) words in the Exhibits which have well known technical or construction industry meanings are used in accordance with such recognized meanings, (d) the words “include”, “includes” and “including” shall be deemed to be followed by the words “without limitation” and unless otherwise specified shall not be deemed limited by the specific enumeration of items, (e) references to “Sections”, “Schedules” and “Exhibits” are to sections, schedules and exhibits to this Agreement, (f) the words “herein”, “hereof”, “hereto”, “hereinafter” “hereunder” and other terms of like import refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (g) a reference to a Person in this Agreement or any other agreement or document shall include such Person’s successors and permitted assigns, (h) references to this Agreement include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time, (i) references to Applicable Law or Applicable Permit are references to the Applicable Law or Applicable Permit, as applicable, as now or at any time hereafter may be in effect, together with all amendments and supplements thereto and any Applicable Law or Applicable Permit substituted for or superseding such statute or regulation, (j) without adversely impacting the rights of either Party with respect to the amendment, restatement or replacement of any agreement under which such Party shall be liable hereunder, references to agreements, certificates, documents and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements, certificates or instruments that are duly entered into and effective against the parties thereto or their successors and permitted assigns, (k) a reference to a Governmental Authority includes an entity or officer that or who succeeds to substantially the same functions as performed by such Governmental Authority as of the date hereof, (l) “shall” and “will” mean “must” and have equal force and effect and express an obligation, (m) this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision in this Agreement, (n) the word “or” in this Agreement is disjunctive but not necessarily exclusive, (o) references in this Agreement to time periods in terms of a certain number of Days mean calendar Days unless expressly stated herein to be Business Days, (p) headings used in this Agreement are for ease of reference only and shall not be taken into account in the interpretation or construction of the provisions of this Agreement, and (q) the words “dollar”, “dollars” or “money” and the symbol “\$” each mean United States Dollars.

**1.2 Defined Terms.** Unless otherwise stated in this Agreement, capitalized terms used in this Agreement have the following meanings:

“Abandons” means, other than in the event of a Force Majeure Event or an Owner-Caused Delay, that Contractor abandons, ceases to perform the Work or leaves the Site for a period longer than thirty (30) consecutive Days.

“AAA” means the American Arbitration Association.

“AC” means alternating current.

“Actual Delay” has the meaning set forth in Section 10.3.

“Affiliate” means, when used with reference to a specified Person, any Person directly or indirectly Controlling, Controlled by, or under common Control with such specified Person. Notwithstanding the foregoing, for purposes of this Agreement (i) Transmission Provider shall not be deemed to be an Affiliate of Owner; and (ii) Affiliates of Owner shall extend only to Berkshire Hathaway Energy Company and such subsidiaries it directly or indirectly Controls.

“Agreement” has the meaning set forth in the preamble, including all Exhibits hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

“APA” has the meaning set forth in the Recitals.

“Applicable Codes” means codes, standards or criteria, such as the National Electric Code and those codes, standards or criteria promulgated by the American Society of Mechanical Engineers, Underwriters Laboratories and Institute of Electrical and Electronics Engineers, and other standards institutions which are generally recognized as applicable to the Work or the Facility.

“Applicable Laws” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of any Governmental Authority, as construed from time to time by such Governmental Authority, including Environmental Laws.

“Applicable Permits” means each and every national, regional and local license, authorization, consent, ruling, exemption, variance, order, judgment, certification, filing, recording, permit or other approval with or of any Governmental Authority, including each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of, in connection with, or related to, the Work or the design, construction or operation of the Facility, including those set forth on Exhibit 6A and Exhibit 6B.

“Applicable Tax Basis” means the actual tax basis (or as applicable the actual EITC eligible tax basis) of the Facility as reasonably determined by Owner consistent with the values reflected in Exhibit 23.

“Application for Payment” means an application for payment in the form attached hereto as Exhibit 10.

“Arbitration Rules” has the meaning set forth in Section 28.2(c).

“Availability Test” means the test to determine the availability of the Facility as described in Exhibit 14A.

“Availability Completion” has the meaning set forth in Section 15.4.

“Availability Completion Date” has the meaning set forth in Section 15.4.

“Availability Test Certificate” means the certificate in the form of Exhibit 15A to be issued by Contractor after completion of the Availability Test.

“BCP” has the meaning set forth in Section 25.1.

“Business Day” means a Day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for business in the State of Nevada.

“Capacity Shortfall” means the difference between the Guaranteed Capacity and the Facility Capacity.

“Capacity Test” means the test and commissioning of the Facility as described in Exhibit 14C.

“Capacity Test Certificate” means the certificate in the form of Exhibit 15B to be issued by Contractor after completion of the Capacity Test.

“Cancellation Cost Cap” means the maximum applicable payment amount as set forth in the Cancellation Cost Cap column of the Schedule of Values that is due to Contractor in any given period should Owner terminate this Contract for convenience pursuant to Section 20.8 or should Contractor terminate this Contract pursuant to Section 20.5(a).

“Cash Flow Curve” means the periodic cash flow curve set forth in the Schedule of Values that constitutes the cumulative maximum payment obligation Owner will have to Contractor under this Agreement for any given period during the performance of the Work.<sup>5</sup>

“Certificate of Final Completion” means a certificate delivered by Contractor pursuant to Section 18.2 and substantially in the form attached as Exhibit 19.

“Certificate of Substantial Completion” means a certificate delivered by Contractor pursuant to Section 16.3 and substantially in the form attached as Exhibit 18.

“Change Order” means a written document signed by Owner and Contractor in accordance with Article 10, authorizing an addition, deletion or revision to the Work, an adjustment of the Contract Price or Construction Schedule, and/or any other obligation of Owner or Contractor under this Agreement, which document is issued after execution of this Agreement.

“Claim Notice” has the meaning set forth in Section 24.5.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” has the meaning set forth in Section 25.1.

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<sup>5</sup> Note to Bidders: Any payments occurring under the APA at or near the issuance of notice to proceed shall be included in the Cash Flow Curve.

“Construction Equipment” means all equipment, machinery, tools, consumables, temporary structures or other items as may be required for Contractor to complete the Work but which will not become a permanent part of the Facility.

“Construction Schedule” means the critical path method construction schedule based on and consistent with the provisions set forth in Exhibit 4 for the progression of the Work by Contractor (including the achievement of the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date), created in accordance with Section 3.11 and as updated from time to time pursuant to the terms of this Agreement.

“Contract Documents” means this Agreement, the exhibits and schedules hereto, and the Contractor Submittals.

“Contract Price” means the sum of [\_\_\_\_\_] (\$\_\_\_\_\_), as the same may be modified from time to time in accordance with the terms of this Agreement.

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

“Contractor Acquired Permits” means those Applicable Permits to be acquired by Contractor and designated on Exhibit 6A and any other Applicable Permits, other than Owner Acquired Permits.

“Contractor Critical Path Items” means those items that are designated as “Contractor Critical Path Items” in the Construction Schedule.

“Contractor Event of Default” has the meaning set forth in Section 20.1.

“Contractor Lien” means any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the Facility Equipment, the Facility, the Site or any part thereof directly or indirectly created, incurred, assumed or suffered to be created by any Contractor Party (other than in accordance with any other Project Transaction Document), any Subcontractor, or any of their respective employees, laborers or materialmen.

“Contractor Party” or “Contractor Parties” means each of Contractor, Contractor’s Guarantor and any of their respective present and future Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns.

“Contractor Performance Security” means a corporate guaranty from Contractor’s Guarantor in the form attached hereto as Exhibit 11.<sup>6</sup>

“Contractor Submittals” means the drawings, specifications, plans, calculations, model, designs and other deliverables described in Exhibit 7.

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<sup>6</sup> Note to Bidders: Subject to bidder credit review a letter of credit or other security may be required during the Term and the Warranty Period.



“Contractor’s Guarantor” means [\_\_\_\_\_].

“Contractor’s Insurance” has the meaning set forth in Section 23.1, as further described in Part I of Exhibit 13.

“Contractor’s Representative” has the meaning set forth in Section 5.2.

“Control” means (including with correlative meaning the terms “Controlled”, “Controls” and “Controlled by”), as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Critical Items” has the meaning set forth in Section 16.4(a).

“Critical Items List” has the meaning set forth in Section 16.4(a).

“Day” means a calendar day unless it is specified that it means a Business Day.

“DC” means direct current.

“Defect Warranty” has the meaning given in Section 21.3(a).

“Defect Warranty Period” has the meaning given in Section 21.4(a).

“Defective” means, unless otherwise defined elsewhere in this Agreement as to a specific aspect of the Work, any designs, engineering, Equipment, installation or other Work which, in Owner’s reasonable judgment:

- (a) does not conform to Exhibit 1 or the Contractor Submittals that have been reviewed by Owner;
- (b) is of improper or inferior workmanship or quality;
- (c) includes a Serial Defect; or
- (d) is inconsistent with Prudent Utility Practice, and either:
  - (i) materially and adversely affects the mechanical, electrical or structural integrity of the Facility; or
  - (ii) materially and adversely affect the continuous, efficient, effective or safe operation of the Facility during the Facility’s design life, provided that such operation is in accordance with the Required Manuals and with Prudent Utility Practice.

“Delay Response Plan” has the meaning set forth in Section 3.22.

“Delivery Point” means [\_\_\_\_\_].

“Depreciation Benefit” means the most accelerated depreciation available under Sections 167 and 168 of the Code, assuming the utilization of the shortest available recovery period, the most accelerated depreciation method available, the half-year convention and a full first taxable year (however, in no event shall the depreciation be more accelerated than five (5) year two hundred percent (200%) declining balance depreciation (without application of Section 168(k) of the Code or any successor thereto). The recovery periods applicable to the Facility shall be determined using the depreciation class percentage allocations derived from costs by class divided by the total costs for the Facility listed on Exhibit 23. In determining the Depreciation Benefit, a thirty-five percent (35%) tax rate shall be applied. Further, in accordance with Section 50(c) of the Code tax basis for purposes of calculating depreciation shall be deemed to be reduced by fifty percent (50%) of the Maximum EITCs.

“Design Warranty” has the meaning given in Section 21.3(b).

“Design Warranty Period” has the meaning given in Section 21.4(b).

“Direct Costs” means the actual and substantiated costs (without mark-up) that are reasonably incurred by Contractor as a result of the event requiring the Change Order for the following items: (a) payroll wages paid for labor in the direct employ of Contractor at the Site; (b) cost of materials and permanent equipment; (c) payments made by Contractor to Subcontractors (such payments excluding any mark-ups by Contractor); (d) rental charges of machinery and equipment for the Work; (e) permit fees; (f) costs of mobilization and/or demobilization; (g) associated standard indirect field costs; and (h) associated engineering costs, if any, directly related to Work implemented under the Change Order. Direct Costs exclude any home-office, overhead or other indirect costs.

“Disclosing Party” has the meaning set forth in Section 25.1.

“Dispute” has the meaning set forth in Section 28.1.

“Dispute Initiator” has the meaning set forth in Section 28.2(a).

“Documentation” shall mean all Contractor Submittals, design documents, Monthly Progress Reports, Weekly Progress Reports engineering change notices (ECNs), requests for information (RFIs), as-built drawings, system turnover packages, isometrics, specifications (including the Technical Specifications), studies, system descriptions, lists, diagrams, procedures, instructions, reports, test results, calculations, manuals, and project schedules required by or referenced in the Technical Specifications or elsewhere in this Agreement, including all electronically originated and stored information and other data and information originated by Contractor or any Subcontractor in connection with Contractor’s obligations under this Agreement.

“Dollar” and “\$” means the lawful currency of the United States of America.

“Effective Date” has the meaning set forth in Section 1.9.

“EITC” means the investment tax credit for energy property described in Section 48(a)(3)(A)(i) of the Code.

“EITC Applicable Percentage” means, for any period, the federal investment tax credit (or successor thereto) percentage for utility scale solar available under then Applicable Law.

“EITC Liquidated Damages” the meaning set forth in Section 17.6(b).

“EITC Timing Determinate” means the time value difference between when the Maximum EITCs were contemplated to be reflected in Owner’s estimated tax and when the EITCs are ultimately reflected in Owner’s estimated tax payments. It is determined assuming Owner will pay its estimated taxes based on the annualized income installment method of Section 6655(e)(2) of the Code (using the annualization periods set forth in Sections 6655(e)(2)(A) and (B) of the Code), and using as the interest rate the Wall Street Journal “prime rate” as of the first Business Day preceding the date of such first estimated tax installment payment.

“Emergency” means an event occurring at the Site or any adjoining property that poses actual or imminent risk of serious personal injury to any Person or material physical damage to the Facility requiring immediate preventative or remedial action, as reasonably determined by the Party assessing the subject event.

“Environmental Laws” means any federal, Indian tribe (including any agency, council or political subdivision thereof), state, or local law, regulation, ordinance, standard, guidance, or order pertaining to the protection of the environment and human health, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601, et seq.; the Clean Air Act, 42 U.S.C. 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq.; the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; and any other law that governs: (a) the existence, removal, or remediation of Hazardous Materials on real property; (b) the emission, discharge, release, or control of Hazardous Materials into or in the environment; or (c) the use, generation, handling, transport, treatment, storage, disposal, or recovery of Hazardous Materials.

“Equipment” means, collectively, Construction Equipment and Facility Equipment.

“Event of Default” means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

“Expected EITCs” means, as of any determination date, the amount of EITCs available for the Facility using the EITC Applicable Percentage multiplied by the Facility’s Applicable Tax Basis. Further, it shall be assumed that Availability Completion is equivalent to Placed in Service for the Facility.

“Facility” has the meaning set forth in the Recitals.

“Facility Capacity” means, with respect to the Facility, the Final Test Results pursuant to the Capacity Test.

“Facility Delay Liquidated Damages” has the meaning set forth in Section 17.1.

“Facility Equipment” means the modules, inverters, trackers and all other equipment, fixtures, materials, supplies, devices, machinery, tools, parts, components, instruments, appliances and other items that are required to complete the Facility and will become a permanent part of the Facility, as well as Spare Parts, whether provided by Contractor or any Subcontractor, and all special tools required to operate and maintain the Facility.

“Facility Tests” means, collectively, the Functional Test, the Availability Test and the Capacity Test.

“FERC Electrical Plant Chart of Accounts” shall have the meaning set forth in Exhibit 28.

“FERC Unit of Plant Cost Allocation Book” shall have the meaning set forth in Exhibit 28.

“Final Capacity Liquidated Damages” has the meaning set forth in Section 17.2(a).

“Final Completion” means satisfaction or waiver of all of the conditions for completion of the Facility as set forth in Section 18.1.

“Final Completion Date” means the actual date on which the Facility has achieved Final Completion in accordance with Section 18.2.

“Final Test Results” means (i) with respect to the Availability Test, the final test results determined pursuant to Exhibit 14A and certified by Contractor pursuant to Section 15.4 and (ii) with respect to the Capacity Test, the final test determined pursuant to Exhibit 14C and certified by Contractor pursuant to Section 15.4.

“Financing Parties” means any and all lenders, security holders, note or bond holders, lessors, lien holders, investors, equity providers, holders of indentures, security agreements, mortgages, deeds of trust, pledge agreements and providers of swap agreements, interest rate hedging agreements, letters of credit and other documents evidencing, securing or otherwise relating to the construction, interim or long-term financing or refinancing of the Facility or a portfolio of projects including the Facility, and their successors and permitted assigns, and any trustees or agents acting on their behalf. The term “Financing Party” includes, for the avoidance of doubt, any Person or Persons that owns the Facility and leases the Facility to Owner or an Affiliate of Owner, as applicable, under a lease, sale-leaseback or synthetic lease structure.

“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Agreement, any act, condition or event occurring after the Effective Date which renders said Party unable to perform or comply with its obligations under this Agreement, but only if and to the extent (a) such event is not within the reasonable control,

directly or indirectly, of the Party (or in the case of Contractor, any Affiliate thereof) seeking to have its performance obligation(s) excused thereby, (b) the Party seeking to have its performance obligation(s) excused thereby (or in the case of Contractor, any Affiliate thereof) has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect thereof on its ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, (c) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby (or in the case of Contractor, any Affiliate thereof) and (d) the Party seeking to have its performance obligations excused thereby (or in the case of Contractor, any Affiliate thereof) had no actual or constructive prior knowledge of such event.

(i) Without limiting the meaning of but subject to the preceding sentence, the following events constitute Force Majeure Events to the extent that they render a Party unable to perform or comply with its obligations under this Agreement:

(A) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(B) acts of God, including storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, objects striking the earth from space (such as meteorites), or any other naturally occurring event for the location of the Site, or at such location in which Contractor performs the Work or Owner performs its obligations under this Agreement, that impacts the ability of the affected Party to perform its obligations under this Agreement;

(C) sabotage or destruction by a third party (other than any contractor retained by or on behalf of the invoking Party) of plants, facilities and equipment located in the continental United States of America necessary for the performance by the affected Party of its obligations under this Agreement; and

(D) except as set forth in subsections (ii)(C) and (ii)(D) below, industrial action, work stoppage, labor strike, boycott, or labor shortage in the continental United States of America.

(ii) Notwithstanding anything to the contrary in this definition, the term Force Majeure Event shall not be based on or include any of the following:

(A) economic hardship of either Party;

(B) Owner's inability to pay;

(C) a strike, work stoppage or labor dispute limited only to any one or more of Owner, Owner's Affiliates, Contractor or subcontractors thereof, or any

other third party employed by a Party to work on the Facility including strikes of Contractor or Subcontractor personnel at the Site or at Contractor's or Subcontractor's facilities;

(D) any labor shortages involving Contractor or a Subcontractor;

(E) Contractor's compliance or inability to comply with the Project Labor Agreement, except if Contractor's inability to comply is caused solely by a Force Majeure Event of the specific type described in subsection (i)(D) above;

(F) Site Conditions, except if Contractor's inability to comply is caused solely by a Force Majeure Event of the specific type described in subsection (i)(B) above;

(G) a Party's inability to obtain sufficient labor, materials, equipment or other resources to build the Facility and perform the Work, except if such Party's inability to obtain sufficient labor, materials, equipment or other resources to build the Facility and perform the Work is caused solely by a Force Majeure Event of the specific type described in any of subsections (i)(A) through (i)(D) above;

(H) the lack of sun or other fuel source of an inherently intermittent nature, except to the extent it is of the specific type described in subsection (i)(B) above;

(I) reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error;

(J) curtailment or reduction in deliveries at the direction of a Transmission Provider;

(K) a Party's inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Facility and necessary interconnection agreements or approvals, including, without limitation, approvals by any Governmental Authority that are subject to pre-decisional analysis under the federal National Environmental Policy Act, 42 U.S.C. §§ 4321-4370d;

(L) an Equipment failure, except if such Equipment failure is caused solely by a Force Majeure Event of the specific type described in any of subsections (i)(A) through (i)(D) above;

(M) utility interruptions;

(N) transportation or shipping accidents; or

(O) unavailability of preferred shipping methods.

“Functional Test” means the test to determine the functionality of the Facility and equipment and components incorporated therein, as described in Exhibit 25.

“Governmental Authority” means any national, federal, Indian tribe (including any agency, council or political subdivision thereof), state, regional, province, town, city, county, local or municipal government, whether domestic or foreign or other administrative, regulatory or judicial body of any of the foregoing and all agencies, authorities, departments, instrumentalities, courts and other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing. For clarity, each of the Western Electricity Coordinating Council and the PUCN shall be a Governmental Authority.

“Guaranteed Availability Completion Date” means, with respect to the Facility, the corresponding date set forth in Exhibit 4.

“Guaranteed Capacity” means, with respect to the Facility, the MW values set forth in Exhibit 14D.

“Guaranteed Date” means each of the Guaranteed Availability Completion Date, the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date.

“Guaranteed Final Completion Date” has the meaning set forth in Section 18.1, as may be extended only in accordance with the express terms of this Agreement.

“Guaranteed Substantial Completion Date” means the corresponding date set forth in Exhibit 4.

“Hazardous Materials” means (a) any regulated substance, hazardous constituent, hazardous materials, hazardous wastes, hazardous substances, toxic wastes, radioactive substance, contaminant, pollutant, toxic pollutant, pesticide, solid wastes, and toxic substances as those or similar terms are defined under any Environmental Laws; (b) any friable asbestos or friable asbestos-containing material; (c) polychlorinated biphenyls (“PCBs”), or PCB-containing materials or fluids; (d) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof; and (e) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability under any Environmental Laws.

“Indemnifying Party” means, with respect to an indemnification obligation under this Agreement, the Party providing such indemnification.

“Indemnitee” means an Owner Party or a Contractor Party, as the context may require, being indemnified pursuant to Section 24.5.

“Independent Engineer” has the meaning set forth in Section 31.9.

“Independent Expert” means an independent third-party engineer mutually agreed upon by the Parties.

“Insolvency Event” means, with respect to a Person, such Person becomes insolvent, institutes or has instituted against it a case under Title 11 of the United States Code or is unable to pay its debts as they mature or makes a general assignment for the benefit of its creditors, or a receiver is appointed for the benefit of its creditors or on account of its insolvency.

“Intellectual Property Claim” means an allegation, claim or legal action asserted by a third party against an Owner Party alleging unauthorized use, disclosure, misappropriation, infringement, or other violation of such third party’s Intellectual Property Rights arising from (a) Owner Party’s use of the Licensed Technology to the extent used in accordance with the license granted pursuant to Section 14.1 or (b) Contractor’s performance (or that of its Affiliates or Subcontractors) under this Agreement asserted against Owner that (i) concerns any Facility Equipment or other goods, materials, supplies, items or services provided by Contractor (or its Affiliates or Subcontractors) under this Agreement, (ii) is based upon or arises out of the performance of the Work by Contractor (or its Affiliates or Subcontractors), including the use of any tools or other implements of construction by Contractor (or its Affiliates or Subcontractors) or (iii) is based upon or arises out of the design or construction of any item by Contractor (or its Affiliates or Subcontractors) under this Agreement or the use, or operation, of any item according to directions embodied in Contractor’s (or its Affiliates’ or Subcontractors’) Contractor Submittals, or any revision thereof, prepared or provided by Contractor.

“Intellectual Property Rights” means all intellectual property rights throughout the world, including all rights in patents and inventions (whether or not patentable); registered and unregistered copyrights, trademarks, database rights, semiconductor mask work rights; proprietary rights, trade secrets, know-how and confidential information.

“Interconnection Agreement” means [\_\_\_\_\_].

“IRS” means the Internal Revenue Service.

“Key Personnel” has the meaning set forth in Section 5.2.

“Licensed Technology” has the meaning set forth in Section 14.1.

“Liquidated Damages” means, collectively, the Facility Delay Liquidated Damages, the Final Capacity Liquidated Damages and the EITC Liquidated Damages.

“Losses” means any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys’ fees and disbursements) of any kind.

“Major Facility Equipment Warranties” has the meaning set forth in Section 21.6(c)(i).

“Major Subcontractor” means (a) a Supplier of the distribution transformers, step-up transformers, inverters, racking and Modules for the Facility, (b) Contractor’s electrical installation Subcontractors, Site preparation/grading Subcontractors and Facility substation design and construction Subcontractors and (c) any other Subcontractor or Supplier for the



Facility with Subcontracts having an aggregate value in excess of Two Hundred Thousand Dollars (\$200,000) for performance of any part of the Work.

“Maximum EITCs” means the maximum amount of EITCs for which the Facility could have qualified, assuming (i) that the Facility achieved Availability Completion by its Guaranteed Availability Completion Date (as in effect on the Effective Date and without giving effect to any extensions thereof under this Agreement) and (ii) Availability Completion is equivalent to Placed in Service.<sup>7</sup>

“Milestone” means any milestone for the Work listed on Exhibit 4.

“Milestone Schedule” means the schedule attached hereto as Exhibit 4.

“Minimum Capacity Level” means ninety seven percent (97%) of the Guaranteed Capacity of the Facility, calculated in accordance with Exhibit 14D.

“Modules” means solar photovoltaic modules with an expected electrical output of [\_\_\_\_] watts of electric power (expressed as DC) as determined under the Standard Test Conditions.

“Monthly Progress Report” means a progress report prepared by Contractor setting forth the detail required in Exhibit 8A.

“MW” means 1,000,000 watts of electric power (expressed as AC).

“Notice of Dispute” has the meaning set forth in Section 28.1.

“Operator” means [\_\_\_\_\_].

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

“Owner Acquired Permits” means those Applicable Permits to be acquired by Owner, as designated on Exhibit 6B.

“Owner-Caused Delay” means (a) any Owner suspension of the Work designated as an Owned-Caused Delay pursuant to Section 19.1 or (b) a failure by Owner (which failure is not otherwise excused by a Force Majeure Event or otherwise in accordance with this Agreement) to perform any of its material obligations under this Agreement including any failure by Owner to timely approve Contractor’s Submittals delivered in connection with this Agreement on or prior to the applicable date as provided in this Agreement (unless a deemed response to such notice is provided for hereunder); provided, however, that any actions by Transmission Provider shall in no event constitute an Owner-Caused Delay.

“Owner Event of Default” has the meaning set forth in Section 20.3.

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<sup>7</sup> Note to Bidders: In the event the Code is amended such that the trigger for EITC eligibility becomes start of construction instead of Placed in Service, the EITC-related provisions in this Agreement may be revised to incorporate such requirements.

“Owner Inspection Parties” has the meaning set forth in Section 6.1.

“Owner Party” or “Owner Parties” means Owner and its present and future Affiliates and their respective directors, officers, employees, shareholders, agents, representatives, successors and permitted assigns. Notwithstanding the foregoing, for purposes of this Agreement, Transmission Provider shall not be deemed to be an Owner Party.

“Owner Taxes” means all Nevada sales and use taxes with regard to any tangible personal property purchased or leased for, used in the permanent construction of, or incorporated into the Facility.

“Owner’s Code of Business Conduct” means the Owner’s Code of Business Conduct set forth on Exhibit 29.

“Owner’s Engineer” means any engineering firm or firms or other engineer or engineers selected and designated by Owner, which may include an employee or employees of an Owner Party.

“Owner’s Insurance” has the meaning set forth in Section 23.2, as further described in Part II of Exhibit 13.

“Owner’s Representative” means the individual designated by Owner in accordance with Section 5.1.

“Party” and “Parties” have the meanings set forth in the preamble.

“Performance Criteria” or “Performance Criterion” means the relevant performance criteria for the Facility identified in Exhibit 14D.

“Permit Expenses” means the actual costs payable to a Governmental Authority and all other reasonable third-party costs and expenses incurred in connection with the application for and issuance of an Applicable Permit.

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization, limited liability company or any other entity or organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

“Placed in Service” means “placed in service” for purposes of Sections 48 and 168 of the Code.

“Progress Payment” has the meaning set forth in Section 8.3.

“Project Labor Agreement” means that certain Project Labor Agreement among Contractor and [\_\_\_\_\_].<sup>8</sup>

“Project Transaction Documents” means this Agreement, the Contractor Performance Security, the APA and any other agreements between Contractor or any Affiliate of Contractor and Owner relating to the engineering, procurement, construction, development, acquisition, ownership, operation or maintenance of the Facility.<sup>9</sup>

“Proposed Punch List” has the meaning set forth in Section 16.4(a).

“Prudent Utility Practice” means those standards of design, engineering, construction, workmanship, care and diligence and those practices, methods and acts that would be implemented and normally practiced or followed by prudent solar engineering, construction, and installation firms in the design, engineering, procurement, installation, construction, testing and commissioning (and operation associated therewith) of rate-based, utility-scale photovoltaic facilities in the Western United States and otherwise performing services of a similar nature in the jurisdiction in which the Work will be performed and in accordance with which practices, methods and acts, in the exercise of prudent and responsible professional judgment by those experienced in the industry in light of the facts known (or that reasonably should have been known) at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, good engineering design practices, safety, reliability, Applicable Codes, Applicable Laws, and Applicable Permits. Solely with respect to Section 21.5(a), “Prudent Utility Practice” shall mean those standards of care and diligence normally practiced by entities that operate and maintain rate-based, utility-scale photovoltaic power plants.

“PUCN” has the meaning set forth in Section 25.1.

“Punch List” has the meaning set forth in Section 16.4(a).

“Punch List Amount” means the cost or estimated cost reasonably determined by Owner to complete any Punch List Item in connection with the approval of the Proposed Punch List or Proposed Punch List in accordance with Section 16.4, as applicable.

“Punch List Estimate” means Contractor’s cost estimate for completing the Punch List Items.

“Punch List Holdback” means an amount equal to two hundred percent (200%) of the Punch List Amount for each Punch List Item.

“Punch List Items” means those non-critical finishing items with respect to the Facility (a) that consistent with Prudent Utility Practice do not affect the operability, reliability, safety, or

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<sup>8</sup> Note to Bidders: If the Site is on Tribal lands, any applicable Tribal labor requirements and related provisions will need to be addressed.

<sup>9</sup> NTD: Reference any O&M Agreement, Supply Agreement, LTSA, Performance Guarantee or other agreements between Owner and Contractor or an Affiliate of Contractor, as applicable.

mechanical, civil or electrical integrity of the Facility, (b) that Owner or Contractor identifies as requiring completion or containing non-material defects, and (c) the completion of which will not adversely affect the performance of the Facility, so long as the Facility is nonetheless ready for commercial operations in a safe and continuous manner and in accordance with Applicable Law and Applicable Permits.

“Real Property Rights” means all rights in or to real property necessary to perform the Work and to develop, construct, complete, operate, maintain and access the Facility and the Site, including those rights set forth in deeds, leases, option agreements, co-tenancy and shared facility agreements, Applicable Permits, easements, licenses, private rights-of-way agreements and crossing agreements that exist as of the Effective Date, including as set forth on Exhibit 2.

“Receiving Party” has the meaning set forth in Section 25.1.

“Reimbursement Amount” means an amount equal to the sum of (a) the Purchase Price (as defined in the APA), and (b) actual and reasonable out of pocket costs and expenses (including reasonable attorney’s fees) incurred by any Owner Party in the negotiation of the Project Transaction Documents and due diligence investigations conducted by Owner in connection therewith.

“Release” means the release, threatened release, discharge, deposit, injection, dumping, spilling, leaking or placing of any Hazardous Material into the environment so that such Hazardous Material or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters under Applicable Law and Applicable Permits.

“Required Manuals” means the manuals (including any Spare Parts manuals), instructions and training aids, whether created by Contractor, Subcontractor or Supplier, reasonably necessary for the safe and efficient operation, maintenance, curtailment, start-up and shut down of the Facility and Facility Equipment as reasonably determined by Owner or Operator, including those identified in Exhibit 7.

“Retainage” means an amount equal to ten percent (10%) of the amount payable pursuant to each Progress Payment (other than the payment to be made in connection with Final Completion).

“SCADA System” means the supervisory control and data acquisition system installed by Contractor in the Facility, as more specifically described in Exhibit 3 under “SCADA System”.

“Schedule of Values” means the schedule of values attached hereto as Exhibit 9 which allocates the Contract Price to different separately identifiable portions of the Work and includes the Cancellation Cost Cap and Cash Flow Curve.

“Scope of Work” means the scope of the work to be performed by Contractor under this Agreement, as further described in the Exhibits.

“Serial Defect” means any failure or non-conformance has occurred with respect to five percent (5%) or more units of any particular item of Facility Equipment, and such failure or non-conformance could reasonably be expected to result from the same cause.

“Site” has the meaning set forth in the Recitals.

“Site Condition” has the meaning set forth in Section 3.25.

“Site Safety Plan” means the site safety plan attached hereto as Exhibit 20.

“Spare Parts” means the spare parts provided by Contractor to Owner in accordance with Exhibit 27.

“Standard Test Conditions” has the meaning set forth in Exhibit 14C.

“Start-up and Commissioning” means the energization and Functional Testing of the Facility, including verifying completeness and readiness for operations and testing of the Facility.

“Subcontract” means any purchase order, agreement or subcontract with a Subcontractor.

“Subcontractors” means any Person (including a Supplier) that, directly or indirectly, and of any tier (other than Contractor but including any Affiliate of Contractor) supplies any items or performs any portion of the Work in furtherance of Contractor’s obligations under this Agreement.

“Substantial Completion” has the meaning set forth in Section 16.2.

“Substantial Completion Date” has the meaning set forth in Section 16.3.

“Supplier” means any Equipment supplier with which Contractor or Subcontractor contracts in furtherance of Contractor’s obligations under this Agreement.

“Survival Period” has the meaning set forth in Section 24.7.

“Taxes” means any and all taxes, charges, duties, imposts, levies and withholdings imposed by any Governmental Authority, including sales tax, use tax, property tax, transfer tax, income tax, withholding taxes, corporation tax, franchise taxes, margin tax, capital gains tax, capital transfer tax, inheritance tax, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, social security or other similar contributions, and any interest, penalty, fine or other amount due in connection therewith, excluding in all cases Permit Expenses.

“Technical Dispute” has the meaning set forth in Section 28.2(a).

“Technical Specifications” has the meaning set forth in the Recitals.

“Termination Payment” means (a) with respect to a termination by Contractor for an Owner Event of Default in accordance with Section 20.5(a) or a termination by Owner for convenience pursuant to Section 20.8, an amount equal to the Direct Costs incurred by Contractor (and not previously paid by Owner) through the effective date of the termination, which amount shall not in the aggregate exceed the Cancellation Cost Cap; (b) with respect to a termination by Owner for a Contractor Event of Default, such amount determined in accordance with Section 20.5(b); and (c) with respect to a termination by Contractor for an extended Force Majeure Event in accordance with Section 20.7, an amount equal to the sum of (i) the Reimbursement Amount, plus (ii) any other amounts paid by Owner under this Agreement plus (iii) ten percent (10%) interest on the amounts in subclauses (i) and (ii).

“Title Company” means [\_\_\_\_\_].

“Transmission Provider” means the transmission function of Nevada Power Company. Notwithstanding the foregoing, for purposes of this Agreement, Transmission Provider shall not be deemed to be Owner, an Owner Party or an Affiliate of Owner.

“Warranty” means, as applicable, the Defect Warranty or the Design Warranty.

“Warranty Period” means, as applicable, the Defect Warranty Period or the Design Warranty Period.

“Weekly Progress Report” means a weekly progress report prepared by Contractor setting forth the detail required in Exhibit 8B.

“Work” means all obligations, duties, and responsibilities assigned to or undertaken by Contractor under this Agreement, as further described in Exhibit 1, with respect to the Facility, including any of the foregoing obligations performed prior to the Effective Date, which shall be deemed to be Work performed by Contractor under this Agreement, notwithstanding the fact that it was performed in whole or in part prior to the Effective Date.

**1.3 Order of Precedence.** In the event of a conflict or inconsistency between any of the Contract Documents forming part of this Agreement, the following order of precedence shall apply: (a) any duly executed amendment or Change Order to this Agreement (and between them, the most recently executed amendment or Change Order shall take precedence); (b) this Agreement (to the extent not superseded by a subsequent amendment); (c) Exhibit 1, Exhibit 16, Exhibit 3, Exhibit 7, Exhibit 20 and Exhibit 21 to this Agreement in the order indicated; (d) the Exhibits to this Agreement not otherwise specified in subclause (c) above; and (e) any other Contract Documents not previously noted.

**1.4 Entire Agreement.** This Agreement and the exhibits attached hereto constitute the complete and entire agreement between the Parties with respect to the engineering, procurement, construction, testing and commissioning of the Facility and supersedes any previous communications, negotiations, representations or agreements, whether oral or in writing, with respect to the subject matter addressed herein. NO PRIOR COURSE OF DEALING BETWEEN THE PARTIES SHALL FORM PART OF, OR SHALL BE USED IN THE

INTERPRETATION OR CONSTRUCTION OF, THIS AGREEMENT. For the avoidance of doubt, this Agreement shall not supersede the other Project Transaction Documents, which shall remain in full force and effect.

**1.5 No Agency.** The Parties are independent contractors. Nothing in this Agreement is intended, or shall be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party (except and solely to the extent expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner's agent). Nothing in this Agreement shall be construed to give either Party any right, power or authority to enter into any agreement or undertaking for, or act as an agent or representative of, or otherwise bind, the other Party. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

**1.6 Invalidity.** Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but, to the extent permitted by law, if for any reason any provision which is not essential to the effectuation of the basic purpose of this Agreement is determined to be invalid, illegal or unenforceable, in whole or in part, such invalidity, illegality or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. Any such invalid, illegal or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid, illegal or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, illegal or unenforceable, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity, illegality or unenforceability and to restore this Agreement as near as possible to its original intent and effect (including economic effect).

**1.7 Binding Effect.** This Agreement shall be binding upon the Parties hereto and their respective successors, heirs and assigns and shall inure to the benefit of the Parties hereto and their respective permitted successors, heirs and assigns.

**1.8 Counterparts.** This Agreement may be signed in counterparts, each of which when executed and delivered shall constitute one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile, .pdf or emailed signatures, which shall be deemed to be an original and shall be as effective for all purposes as delivery of a manually executed counterpart.

**1.9 Effective Date.** The effective date of this Agreement is the date when this Agreement has been signed by both Parties (the "Effective Date"), and Owner shall be deemed to have issued a full notice to proceed as of the Effective Date.

**1.10 Time is of the Essence.** To the extent that there is not a specific time period specified in this Agreement, time is of the essence with respect to a Party's performance of its obligations under this Agreement.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

**2.1 Representations and Warranties of Contractor.** Contractor represents and warrants to Owner that as of the Effective Date:

(a) Organization, Standing and Qualification. Contractor is a [\_\_\_\_], duly organized, validly existing, and in good standing under the laws of the State of [\_\_\_\_], and has full power to execute, deliver and perform its obligations hereunder to own, lease and operate its properties and to engage in the business it presently conducts and contemplates conducting under this Agreement, and is and will be duly licensed or qualified and in good standing under the laws of the State of Nevada and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to execute and deliver this Agreement or perform its obligations hereunder.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Contractor of this Agreement will not (i) violate or conflict with or cause a default under any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents, (ii) violate or conflict with any Applicable Law or (iii) subject the Facility or any component part thereof to any lien other than as contemplated or permitted by this Agreement.

(d) Government Approvals. Other than with respect to the Applicable Permits, neither the execution nor the delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority. Contractor represents and warrants that all Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect or Contractor has no knowledge of any reason that any Contractor Acquired Permit cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit Contractor to timely commence and perform the Work to completion in accordance with the terms and conditions of this Agreement.

(e) Violation of Laws; No Suits; Proceedings. Contractor is not in violation of any Applicable Laws or judgment entered by any Governmental Authority, which violations, individually or in the aggregate, would materially and adversely affect its performance of any obligations under this Agreement. There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge after due inquiry,



threatened against it before any court, arbitrator or Governmental Authority that individually or in the aggregate could result in any materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

(f) Business Practices. Neither Contractor nor any Subcontractor, or their respective employees, officers, representatives, or other agents of Contractor have made or will make any payment or have given or will give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor is in compliance with the requirements set forth in Section 3.29.

(g) Licenses. All Persons who will perform any portion of the Work have or will have all business and professional certifications and licenses if and as required by the terms and conditions of this Agreement, Applicable Codes, Applicable Law and Applicable Permits to perform such portion of the Work under this Agreement and Contractor has no knowledge of any reason that any such certifications and licenses cannot be obtained in the ordinary course of business and within the timeframe necessary so as to permit such Persons to timely commence and perform any portion of the Work to completion in accordance with the terms and conditions of this Agreement.

(h) Financial Condition and Adequate Resources. Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement. Contractor has or will procure adequate resources and is qualified, in each case directly or through its Subcontractors, to perform the Work in accordance with the terms and conditions of this Agreement.

(i) Intellectual Property. Contractor owns or has the right to use, or will be able to secure from its Affiliates or Subcontractors the right to use, all Intellectual Property Rights necessary to perform the Work without infringing on the rights of others and to enable Owner to use the Intellectual Property Rights in connection with the ownership, operation, use, maintenance, modification, altering, commissioning, de-commissioning, disposal of or removal of the Facility without infringement on the rights of others. The Licensed Technology (and the use thereof to the extent used in accordance with the license granted under Section 14.1) do not and shall not infringe, or cause the infringement of, the Intellectual Property Rights of a third party.

**2.2 Representations and Warranties of Owner.** Owner represents and warrants to Contractor that as of the Effective Date:

(a) Organization, Standing and Qualification. Owner is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Nevada, and has the full power to execute, deliver and perform its obligations hereunder and engage in the

business it presently conducts and contemplates conducting under this Agreement, and Owner is and will be duly licensed or qualified and in good standing under the laws of the State of Nevada and in each other jurisdiction in which the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

(b) Due Authorization; Enforceability. This Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(c) No Conflict. The execution, delivery and performance by Owner of this Agreement will not violate or conflict with or cause a default under any Applicable Law or any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

## ARTICLE 3

### CONTRACTOR'S OBLIGATIONS

**3.1 Performance of Work.** Contractor shall diligently, duly and properly perform and complete the Work in accordance with the Scope of Work and the terms of this Agreement in order to construct the Facility according to the Construction Schedule and Milestone Schedule, place it into operation in conformance with the Contract Documents and the Technical Specifications, and achieve Final Completion of the Facility. Contractor acknowledges and agrees that it is obligated to perform the Work on a "turnkey basis" which means that Contractor is obligated to supply all of the Equipment, labor and design services and to supply and perform all of the Work, in each case as may reasonably be required, necessary, or appropriate (whether or not specifically set forth in this Agreement) to complete the Work such that the Facility satisfies the applicable terms and conditions set forth in this Agreement for the Contract Price, including, but not limited to any such work that would be required of a turnkey contractor of a rate-based, utility-operated solar photovoltaic generation project of comparable size and design in the Western United States and/or be included in the engineering, procurement and construction contract for the construction of such comparable project in accordance with the Contract Documents, all Applicable Laws, Applicable Codes and Prudent Utility Practices. Where this Agreement describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any incidental work reasonably inferred or required to complete the Work in accordance with this Agreement. Contractor shall execute the entire Work under this Agreement, including work not specifically delineated in this Section 3.1 or elsewhere in this Agreement to the extent necessary to complete the Facility in accordance with Prudent Utility Practice or to comply with Applicable Law and such Work shall be deemed included herein. Except as otherwise expressly specified herein, Contractor shall provide all facilities and services required for a complete photovoltaic solar power plant facility, including

all balance-of-system facilities set forth in the Scope of Work and the Technical Specifications, for the Contract Price.

**3.2 Scope of Work.** Contractor shall perform the Scope of Work to the extent necessary (a) for the proper execution and completion of the Work under this Agreement; (b) to supervise and direct the Work in a safe manner and perform all Work in accordance with this Agreement, Applicable Law, Applicable Permits and Prudent Utility Practice; (c) to achieve Final Completion of the Facility; and (d) to place the Facility into operation in conformance with the Contract Documents and the Exhibits and such that the Facility is in compliance with the Interconnection Agreement, Prudent Utility Practice, Applicable Codes, Applicable Laws and Applicable Permits. Subject to Owner's right to review and comment, Contractor shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under this Agreement. To that end, Contractor may, in its sole discretion, accelerate the Work and cause Milestones to be completed prior to the scheduled date therefor in the Construction Schedule; provided that Owner shall have no obligation to pay any Application for Payment in amounts in excess of the amount to which Contractor is entitled under Article 8 based upon the Schedule of Values.

**3.3 Properly Licensed; Sufficient Qualified Personnel.** Contractor shall use, and shall require each of its Subcontractors to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or Applicable Permits to enable such persons to perform work forming part of the Work.

**3.4 Utilities.** As part of the Work, Contractor shall arrange and pay for construction power and water (including all water used for dust control) and the installation of construction telecommunication lines and utilities, but only to the extent necessary for Contractor to perform its Work hereunder, and pay when due all such utility usage charges. For all permanent utilities, such as backfeed power, permanent water and power (i.e., for operations and maintenance facilities), permanent telecommunication lines, grid telemetry, and infrastructure necessary (including internet access) to transmit data gathered by the SCADA System, Contractor shall arrange and pay for such permanent utilities prior to the Substantial Completion Date and Owner shall pay for such permanent utilities after the Substantial Completion Date.

**3.5 Contract Documents.** Contractor shall deliver to Owner all Contract Documents as and when required pursuant to the terms of this Agreement, including Exhibit 7.

**3.6 Record-Keeping.** All Documentation relating to the Facility shall be kept by Contractor in an organized fashion for reference by Owner during the performance by Contractor of the Work. Contractor shall also maintain at the Site at least one (1) copy of all Contractor Submittals, Change Orders and other modifications.

**3.7 Materials and Equipment.** As part of the Work, Contractor shall procure all Facility Equipment (including Modules) and shall provide or cause to be provided, at its own expense, all Construction Equipment, machinery, tools, consumables, temporary structures (including temporary facilities for Owner at the Site) or other items as may be required for

Contractor to complete the Work. Contractor shall not incorporate any Facility Equipment that (a) constitutes “prototype” equipment pursuant to the risk ratings standards customarily employed by the commercial insurance industry and (b) on account of being deemed “prototype” equipment, would not be insurable under the insurance policies to be obtained by the Parties pursuant to Article 23.

**3.8 Compliance and Cooperation with EITC Requirements, Applicable Laws, Applicable Permits, Applicable Codes and Prudent Utility Practices.** Whether or not expressly set forth in any specific section or exhibit, Contractor shall comply with all Applicable Laws, Applicable Permits, Applicable Codes and Prudent Utility Practices in the course of performing the Work and cause the Facility to comply with all Applicable Laws and Applicable Permits prior to the Substantial Completion Date. Contractor shall provide to Owner such information, reports, and documents and take such other actions as may be reasonably requested by Owner to assist Owner in performing its notification and submittal responsibilities as set forth in any Applicable Permit, including as set forth in Section 3.24, and in connection with Owner’s claiming of EITCs and sales and property tax abatements with respect to the Facility. The Facility shall be designed and constructed in compliance with all of the requirements for a renewable energy system as may be provided under the Nevada Revised Statutes, including Chapter 704, Sections 7801 through 7828, any regulations promulgated thereunder, and the associated implementing rules and regulations of the PUCN.

**3.9 Contractor Acquired Permits; Other Approvals.** Contractor shall obtain and maintain in full force and effect the Contractor Acquired Permits and shall file on a timely basis any documents as are required to obtain and maintain the Contractor Acquired Permits in full force and effect. Contractor shall also be responsible for obtaining and maintaining in Contractor’s or Owner’s name in connection with the Work, as applicable, all construction permits, transportation permits, road use agreements, crossing rights with respect to electrical distribution lines, cable TV lines, drain tiles, rural water lines, telecommunication lines, and other licenses and, with respect to rights-of-way, those necessary to build the Facility, all of which, as necessary for operation of the Facility, shall be included as Contractor Submittals as a condition of Final Completion. The Contract Price includes consideration for Contractor to obtain the Contractor Acquired Permits and such other approvals. Any Taxes, Permit Fees and other costs required for the procurement or maintenance of the Contractor Acquired Permits and such other approvals shall be at Contractor’s sole expense. Additionally, Contractor shall provide reasonably requested assistance to Owner in obtaining any Owner Acquired Permit.

**3.10 Spare Parts.** Contractor shall (i) no later than six (6) months prior to the Guaranteed Substantial Completion Date, provide a list of recommended Spare Parts as required pursuant to Exhibit 27 and specifically incorporating any spare parts determined by Operator to be in keeping with Prudent Utility Practice and (ii) on or before the Substantial Completion Date, provide the Spare Parts required pursuant to Exhibit 27 and this Section 3.10 to Owner. Such Spare Parts delivered to Owner by Contractor pursuant to this Section 3.10 or Exhibit 27 shall be delivered to the location directed by Owner, at Contractor’s sole cost and expense, and free and clear of any liens.

### **3.11 Construction Schedule; Progress Reports; Meetings.**

(a) Within thirty (30) Days after the Effective Date, Contractor shall deliver to Owner the Construction Schedule, which shall (i) be a Gantt chart developed using Primavera, (ii) designate appropriate Contractor Critical Path Items utilizing the critical path method and (iii) be consistent with Exhibit 4 and inclusive of all Milestones set forth therein and shall provide necessary data about the timing for Owner decisions and all Owner milestones. The Construction Schedule shall contain Milestones and include details to support all major engineering, procurement, construction, commissioning and testing activities of the Facility. The Construction Schedule shall form the basis for progress reporting through the course of the performance of the Work. The Construction Schedule shall be subject to Owner's approval, such approval not to be unreasonably withheld or delayed. The Construction Schedule and any revisions thereto shall be submitted in both written and electronic format to Owner on at least a monthly basis.

(b) Contractor shall prepare and submit to Owner (i) through the Final Completion Date, Monthly Progress Reports in the format required under Exhibit 8A (which shall include a summary of any material deviations from the prior Construction Schedule and the reasons for such deviation) on the sooner of (x) delivery of an Application for Payment and (y) ten (10) Days after the end of each calendar month and (ii) through the Substantial Completion Date, Weekly Progress Reports in the format required under Exhibit 8B delivered on a weekly basis. In addition, Owner or any Affiliate of Owner shall be entitled to attend and participate in meetings convened by Contractor on the Site and other regularly scheduled meetings with respect to the progress and performance of the Facility.

**3.12 Transportation.** Contractor shall provide transportation and shipping with respect to all Equipment hereunder and shall be responsible for all necessary Applicable Permits and documentation relating thereto. All transportation and shipping services, including quality assurance, shipping, loading, unloading, customs clearance (and payment of any customs duties in connection therewith), receiving, and any required storage and claims shall be included in the Contract Price.

**3.13 Security.** Contractor shall be responsible for the proper security and protection of the Site and all Equipment and materials furnished by Contractor and the Work performed until Substantial Completion. Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports to Owner in a timely manner.

**3.14 Safety; Quality Assurance.** Contractor shall take all precautions for the safety of all Persons present at the Site and to prevent accidents or injury to individuals or damage to property on, about, or adjacent to the Site. Contractor shall provide to all such Persons, at its own expense, safety equipment required to protect against injuries during the performance of the Work and shall provide (or cause to be provided) appropriate safety training to its employees, Subcontractors and Suppliers. Contractor and Owner hereby agree that the Site Safety Plan shall be implemented by Contractor to secure the Facility and the Site during the execution of the Work, both before and after transfer of custody and control to Owner, including any remedial or warranty Work. Contractor shall notify all Persons accessing the Site of the Site Safety Plan,

which shall apply to all such Persons. During the performance of the Work, Contractor shall be responsible for the oversight of all Persons at the Site and for the performance of the Work in accordance with the Site Safety Plan and with all Applicable Laws governing occupational health and safety, Applicable Permits and Prudent Utility Practices. Contractor shall require that any employee or personnel of Contractor or any Subcontractor or Supplier shall have passed a drug test within ten (10) Days prior to first coming on to the Site. Contractor and Owner further agree that the Quality Assurance Plan attached hereto as Exhibit 21 shall be implemented by Contractor.

**3.15 Clean-Up.** Contractor shall keep the part of the Site where the Facility is to be located and surrounding areas free from accumulation of debris, waste materials or rubbish caused by the Work throughout all phases of the Work, and as a condition of Final Completion or as soon as practicable after termination of this Agreement by Owner, all of Contractor's and Subcontractors' personnel shall have left the Site and Contractor shall remove from the part of the Site where the Facility is located and surrounding areas all debris, waste materials, rubbish, tools, Construction Equipment, machinery and surplus materials arising from or due to the Work. Should Contractor fail to comply with its obligations under this Section 3.15, Owner may undertake same and charge the cost thereof to Contractor.

**3.16 Suppliers and Subcontractors.**

(a) Set forth in Exhibit 22 is a schedule of qualified Major Subcontractors who, notwithstanding anything to the contrary herein, Contractor shall be entitled to engage in furtherance of Contractor's obligations under this Agreement without the consent of Owner. Contractor shall notify Owner of any proposed additional Major Subcontractors or replacements thereof with whom Contractor anticipates engaging. Owner shall have the right to review and approve such engagement, such approval not to be unreasonably withheld or delayed. Contractor shall update and amend Exhibit 22 by notice to Owner from time to time as necessary to reflect approved additions or changes thereto, provided Contractor may not change the supplier of Modules without Owner's express written consent in its sole discretion.

(b) No Subcontract shall bind or purport to bind Owner, but each Subcontract shall (i) provide that the Subcontractor expressly agrees, upon Owner's request if this Agreement is terminated, to the assignment of such Subcontract to, at Owner's request, Owner, a Financing Party or any successor EPC contractor to Contractor, (ii) incorporate by reference and flow down the provisions of this Agreement to the work or services performed by such Subcontractor, irrespective of whether such provisions are expressly made to so apply, including any provisions related to standards of performance, safety, insurance, indemnification, liability, choice of law and dispute resolution and (iii) provide that Owner, any Financing Party or any successor EPC contractor are a third-party beneficiary under such Subcontract.

(c) The use by Contractor of any Subcontractor shall not (i) constitute any approval of the Work undertaken by any such Subcontractor, (ii) relieve Contractor of its duties, responsibilities, obligations or liabilities hereunder, (iii) relieve Contractor of its responsibility for the performance of any work rendered by any such Subcontractor or (iv) create any relationship between Owner, on the one hand, and any such Subcontractor, on the other hand, or

cause Owner to have any responsibility for the actions or payment of such Subcontractor. As between Owner and Contractor, Contractor shall be solely responsible for the acts, omissions or defaults of its Subcontractors and any other Persons for which Contractor or any such Subcontractor is responsible (with the acts, omissions and defaults of its Subcontractors and any such other Person being attributable to Contractor).

(d) In no event shall any act or omission by any Subcontractor constitute a Force Majeure Event except to the extent caused by an event or circumstance that itself constituted a Force Majeure Event.

(e) Until the Final Completion Date, Contractor shall furnish Owner with (i) claims, notices of claim, and other information relating to disputes with any Subcontractor and (ii) such information with respect to any Subcontractor as Owner may reasonably request; it being understood and agreed that information that Owner may reasonably request may include technical specifications, drawings, operating and maintenance manuals, Spare Parts lists, sourcing information for Spare Parts and consumables, inspection and test reports and training materials relative to the Work. Until the expiry of the Defect Warranty Period, Contractor shall furnish Owner with reports received from the Subcontractors or other Persons relating to recall notices, defect notices or other similar product communications.

**3.17 Insurance.** Contractor and each Subcontractor shall obtain and maintain insurance required in accordance with Article 23 and Exhibit 13.

**3.18 Contractor's Key Personnel.** Contractor shall appoint Contractor's Key Personnel in accordance with Section 5.2.

**3.19 Hazardous Materials.** Contractor shall comply with the provisions of Article 12 with respect to Hazardous Materials as part of and in connection with the Work.

**3.20 Contractor Performance Security.** Contractor shall provide to Owner and maintain until expiry of the Warranty Period the Contractor Performance Security in accordance with Section 8.8.

**3.21 FERC Electrical Plant Chart of Accounts.** Within thirty (30) Days after the Final Completion Date, Contractor shall deliver to Owner a FERC Unit of Plant Cost Allocation Book, including a FERC Electrical Plant Chart of Accounts, containing the information described in Exhibit 28 and otherwise in form and substance acceptable to Owner. Owner shall have thirty (30) Days to review such FERC Unit of Plant Cost Allocation Book and provide comments to Contractor, and Contractor shall incorporate Owner's comments therein and provide the final FERC Unit of Plant Cost Allocation Book to Owner not later than seventy-five (75) Days after the Final Completion Date.

**3.22 Delay Response Plan.** If, at any time during the performance of the Work, the updated, detailed schedule reflecting actual progress to date included in a Monthly Progress Report delivered under Section 3.11(b) shows that the critical path of the Work is delayed such that (i) Availability Completion is reasonably expected to occur later than the Guaranteed

Availability Completion Date, or (ii) Substantial Completion is reasonably expected to occur later than the Guaranteed Substantial Completion Date, Contractor shall, in any such instance, prepare and submit to Owner within ten (10) Business Days a plan which specifies in reasonable detail the actions to be taken by Contractor and the associated schedule to explain and display how Contractor intends to recover from such delay (the “Delay Response Plan”). The corrective actions described in the Delay Response Plan that Contractor proposes to undertake with respect to the Work shall be (a) undertaken at Contractor’s sole cost and expense and (b) designed and intended to recover the schedule for the Facility as promptly as reasonably practicable. Contractor shall promptly and diligently perform the Work in accordance with the Delay Response Plan until the Work is progressing in compliance with the Construction Schedule and the critical path of the Work. Unless set forth in a Change Order executed by the Parties, the implementation of any Delay Response Plan shall not change the Guaranteed Dates.

### **3.23 Project Labor Agreement; Employees.**

(a) Contractor shall comply in all material respects with the terms and conditions of the Project Labor Agreement; provided, however that Contractor is solely responsible for such compliance, and the Project Labor Agreement and compliance thereunder are not obligations of Owner and do not excuse Contractor from, or entitle Contractor to any schedule or cost relief with respect to, its performance of Work and other obligations under this Agreement.

(b) Contractor shall remove from any performance of the Work, and cause any Subcontractor to remove from any performance of the Work, as soon as reasonably practicable, any Person performing the Work (including any Key Personnel) who is creating a risk of bodily harm or injury to themselves or others or whose actions create a risk of material property damage. Additionally, as soon as practicable after receiving a request by Owner Contractor shall remove such Person (including any Key Personnel) from the Site, and cause any Subcontractor to remove such Person (including any Key Personnel) from the Site.

(c) Contractor shall also remove, and cause its Subcontractors and agents to remove, any employee, agent or other Person engaged in the performance of the Work for Contractor (including any Key Personnel) or such Subcontractor, as the case may be, whose off-Site conduct violates any Applicable Laws or Applicable Permits. If a Person is harming or having a negative effect on the perception of the Facility or Owner’s relationship with the surrounding community based on two or more documented incidents, Owner may provide notice to Contractor and Contractor and Owner will meet to discuss an appropriate response. If the Parties cannot otherwise agree Contractor shall remove and cause its Subcontractors and agents to remove such Person.

**3.24 Notification.** To the extent not prohibited by Applicable Law, with respect to the Facility, Contractor shall provide Owner, promptly and in any event within five (5) Business Days (or such other time period set forth below) following (a) Contractor’s actual knowledge of its occurrence or (b) Contractor’s receipt of the relevant documentation, with written:



(i) Notification of all events requiring the submission by Contractor of a report to any Governmental Authority pursuant to the Occupational Safety and Health Act;

(ii) Notifications and copies of all citations by Governmental Authorities concerning accidents or safety violations at the Site and, within five (5) Business Days of such written notice, a follow up report containing a description of any steps Contractor is taking and proposes to take, if any, with respect to such accident or safety violations;

(iii) Notifications and copies of all written communication to or from any Governmental Authority, relating to any breach or violation or alleged breach or violation of any Applicable Law, any Applicable Permit, Applicable Codes or any provision of the Interconnection Agreement;

(iv) Updates of status of communications with insurance companies related to claims with respect to an accident, incident or occurrence at the Site or in the performance of Work;

(v) Notifications and copies of any actions, suits, proceedings, patent or license infringements, or investigations pending or threatened against it at law or in equity before any court or before any Governmental Authority (whether or not covered by insurance) that (A) if determined adversely to Contractor would have a material adverse effect on Contractor's ability to perform its obligations under this Agreement or (B) relates to the Facility; and

(vi) Notifications within (A) (x) one (1) Business Day after Contractor has actual knowledge of any accident related to the Work that has a material and adverse impact on the environment or on human health (including any accident resulting in the loss of life) and (y) within three (3) Business Days after Contractor has actual knowledge of any recordable, lost-time injury related to the Work and (B) ten (10) Business Days thereafter, a report describing such accident or injury, the impact of such accident or injury and the remedial efforts required and (as and when taken) implemented with respect thereto.

**3.25 Site Conditions.** Contractor has inspected the Site, including both surface and subsurface conditions, and has satisfied itself as to all matters regarding the geotechnical and physical condition thereof, including those matters related to the environment, availability and quality of water, heat and other weather conditions at the Site, physical conditions at the Site, topography and ground surface conditions (including as such conditions may impact surface water runoff), any underground utilities, sound attenuation conditions, subsurface geology and conditions, nature and quality of surface and subsurface materials to be encountered (collectively, "Site Conditions"), and shall be responsible at its sole expense for all necessary works in relation to, or because of, such Site Conditions both below and above ground (including (subject to Article 12 and Article 24) the existence of Hazardous Materials, archeological or religious sites, and monuments) on the Site in connection with Contractor's performance of the Work.

Contractor shall be solely responsible for performing any preliminary Work on the Site necessary for the commencement of construction to occur, including removal of all physical impediments to performing Work on the Site, above and below ground, and preparing the Site for the Work. Contractor specifically acknowledges and accepts the Site Conditions and agrees that no claims by Contractor for additional payment or extensions of time shall be permitted with respect to the Site Conditions on the ground of any misunderstanding or misapprehension of the matters referred to in this Section 3.25 or on the ground of incorrect or insufficient information in respect of the Site or the Site Conditions, and Contractor specifically waives any right to seek a Change Order relating to any of the foregoing. Contractor acknowledges and agrees that none of Owner, any of its Affiliates or any of its agents or representatives have made, nor shall they make, any express or implied warranty to Contractor as to Site Conditions. Additionally, Contractor shall install the piles necessary for the Facility as part of the Scope of Work. If additional soil samples, other geotechnical information or information about Site Conditions are needed before the piles can be installed, this additional sampling or gathering of additional information is the sole responsibility of Contractor.

**3.26 Other Reports and Quality Control Documents.** Contractor shall provide Owner with other reports and quality control documentation relating to the Work, the Facility Equipment, the Facility and the Subcontractors as Owner may reasonably request.

**3.27 Construction Methods.** Contractor shall make itself and its Subcontractors available to discuss and shall promptly respond to any reasonable questions from Owner, Owner's Engineer, any Financing Parties or the Independent Engineer regarding construction methods or procedures used during construction of the Facility.

**3.28 Cooperation; Access.** Contractor shall, and shall cause the other Contractor Parties and any Subcontractor and their respective hired personnel to, cooperate with Owner and its contractors and other hired personnel in coordinating the work of Owner's contractors and personnel who may be working at the Site with the Work being performed by any Contractor Party or Subcontractor at the Site. Contractor shall take reasonable efforts to accomplish any necessary modification, repairs or additional work with respect to the Facility after Substantial Completion with minimal interference with commercial operation of the Facility or any portion thereof and that reductions in and shut-downs of all or part of the Facility's operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and any impact on Owner's native load or other contractual obligations. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off-peak hours, nights, weekends and holiday.

**3.29 Business Ethics.** Contractor, its employees, officers, agents, representatives and Subcontractors shall at all times maintain the highest ethical standards and avoid conflicts of interest in the performance of Contractor's obligations under this Agreement and shall comply with the Owner's Code of Business Conduct as it may be revised, updated or amended from time to time. In conjunction with its performance of the Work, Contractor and its employees, officers, agents and representatives shall comply with, and cause its subcontractor and its employees, officers, agents and representatives to comply with, all Applicable Laws, statutes, regulations and codes prohibiting bribery, corruption, kick-backs or similar unethical practices including,

without limitation, the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act 2010. Without limiting the generality of the foregoing, Contractor specifically represents and warrants that neither Contractor nor any Subcontractor, employees, officers, representatives or other agents of Contractor have made or will make any payment, or have given or will give anything of value, in either case to any government official (including any officer or employee of any governmental authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall maintain and cause to be maintained effective accounting procedures and internal controls necessary to record all expenditures in connection with this Agreement and to verify Contractor's compliance with this Section 3.29. Owner shall be permitted to audit such records as reasonably necessary to confirm Contractor's compliance with this Section 3.29. Contractor shall immediately provide notice to Owner of any facts, circumstances or allegations that constitute or might constitute a breach of this Section 3.29 and shall cooperate with Owner's subsequent investigation of such matters. Contractor shall indemnify and hold Owner harmless for all fines, penalties, expenses or other losses sustained by Owner as a result of Contractor's breach of this provision. The Parties specifically acknowledge that Contractor's failure to comply with the requirements of this Section 3.29 shall constitute a condition of default under this Agreement.

### **3.30 Real Property Rights.**

(a) Compliance with Real Property Rights. Contractor shall comply with the terms of the Real Property Rights.

(b) Access to Site. If the Real Property Rights do not allow for the currently contemplated route of access to the Site, then obtaining any additional Real Property Rights needed for alternative routes of access and the construction and use of such alternative routes of access to the Site shall be at Contractor's sole cost and expense. Contractor shall be responsible to ensure that the access to the Site is sufficient to permit cranes and other operating and rigging equipment that will be used in the performance of the Work, if any, freedom to maneuver on or about the Site.

(c) Relocation of Facilities. If any lack of necessary Real Property Rights or exercise by a counterparty of its rights under any agreement relating to the Real Property Rights requires relocation of any utilities, transmission lines or other facilities from their existing or currently planned location, Contractor shall bear the sole construction cost associated with relocating any such utilities, transmission lines or other facilities.

(d) Construction Real Property Rights. To the extent not already obtained, Contractor shall obtain any additional Real Property Rights and easements necessary for Contractor to perform the Work. Contractor shall notify Owner upon the occurrence, or potential occurrence, of a dispute, conflict, confrontation, or other similar problem, or potential problem, involving Real Property Rights or one or more owners or occupiers of land so situated as to potentially result in a situation that would reasonably be expected to have a material adverse effect upon the performance of the Work. Owner shall cooperate with Contractor in resolving all such problems.

(e) Damage from Construction. Contractor shall be required to reimburse Owner for any payment Owner is required to make to any other party to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work.

(f) Acknowledgment. Contractor acknowledges that it has reviewed the Real Property Rights, confirmed adequacy of the Real Property Rights, and is satisfied that such Real Property Rights are sufficient for Contractor to perform the Work hereunder.

**3.31 Tax Abatement Requirements.** Contractor acknowledges that Owner expects to obtain the sales and property tax abatements applicable to the Facility under Nevada law and recognizes that such abatements place specific requirements on Contractor and the construction of the Facility. In connection therewith, Contractor agrees and warrants that all Work will be carried out in all respects necessary to fully comply with the requirements of Nevada Revised Statutes Chapter 701A, Sections 360 through 390, and any regulations promulgated thereunder, and Contractor agrees to cooperate with all requests by Owner in connection therewith.

### **3.32 Training of Personnel.**

(a) Design and Review of Training Program. Contractor shall design the training program (in accordance with the provisions of Exhibit 1) to be used for the training of Owner's designated operating personnel in the requirements for the start up, shut-down, operation and maintenance of, and safety, general process understanding and emergency procedures for, the Facility and all of its sub-systems and shall submit such training program to Owner by no later than the date that is six (6) months prior to the Guaranteed Availability Completion Date. Owner will review, comment on, and approve or disapprove such program in writing within twenty-five (25) Days after such submission by Contractor. If Owner conditions its approval on reasonable changes in the program submitted by Contractor, Contractor will effect such changes at no additional cost to Owner and resubmit the program to Owner within ten (10) Days after Contractor receives Owner's conditional approval. Owner will then have ten (10) Days after such resubmission to review, comment on the original comments, and approve or disapprove the program as resubmitted by Contractor. Such procedure shall continue with the same ten (10) Day time periods until a program is approved by Owner.

(b) Commencement of Training. Commencing on the date that is six (6) months prior to the Guaranteed Availability Completion Date, and in accordance with Section 3.2, Contractor shall train Owner's designated operating personnel in the requirements for the startup, shut-down, operation and maintenance of, and safety, general process understanding and emergency procedures for, the Facility and all of its sub-systems pursuant to the training program approved by Owner as set forth in Section 3.32(a).

## ARTICLE 4

### OWNER'S OBLIGATIONS

**4.1 Access.** From the Effective Date until the Substantial Completion Date, Owner shall provide Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Work and perform its obligations in accordance with this Agreement. From the Substantial Completion Date until the Final Completion Date, Owner shall provide Contractor with reasonable access to the Site as suitable and necessary for Contractor to complete the Punch List Items. Owner shall also provide Contractor with access to the SCADA System (consistent with Section 25.2). Owner shall provide reasonable access to the Site for Contractor to complete work in connection with the Warranties. Notwithstanding the foregoing, Contractor's access shall be subject to the terms of the Real Property Rights and any lack of access due to Contractor's failure to comply with the Real Property Rights or otherwise with the terms of this Agreement shall not be considered a breach by Owner.

**4.2 Compliance with Laws and Permits.** Owner shall at all times fully comply with Applicable Laws and Applicable Permits. Owner shall obtain and maintain in full force and effect all Owner Acquired Permits.

**4.3 Owner Scope.** Owner shall perform any obligations clearly identified as being Owner's responsibility pursuant to Exhibit 1. In connection with Owner's obligations under this Agreement, Owner shall be entitled to hire any third party quality consultants to advise Owner concerning the quality control and performance of the Facility.

**4.4 Owner's Representative.** Owner shall appoint an Owner's Representative in accordance with Section 5.1.

**4.5 Insurance.** Owner shall obtain and maintain insurance required in accordance with Article 23.

**4.6 Cooperation.** Owner shall, and shall cause its contractors and their respective hired personnel to, cooperate with Contractor and Subcontractors in coordinating the work of Owner's contractors and personnel who are working at or near the Site with the Work being performed by any Contractor Party or Subcontractor at or near the Site.

**4.7 Owner-Provided Information.** Owner, or its Affiliates, or their respective employees, representative and agents (or Owner's Engineer) may provide Contractor with opinions, recommendations and other statements or information and Contractor acknowledges that all such opinions, recommendations, statements and information have been or will be provided as background information and as an accommodation to Contractor. Contractor further acknowledges that neither Owner nor any of its Affiliates or their respective employees, representative or agents (nor Owner's Engineer) makes any representations or warranties with respect to the accuracy of such information (including oral statements) or opinions expressed. Contractor further agrees, represents and warrants that it is not relying on Owner or Owner's Affiliates, or any of their respective employees, representatives or agents (or Owner's Engineer)

for any information, data, inferences, conclusions, or other information with respect to Site Conditions, including the surface and sub-surface conditions of the Site and the surrounding areas, or the design of the Facility, the Work, or otherwise.

## ARTICLE 5

### REPRESENTATIVES; KEY PERSONNEL

**5.1 Owner's Representative.** Owner designates, and Contractor agrees to accept, [\_\_\_\_\_] as Owner's Representative for all matters relating to this Agreement and Contractor's performance of the Work (except as otherwise stated in this Agreement). The acts and omissions of Owner's Representative with respect to this Agreement are deemed to be the acts and omissions of Owner and shall be fully binding upon Owner. Owner may, upon written notice to Contractor pursuant to Article 27, change the designated Owner's Representative.

**5.2 Contractor's Key Personnel and Contractor's Representative.** Contractor designates, and Owner accepts, those individuals set forth on Exhibit 5 (the "Key Personnel") for all matters relating to Contractor's performance under this Agreement. The individual designated by Contractor on Exhibit 5 as "Contractor's Representative" (the "Contractor's Representative") shall have full responsibility for the prosecution and scheduling of the Work and any issues relating to this Agreement. If Contractor elects to replace Key Personnel, it shall promptly deliver a notice to Owner with the name and résumé of the proposed replacement individual. Owner shall have the right to approve any such replacement of Key Personnel, provided, however, that such approval shall not be unreasonably withheld or delayed. The actions taken by Contractor's Representative are deemed to be the acts of Contractor.

**5.3 Power to Bind.** The Parties shall vest, respectively, Owner's Representative and Contractor's Representative with sufficient powers to enable them to assume the obligations and exercise the rights of each Party, as applicable, under this Agreement.

**5.4 Notices.** Notwithstanding Section 5.1, Section 5.2, and Section 5.3, all amendments to this Agreement, Change Orders, notices and other communications between Contractor and Owner contemplated herein shall be delivered in writing and otherwise in accordance with Article 27.

## ARTICLE 6

### INSPECTION

**6.1 Inspection.** Owner, its Affiliates, its representatives (including Owner's Engineer), any Financing Party, its representatives (including any Independent Engineer), and the Transmission Provider (collectively, "Owner Inspection Parties") shall have the right to observe and inspect any item of Facility Equipment at the Site, including to witness any Facility Test, and the material, design, engineering, service, workmanship or any other portion of the Work at the Site; provided that (a) such observations and inspections shall be arranged at reasonable times and with reasonable advance notice to Contractor and (b) Owner has granted

such Person access to the Site and Work for such purpose. Notwithstanding the foregoing, any personnel of such Owner Inspection Parties that have completed Contractor's safety training and worker environmental training may observe and inspect the Work at the Site, including to witness Facility Tests, at any time subject to compliance with the Site Safety Plan. Prior to Substantial Completion, Contractor shall promptly correct or cause the correction of any part of the Work that is defective, deficient or is otherwise not in accordance with this Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner has previously reviewed or inspected or otherwise accepted such part of the Work in any way. Contractor shall bear the cost of re-performing any defective, deficient or non-conforming Work and removing any deficient Work from the Site. In the event that any part of the Work is discovered to be in a defective, deficient or non-conforming condition after Substantial Completion, correction of such defective, deficient or non-conforming condition shall be governed by Article 21.

**6.2 Off-Site Inspections.** If requested by Owner, Contractor shall obtain access and arrange for Owner Inspection Parties to inspect the off-Site facilities of Contractor and any Supplier, including to witness tests of the Facility Equipment being supplied by them and to partake in manufacturing facility tours, such inspections to be arranged at reasonable times and with reasonable advance notice. Contractor shall incorporate a forward-looking schedule into each Monthly Progress Report of the tests (if any) to be performed on such Facility Equipment. If any Owner Inspection Party desires to be present at any such test listed on the Monthly Progress Report, Owner shall give Contractor five (5) Business Days' notice prior to the date of such test. If the Contractor proposes to conduct any testing on Facility Equipment that is not otherwise identified in a Monthly Progress Report, the Contractor must provide the Owner Inspection Parties no less than ten (10) Business Days' notice of such proposed testing so that such Owner Inspection Parties may arrange to observe such testing. In addition, if any Owner Inspection Party requests to inspect the off-Site facilities of any other Supplier and any Subcontractor, or to witness any test of the Facility Equipment, such inspections are to be arranged at reasonable times and with reasonable advance notice.

## ARTICLE 7

### CONTRACT PRICE

**7.1 Contract Price.** As full compensation for the Work and all of Contractor's obligations hereunder, Owner shall pay to Contractor, and Contractor agrees to accept as full compensation for the Work, the Contract Price. All payments due and payable to Contractor shall not exceed the applicable amount for such period in the Cash Flow Curve set forth in the Schedule of Values. The Contract Price shall be adjusted only as expressly provided under the terms of this Agreement and is otherwise firm and fixed and, except as otherwise indicated in Article 8 below, shall be deemed to include all expenses to be incurred by Contractor related to Contractor's performance of its obligations under this Agreement. The Contract Price includes all Taxes except Owner Taxes as provided in Article 9, as well as all Permit Fees related to all Contractor Acquired Permits and assistance provided by Contractor in acquiring all Owner

Acquired Permits and any other obligation of Contractor hereunder. The Contract Price shall be paid by Owner to Contractor in accordance with the terms of Article 8.

## **ARTICLE 8**

### **PAYMENT PROCESS & PERFORMANCE SECURITY**

#### **8.1 Payments.**

(a) Owner shall pay the Contract Price according to the Schedule of Values. Each Progress Payment shall be due and payable only to the extent it is supported by the completion of the corresponding Work set forth in the Schedule of Values for the payment of such Progress Payment. Subject to and in accordance with any mutually agreed upon Change Order, in no circumstance shall Owner have an obligation to pay any Application for Payment in amounts in excess of the Schedule of Values.

(b) Within thirty (30) Days after the acceptance of the Certificate of Substantial Completion, Owner shall release to Contractor fifty percent (50%) of the Retainage, less an amount equal to the Punch List Holdback for all Punch List Items that have not been completed at such time pursuant to the terms hereof. On the Final Completion Date, concurrent with the payment for the Final Completion, Owner shall release to Contractor any remaining Punch List Holdbacks then held by Owner. Any interest accruing on the Retainage shall accrue for the account of Owner and not Contractor.

(c) If Contractor fails to perform any Punch List Item on the Punch List within sixty (60) Days after the Substantial Completion Date, Owner may elect by written notice to Contractor to retain the Punch List Holdback applicable to such Punch List Item and complete such Punch List Item itself. Upon Owner making such election, Contractor shall forfeit any return of such portion of the Punch List Holdback and Contractor's obligation to perform such Punch List Item shall be deemed satisfied.

(d) The remaining fifty percent (50%) of the Retainage not addressed in Section 8.1(b) shall be held by Owner as security for completion of Contractor's obligations under the Warranty and shall be released at the end of the Warranty Period, except as otherwise provided under Section 21.6(b).

**8.2 Milestone Assessment.** Contractor and Owner shall periodically, and in any event at least once each month, review the Work completed and assess the progress of on-Site Work completed and completion of the relevant Milestone. Owner's Engineer and any Independent Engineer may be present during such review and assessment of the Work.

**8.3 Application for Payment.** On or before the tenth (10<sup>th</sup>) Day of each month during the performance of the Work, Contractor shall submit to Owner an Application for Payment with respect to that portion of the Work (including Punch List Items) which Contractor has satisfactorily completed during that month and for which Contractor has not been previously paid. Each Application for Payment shall set forth, as the amount of the Contract Price



Contractor is entitled to be paid for such month, with respect to the items of Work set forth in the Schedule of Values, the aggregate of the amounts obtained by multiplying (x) the value of each item of Work set forth in the Schedule of Values and (y) that portion of such item of Work, expressed as a percentage, which has been satisfactorily completed during such month, as verified and approved by Owner, less (z) Retainage (for such month, the “Progress Payment”). The Application for Payment in respect to Substantial Completion shall be delivered when required under Section 16.3. Each Application for Payment shall be reasonably detailed and shall be accompanied by supporting Documentation evidencing the achievement of the Milestone pursuant to the Schedule of Values for which the Progress Payment is being requested, shall be accompanied by lien waivers required to be delivered pursuant to Section 8.4 and shall be sent by either (i) written notice, or (ii) electronic mail and confirmed by first class mail (with the date of receipt of the original by first class mail to be the date of receipt). In addition, as a condition precedent to Owner’s obligation to make payment, Contractor shall be current in its delivery of Monthly Progress Reports, Weekly Progress Reports and other Documentation required for all periods through the month for which payment is requested. In no event shall the aggregate amounts invoiced by Contractor or payable by Owner under each Application for Payment exceed the aggregate amount of the Contract Price payable cumulatively through such month according to the Cash Flow Curve. Owner shall make all payments of undisputed amounts when they become due, but in any event, no later than thirty (30) Days after receipt of the Application for Payment; provided that the payments in respect of any Application for Payment with respect to Substantial Completion shall be due within thirty (30) Days after Owner’s acceptance of the Certificate of Substantial Completion. If Owner disputes a portion of an Application for Payment, Owner shall notify Contractor of such Dispute and shall pay to Contractor the undisputed portion in accordance with this Section 8.3. If such dispute is resolved within thirty (30) Days after receipt of the Application for Payment, Owner shall make payment of such resolved amounts within thirty (30) Days after resolution of the dispute. No partial payment made under this Agreement shall be construed to be an acceptance or approval by Owner of any part of the Work or to relieve Contractor of any of its obligations under this Agreement. Contractor shall be responsible for paying or ensuring the payment of all Subcontractors in connection with the Work completed by the Subcontractors in accordance with the terms of their Subcontracts.

**8.4 Lien Releases.** Contractor shall submit with each Application for Payment a conditional partial lien release in the form set forth in Exhibit 12A for the amount requested in the current Application for Payment in respect of work performed or materials delivered on the Site during the period covered by such Application for Payment. Both Contractor and its Major Subcontractors shall provide Owner a conditional final lien release in the form set forth in Exhibit 12B as a condition precedent to payment by Owner of the final Application for Payment. In addition to the lien releases described in this Section 8.4, Contractor shall deliver to the Title Company, as and when required by the Title Company in order to issue title insurance to any Financing Party and to provide an endorsement thereto with respect to mechanic’s liens pending disbursement coverage, (a) Contractor’s sworn statement and (b) a mechanic’s lien subordination agreement, each executed by Contractor and in form and substance acceptable to the Title Company.

**8.5 Release of Liability.** Contractor's acceptance of payment of the Application for Payment for Final Completion shall constitute a release by Contractor of Owner from all liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability with respect to the payment of the Contract Price or any event or circumstance that would entitle Contractor to request a Change Order in respect of any event that occurs prior to Final Completion, except claims for which Contractor has delivered a dispute notice to Owner, claims that are based on facts or circumstances arising after Final Completion and claims arising under Article 24. No payment by Owner shall be deemed a waiver by Owner of any obligation of Contractor under this Agreement.

**8.6 Overdue Payments.** Overdue payment obligations of either Party hereunder shall bear interest from the date due until the date paid at a rate per annum equal to the lesser of (a) the rate published by the *Wall Street Journal* as the "prime rate" on the Business Day preceding the date on which such interest begins to accrue plus two percent (2%) and (b) the maximum rate allowed under Applicable Law.

**8.7 Disputed Payments.** Failure by Owner to pay any invoiced amount disputed in good faith until such dispute has been resolved in accordance with Article 28 shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder, subject to the provisions of such Article 28. Contractor's acceptance of any payment, and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts expeditiously and in any case in accordance with the provisions of Article 28. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If an Application for Payment was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner with respect to such Application for Payment are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor, at the interest rate set forth in Section 8.6, from the date on which such payment was originally due under Section 8.3 until the date such payment is actually received by Contractor. If amounts disputed in good faith that have been paid by Owner are later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the interest rate set forth in Section 8.6, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner.

**8.8 Contractor Performance Security.** On the Effective Date, Contractor shall deliver to Owner and maintain in full force and effect the Contractor Performance Security in the form set forth in Exhibit 11. If Contractor fails to deliver the Contractor Performance Security or the issuer thereof repudiates or breaches its obligation to pay or perform thereunder, Owner shall be excused from paying any Progress Payments until such time as Contractor shall have delivered replacement contractor performance security in a form acceptable to Owner in its sole discretion.

## **8.9 Holdback.**

(a) Any provision hereof to the contrary notwithstanding, upon the occurrence and continuance of any of the following events, Owner, upon notice to Contractor, may, but shall have no obligation to, withhold or retain such portion (including all) of any payment due to Contractor under this Agreement as reasonably necessary to ensure the performance of the Work, to cover two hundred percent (200%) of the Losses or reasonably anticipated Losses to Owner related to such event, or to otherwise protect fully Owner's rights hereunder:

(i) A Contractor Event of Default shall have occurred;

(ii) Contractor shall have failed to timely make undisputed payments to its Subcontractors for material or labor used in the Work and Owner is not in breach of its obligations to pay Contractor;

(iii) Contractor shall have failed to deliver any required Contractor Submittal;

(iv) Owner in good faith shall have determined based upon the Construction Schedule that Contractor cannot with prompt and reasonable acceleration of the Work achieve (i) Availability Completion before the Guaranteed Availability Completion Date; or (ii) Substantial Completion before the Guaranteed Substantial Completion Date; provided, however, that amounts withheld or retained on account of this Section 8.9(a)(iv) shall not exceed the amount of any Facility Delay Liquidated Damages or EITC Liquidated Damages which would be payable under Section 17.1 or Section 17.6 or on account of the then-estimated delay in Availability Completion or Substantial Completion; or

(v) Any part of such payment shall be attributable to Work that contains a defect or has not been performed in accordance with the terms of this Agreement.

(b) No payment made under this Section 8.9 shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. Should any dispute arise with respect to Owner's exercise of its rights under this Section 8.9, such dispute shall be subject to resolution in accordance with the expedited payment dispute procedures provided in Article 28. Contractor shall not have any rights of termination or suspension under Section 20.4 as a result of Owner's exercise or attempted exercise of its rights under this Section 8.9.

**8.10 Setoff.** Notwithstanding any other provision in this Agreement, Owner shall be entitled to set off against any amount it owes to Contractor under this Agreement, any undisputed amount(s) that either (a) Contractor owes to Owner under this Agreement or (b) Contractor or any Affiliate of Contractor owes to Owner under the Project Transaction Documents.

## ARTICLE 9

### TAXES

**9.1 Taxes.** The Contract Price includes any and all Taxes imposed under Applicable Law on Contractor, the Subcontractors, the Work, the construction or sale of Facility Equipment to Owner or installation of the Facility, except for Owner Taxes. In addition to the Contract Price, Owner assumes exclusive liability for and shall pay all Owner Taxes. Contractor and Owner agree to cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible and commercially reasonable for such Party. Contractor shall provide Owner with such assistance as may be reasonably requested by Owner in demonstrating eligibility for exemptions or exclusions from such Taxes (and any other Tax exemptions) to the relevant Governmental Authority, including as provided in Section 3.31. Contractor shall, in accordance with Applicable Law, timely administer and timely pay all Taxes that are included in the Contract Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes and furnish copies of such information and reports (other than information specifically pertaining to Contractor's income and profit) to Owner as reasonably requested by Owner and within thirty (30) Days after any request from Owner. Contractor shall provide Owner with any other information regarding allocation of quantities, descriptions, and costs of property provided by Contractor and installed as part of the Facility that is necessary in connection with the preparation of Owner's tax returns or as a result of an audit by a taxing authority. The Owner or its designee shall be entitled to all tax benefits associated with the Facility, and Contractor will have no claim with respect to such benefits.

## ARTICLE 10

### CHANGES AND EXTRA WORK

**10.1 Owner Requested Change Order.** Without invalidating this Agreement, Owner may request changes in the Work or the Facility. Owner shall request such changes in the Work or the Facility by delivering a written Change Order request to Contractor. As soon as practicable after receipt of a Change Order request, but in no event later than five (5) Days after receipt of a Change Order request, Contractor shall prepare and forward to Owner in writing: (i) a quotation for the price for the extra or changed Work and change to the Schedule of Values (if applicable); (ii) an estimate of any required adjustment to the Construction Schedule; (iii) any adjustment to Performance Criteria; and (iv) an estimate of any impact of the proposed change on any Applicable Permit, warranty and any other term or condition of this Agreement. The Parties shall negotiate in good faith to determine the adjustment to the Contract Price for Change Orders contemplated by this Section 10.1. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.1, then the adjustment to the Contract Price may be determined in accordance with Exhibit 16 but only if the Parties so agree. If the Parties do not agree either (A) to a fixed price Change Order, or (B) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 16, then Owner may nonetheless direct Contractor to proceed with the Work that is the subject of the Change Order, in which case (1) for a deductive Change Order, the Contract Price shall be reduced by the amount of any

reduction in Contractor's Direct Costs and (2) in the case of an additive Change Order (or Change Order involving additive and deductive elements), Contractor shall be paid an amount equal to any net increase in its Direct Costs in performing the Change Order plus a markup of four percent (4%). Contractor shall submit Applications for Payment no more frequently than monthly with respect to Contractor's Direct Costs in accordance with the preceding sentence and Owner shall be obligated to pay such undisputed amounts within thirty (30) Days after Owner's receipt of Contractor's Application for Payment.

**10.2 Contractor Requested Change Order.** Contractor may propose a Change Order to Owner if the proposed changes improve the Facility or are otherwise advisable for the Work. Any such proposed Change Order shall not affect the obligation of Contractor to perform the Work and to deliver the Facility in accordance with this Agreement unless and until Owner executes a Change Order pursuant to Section 10.6. If the Parties do not agree on the adjustment to the Contract Price in respect of this Section 10.2, then the adjustment to the Contract Price may be determined in accordance with Exhibit 16 but only if the Parties so agree. If the Parties do not agree either (a) to a fixed price Change Order or (b) that an adjustment to the Contract Price shall be determined in accordance with Exhibit 16, then no Change Order shall be executed. If Contractor proceeds with a proposed change in the Work pursuant to this Section 10.2 without receiving the consent of Owner, Contractor shall be responsible for the removal of any such work if a Change Order request is not subsequently approved by Owner; provided, however, that in the event of any Emergency, Contractor shall act, in its good faith discretion, to prevent threatened damage, injury or loss to any Person or property.

**10.3 Mandatory Change Order.** Contractor shall be entitled to an adjustment in the Contract Price as set forth in this Agreement and an adjustment in the Construction Schedule (including to any Guaranteed Dates) as set forth below upon the occurrence of any of the following events: (a) an Owner-Caused Delay or (b) a Force Majeure Event, in each case as and only to the extent permitted by Article 11. Contractor shall only be entitled to a Change Order if and to the extent it can demonstrate that the occurrence of a preceding event had an actual and demonstrable adverse impact (i) on Contractor's Direct Costs or (ii) when taken together with all other delays caused by the events described in (a) and (b) above of which Contractor has timely provided notice to Owner in accordance with this Agreement, on Contractor's ability to perform any Contractor Critical Path Item necessary for the achievement of any Guaranteed Date and, in such event, the Contractor Critical Path Items shall be correspondingly extended by the period of time (if any) that Contractor is actually and demonstrably delayed in the performance of such Contractor Critical Path Item as a result of the impact of such event (such period, the "Actual Delay").

**10.4 Limitation on Change Orders.** Change Orders shall be limited to (i) changes requested by Owner in accordance with Section 10.1, (ii) changes requested by Contractor and mutually agreed to by the Parties in accordance with Section 10.2 and (iii) changes in connection with mandatory Change Orders in accordance with Section 10.3. Notwithstanding anything to the contrary, other than to the extent resulting from a Force Majeure Event occurring after the Effective Date, in no event shall any Site Condition give rise to a Change Order.

**10.5 Determining Change Order.** Any adjustment of the Construction Schedule pursuant to a Change Order shall be determined in accordance with Section 10.3 as well as Article 11. Any adjustment of the Contract Price shall include all costs to Contractor associated with the performance of the extra Work or changes or a reduction of the Contract Price based on savings to Contractor associated with the changes, as applicable. Adjustments in the Contract Price shall be determined in accordance with Section 10.1, Section 10.2 and Section 10.3, as applicable, as well as Article 11.

**10.6 Change Order Must Be in Writing.** No change in the Work or extra Work shall be valid and effective unless it is in writing in the form of a Change Order signed by the representatives of both Parties that includes a description of the amount of any adjustment of the Contract Price and any adjustment to the Construction Schedule, the Schedule of Values or the Performance Criteria due to the change.

## ARTICLE 11

### FORCE MAJEURE EVENT; OWNER-CAUSED DELAY

**11.1 Certain Events.** No failure or omission to carry out or observe any of the terms, provisions or conditions of this Agreement shall give rise to any claim against a Party, or be deemed to be a breach or an Event of Default under this Agreement, if such failure or omission shall be caused by or arise out of a Force Majeure Event or an Owner-Caused Delay; provided that the Party claiming relief strictly complies with the provisions of Article 11. Notwithstanding anything to the contrary in the foregoing, the obligation to pay money in a timely manner in accordance with the terms hereof shall not be subject to the Force Majeure Event or Owner-Caused Delay provisions hereof.

**11.2 Notice of Force Majeure Event and Owner-Caused Delay.** If a Party's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Owner-Caused Delay (in the case of Contractor), the Party claiming relief shall provide prompt notice, but in any event not later than eight (8) hours of when the Force Majeure Event or Owner-Caused Delay first prevents or delays performance under this Agreement, to Contractor's Representative or Owner's Representative, as applicable, of any delay or anticipated delay in the claiming Party's performance of this Agreement due to such Force Majeure Event or Owner-Caused Delay, including a description of the event including reasonable details (to the extent available and known to the claiming Party, at such time) regarding the underlying facts and conditions pursuant to which such Party is claiming a Force Majeure Event or Owner-Caused Delay and the anticipated length of the delay. After such notice, the claiming Party shall deliver written notice as soon as practicable, but in any event not later than five (5) Business Days after the claiming Party becomes aware of the delay or anticipated delay, describing in detail the particulars of the occurrence giving rise to the claim, including what date the claiming Party became aware of the occurrence of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations, any action being taken to avoid or minimize its effect, and a proposed recovery schedule (the "Delay Notice"). The Party claiming relief due to a Force Majeure Event or Owner-Caused Delay shall have a continuing obligation to deliver to the other Party regular updated reports and any additional documentation and analysis

supporting its claim regarding a Force Majeure Event or an Owner-Caused Delay promptly after such information becomes available to such Party. IT IS A CONDITION TO CONTRACTOR'S RIGHT TO RECEIVE AN EXTENSION OF TIME, AN INCREASE TO THE CONTRACT PRICE AND OTHER ADJUSTMENTS TO THE CONSTRUCTION SCHEDULE THROUGH A CHANGE ORDER AS PROVIDED IN SECTION 10.3 THAT CONTRACTOR PROVIDE NOTICE TO OWNER WITHIN EIGHT (8) HOURS OF THE TIME CONTRACTOR BECAME AWARE OR SHOULD HAVE BECOME AWARE OF THE FACTS OR CIRCUMSTANCES THAT PERMIT CONTRACTOR TO SEEK A CHANGE ORDER UNDER SECTION 10.3; IN THE EVENT CONTRACTOR DOES NOT PROVIDE NOTICE WITH SUFFICIENT DETAIL WITHIN EIGHT (8) HOURS OF THE TIME CONTRACTOR BECAME AWARE OR SHOULD HAVE BECOME AWARE OF THE FACTS OR CIRCUMSTANCES THAT PERMIT CONTRACTOR TO SEEK A CHANGE ORDER UNDER SECTION 10.3, CONTRACTOR SHALL NOT BE ENTITLED TO A CHANGE ORDER UNDER ARTICLE 10 OR ANY OTHER RELIEF HEREUNDER.

**11.3 Force Majeure Event and Owner-Caused Delay Conditions.** Upon the occurrence of a Force Majeure Event or an Owner-Caused Delay, the suspension of, or impact on, performance due to such Force Majeure Event or Owner-Caused Delay shall be of no greater scope and no longer duration than is required by such event (taking into account the obligations affected thereby). In addition, the claiming Party shall exercise reasonable efforts to (a) minimize and mitigate the effects of any delay caused by, and costs arising from said Force Majeure Event or Owner-Caused Delay, (b) continue to perform its obligations hereunder not affected by such event and (c) correct or cure the effect of such event. When the Party claiming relief due to such Force Majeure Event or Owner-Caused Delay is able to resume performance of its affected obligations, such Party shall provide prompt notice to the other Party to that effect and promptly resume performance of all of its obligations under this Agreement.

#### **11.4 Contractor's Remedies.**

(a) Force Majeure Event. As Contractor's sole remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Section 11.2 and Section 11.3, Contractor shall be entitled to an extension to the Construction Schedule (including to the Guaranteed Dates, other than the Guaranteed Availability Completion Date) to the extent of the Actual Delay in accordance with Section 10.3. Force Majeure Events shall not be compensable.

(b) Owner-Caused Delay. As Contractor's sole remedy for the occurrence of an Owner-Caused Delay, and provided that Contractor has otherwise materially complied with the applicable provisions of Section 11.2 and Section 11.3, Contractor shall be entitled to an extension to the Construction Schedule (including to the Guaranteed Dates) to the extent of the Actual Delay in accordance with Section 10.3. If Contractor's costs increase despite Contractor's reasonable efforts to mitigate any such increases pursuant to Section 11.3, the Contract Price shall be increased by the Direct Costs incurred by Contractor as a direct result of such Owner-Caused Delay.

(c) Changes Orders. Upon the occurrence of an event that entitles Contractor to relief under this Section 11.4, and subject to Contractor's compliance with the applicable provisions of this Article 11 and Article 10 in all material respects, Contractor and Owner shall prepare a Change Order in accordance with Article 10. The remedies set forth in this Section 11.4 shall be Contractor's sole remedies for any such event.

## ARTICLE 12

### HAZARDOUS MATERIALS

**12.1 Use by Contractor.** Contractor shall minimize and manage the use of Hazardous Materials in the performance of its obligations under this Agreement and shall not permit any of the Subcontractors, directly or indirectly, to cause any Release in, on or under the Facility, the Site or the adjacent area except to the extent required for the performance of the Work, in such case, in accordance with Applicable Laws and Applicable Permits (including the performance of investigatory, monitoring, or other remedial work upon the Facility, the Site or adjacent areas to the extent reasonably necessary to comply with Applicable Laws and Applicable Permits).

**12.2 Remediation by Contractor.** Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site as required by Applicable Laws and Applicable Permits in connection with any Release, disposal or the presence of Hazardous Materials, where existing prior to the Effective Date or brought onto or generated at the Site by any Contractor Party or Subcontractor or to the extent any such Release is caused by the negligent acts or omissions of any Contractor Party or Subcontractor, except to the extent such Release is caused by any Owner Party after the Effective Date. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws and Applicable Permits relating to the use, transportation, storage, handling or presence of Hazardous Materials, or any Release, by any Contractor Party, Subcontractor or any Person acting on its or their behalf or under its or their control of any such Hazardous Materials brought onto or generated at the Site by any Contractor Party or Subcontractor, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work.

**12.3 Hazardous Materials File.** During the performance of the Work, Contractor shall maintain and update a file of all safety data sheets for all Hazardous Materials used in connection with the Work hereunder, or used by or on behalf of any Contractor Party or Subcontractor at the Site and shall promptly deliver such file and any updates to Owner.

**12.4 Notice of Hazardous Materials.** If Contractor discovers, encounters or is notified of any Release or exposure to Hazardous Materials at the Site:

(a) Contractor shall promptly notify Owner thereof and take all reasonable efforts, consistent with Applicable Law or Applicable Permits, to mitigate the impacts associated with such Hazardous Materials including, as appropriate, containing any Release and stopping Work in and restricting access to areas affected by such Hazardous Materials;



(b) if any Contractor Party or Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall, as promptly as reasonably practicable, remove such Hazardous Materials from the Site and remediate the Site to the extent required by all Applicable Laws and Applicable Permits in each case at Contractor's sole cost and expense, except where such materials were Released after the Effective Date by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor; and

(c) if any Contractor Party or any Subcontractor has brought such Hazardous Materials onto the Site or generated such Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials, except where such materials were Released after the Effective Date by Owner, its Affiliates, or any third party other than any Contractor Party or Subcontractor.

**12.5 Hazardous Materials Disposal System.** Contractor shall, in consultation with Owner, arrange and contract with contractors (who are appropriately licensed and insured) for the transportation from the Site and the management or disposal in accordance with Applicable Law and Applicable Permits of Hazardous Materials generated by or produced in connection with Contractor's performance of the Work. To the extent required by Applicable Law or Applicable Permits, Contractor shall (a) prepare and maintain accurate and complete documentation of all Hazardous Materials used by Contractor or Contractor Parties at the Site in connection with the Facility, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site and (b) prepare and deliver all required notifications and reports to Governmental Authorities in connection with the presence of Hazardous Materials at the Site that were brought onto the Site or generated by any Contractor Party or Subcontractor. Contractor shall comply with Owner's reasonable requirements and procedures with respect to the disposal of such Hazardous Materials.

**12.6 Scope of Contractor Environmental Indemnification.** Contractor hereby specifically agrees to indemnify, defend and hold Owner and the Owner Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Facility or the Site, that they may incur or suffer by reason of:

(a) any use of or introduction of Hazardous Materials to the Site by any Contractor Party or Subcontractor in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(b) any Release or disturbance of Hazardous Materials in connection with the performance of the Work by Contractor or any of its Subcontractors (except as provided in Section 12.7);

(c) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by any Contractor Party or any Subcontractor;

(d) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or prevent a violation or threatened violation of any Environmental Law by any Contractor Party or Subcontractor; and

(e) any action required by Contractor to mitigate a situation created by the violation of any Applicable Law or Applicable Permit by any Contractor Party or Subcontractor.

**12.7 Scope of Owner Environmental Indemnification.** Owner hereby specifically agrees to indemnify, defend and hold Contractor and Contractor Parties harmless from and against any and all losses, liabilities, claims (including relating to personal injury or bodily injury or death), demands, damages, causes of action, fines, penalties, costs and expenses (including, all reasonable consulting, engineering, attorneys' or other professional fees), whether or not involving damage to the Facility or the Site, that they may incur or suffer by reason of:

(a) any Hazardous Materials present or used, brought upon, transported, stored, kept, discharged, or spilled by Owner or any Owner Party in, on, under or from the Site after the Effective Date including any Release by Owner or its Affiliates, in accordance with the terms of this Agreement and all Applicable Laws;

(b) any administrative, enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Environmental Law by Owner; and

(c) any action reasonably necessary to abate or remediate Hazardous Materials described in paragraphs (a) or (b) above, or to prevent a violation or threatened violation of any Environmental Law by Owner.

## ARTICLE 13

### TITLE AND RISK OF LOSS

**13.1 Equipment – Risk of Loss Before Substantial Completion.** From the Effective Date and until the Substantial Completion Date, subject to the provisions of this Article 13, Contractor has care, custody and control of all Facility Equipment and other items that become part of the Facility and shall exercise due care with respect thereto and assumes the risk of loss and full responsibility for the cost of replacing or repairing any damage to the Facility and all materials, Equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased for permanent installation in or for use during construction of the Facility.

**13.2 Equipment – Risk of Loss After Substantial Completion.** Owner shall take possession and control and shall assume and shall bear the risk of loss and responsibility in

respect of the Facility completed and transferred to Owner upon the Substantial Completion Date or the earlier termination of this Agreement, unless the loss or damage to the Facility is (a) caused by any Contractor Party, Subcontractor or other Person over whom Contractor has control or (b) a defect covered by the Warranties provided by Contractor under this Agreement. If any component of the Facility is lost or damaged for whatever reason after the Substantial Completion Date, then, upon Owner's written request, Contractor shall restore or rebuild any such loss or damage and complete the Work in accordance with this Agreement at the sole cost and expense of Owner, unless such loss or damage is (i) caused by any Contractor Party or Subcontractor or other Person over whom Contractor has control or (ii) a defect covered by the Warranties provided by Contractor under this Agreement, in which case Contractor shall restore or rebuild any such loss or damage at its cost.

### **13.3 Title.**

(a) Contractor warrants good and marketable title, free and clear of all Contractor Liens (to the extent Owner's payments to Contractor are made in accordance with this Agreement), to all Work, Facility Equipment and other items furnished by Contractor or any of the Subcontractors that become part of the Facility.

(b) Title to the Facility, and to any discrete and identifiable item or series of Facility Equipment, shall pass to Owner upon the earliest to occur of (i) receipt by Contractor of payment (less any Retainage) in full therefor, (ii) delivery of such Facility Equipment to the Site; (iii) Availability Completion, and (iv) with respect to any applicable Facility Equipment, incorporation of such Facility Equipment into the Facility.

## **ARTICLE 14**

### **INTELLECTUAL PROPERTY**

**14.1 Title to Plans and Specifications.** Upon Owner's payment of the Contract Price as provided in this Agreement, the documentation prepared by Contractor shall become the exclusive property of Owner; provided, however, that Contractor's intellectual property rights in any such documentation shall remain with Contractor and nothing in this Agreement shall be construed as limiting Contractor's rights to use its know-how, experience and skills of its employees (excluding Owner confidential information), whether or not acquired during performance of the Work, or to perform any construction or other services for any other person. Notwithstanding the foregoing, Contractor agrees to grant, and hereby does grant, to Owner an irrevocable, fully paid-up, royalty-free, perpetual, non-exclusive, world-wide, transferable license to use such intellectual property rights as needed for installing, owning, operating, repairing, maintaining, replacing, modifying and expanding the Facility (the "Licensed Technology").

**14.2 Intellectual Property.** Contractor shall include, as a term or condition of each contract with a Major Subcontractor employed by it in the performance of the Work, an intellectual property indemnification provision (including patents, trademarks, copyrights and trade secrets) extending from the Major Subcontractor to Owner and Contractor, with similar

obligations as those set forth in Section 14.4. Contractor shall enforce and render all assistance Owner may reasonably require on a reimbursable cost basis to enforce the terms of those indemnifications by such Major Subcontractors. This obligation shall not reduce or otherwise affect Contractor's obligation to provide all Work to Owner free and clear of all intellectual property infringement or other violation claims.

### **14.3 Procurement of Proprietary Rights.**

(a) Contractor warrants that no infringement of any patents, trademark, registered design, copyright, design right or other registerable or proprietary intellectual property right of any kind will be caused by the performance of the Work, the ownership of confidential information or the Facility and the Facility's operation in accordance with the Required Manuals.

(b) Contractor shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into the Facility. In performing the Work, Contractor shall not incorporate into the Facility any materials, methods, processes or systems which involve the use of any confidential information or intellectual property rights that Owner or Contractor do not have the right to use in connection with the performance of the Work or the construction, ownership or operation of the Facility or which may cause any Losses to Owner or Contractor arising out of claims of infringement of any domestic intellectual proprietary rights, or applications for such rights, or use of confidential information.

### **14.4 Intellectual Property Infringement.**

(a) Contractor shall pay all royalties, license and other fees payable under or in respect of, and shall defend, indemnify and hold harmless the Owner Parties from and against any claim arising out of, resulting from, or reasonably incurred in contesting, (i) any unauthorized disclosure by Contractor or any Subcontractor or use of any trade secrets, (ii) any other intellectual property infringement (including patent, copyright or trademark infringement) caused by Contractor's performance, or that of its Subcontractors, under this Agreement, or (iii) any claim asserted against such Owner Party that (A) concerns any equipment or other items provided by Contractor or any Subcontractor under this Agreement, (B) is based upon the performance of the Work by Contractor or any Subcontractor, including the use of any tools or implements for construction by Contractor or any Subcontractor, or (C) is based upon the design or construction of any item or unit specified by Contractor under this Agreement or upon the operation of any item or unit according to directions embodied in Contractor's final process design, or any revision thereof, prepared or approved by Contractor unless to the extent that such claims relate, in whole or in part, to (a) Owner's modification of such equipment or other items made without Contractor's approval, (b) the combination of such item with other products, materials, equipment, parts or apparatus not approved by Contractor, unless such combination was done in accordance with this Agreement, any change order, the Technical Specifications, or otherwise agreed to by the Contractor, and provided that such claim could not be brought but for such combination and such claim is based on infringement by the other products, materials, equipment, parts or apparatus or (c) a failure to promptly install an update required by Contractor, provided such update does not reduce or potentially reduce the performance of the Facility as of

such date or otherwise adversely affect the Facility in any way with respect to the Project Transaction Documents or otherwise.

(b) If such claim for infringement or other violation results in a suit against an Owner Party, Contractor shall, at its election and in the absence of a waiver of this indemnity by such Owner Party, have sole charge and direction of said suit on such Owner Party's behalf so long as Contractor diligently prosecutes the same. If Contractor has charge of a suit brought against an Owner Party by a third party, such Owner Party shall render such assistance at Contractor's expense as Contractor may reasonably require in the defense of such suit except that such Owner Party shall have the right to be represented therein by counsel of its own choice and at its own expense. If such Owner Party is enjoined from completion of the Facility or any part thereof, or from the use, operation or enjoyment of the Facility or any part thereof as a result of such claim or any litigation based thereon, Contractor shall promptly seek to have such injunction removed at no cost to any Owner Party. If in such claim any device is held to constitute an infringement or other violation and its use is enjoined, Contractor shall either secure for each of the Owner Parties the right to continue using such device by suspension of the injunction or by procuring for such Owner Party a license, or otherwise at Owner's option and at Contractor's expense, replace such device with a non-infringing or violating device of equivalent utility, performance and expected life, or modify it so that it becomes non-infringing or violating without impairing its utility, performance and expected life.

## ARTICLE 15

### START-UP, COMMISSIONING & TESTING<sup>10</sup>

**15.1 Start-up and Commissioning.** Contractor shall conduct the Start-up and Commissioning of the Facility in accordance with the Start-up and Commissioning requirements set forth in Exhibit 3 and Exhibit 25.

**15.2 Facility Tests.** Contractor shall conduct the Functional Test for the Facility in accordance with Exhibit 25, and when Contractor believes that the Facility can satisfy the Minimum Capacity Level, Contractor shall conduct the Availability Test and the Capacity Test in accordance with Exhibit 14A or Exhibit 14C, as applicable. Contractor shall submit a test report for each Facility Test within five (5) Days after the completion thereof, which test report shall include a summary of such Facility Test and the results for such test. Owner and Contractor will negotiate in good faith to agree upon detailed testing procedures that comply with the protocols set forth in Exhibit 14A, Exhibit 14C and Exhibit 25.

**15.3 Availability and Capacity Test Notice.** Contractor shall provide Owner with at least five (5) Business Days' prior written notice of the commencement of the Availability Test and the Capacity Test, in order to permit Owner's Representative to arrange attendance at such tests. Contractor shall give Owner's Representative at least five (5) Business Days advance

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<sup>10</sup> NTD: To the extent the approved Construction Schedule includes phased completion of the Facility on a block-by-block basis, the provisions of this Agreement relating to testing, delays, acceptance liquidated damages and related matters will be revised to etc. will need to be revised to reflect block completion milestones.

notice of the re-performance of the Availability Test or Capacity Test, as applicable. Owner's Representative, and any Owner Inspection Party identified to Contractor by Owner in writing prior to the date of the Availability Test or Capacity Test, shall be entitled to attend and observe the Availability Test and Capacity Test and each re-performance thereof.

**15.4 Availability and Capacity Test Acceptance.** Contractor shall, as soon as practicable following the successful completion of the Availability Test, submit to Owner's Representative an Availability Test Certificate, signed by Contractor's Representative and attaching the Final Test Results performed pursuant to such Availability Test. Subject to this Section 15.4, Owner shall, within thirty (30) Business Days after Owner's receipt of an Availability Test Certificate from Contractor, either (y) approve the Availability Test results by countersigning and delivering to Contractor the fully executed Availability Test Certificate (which shall be deemed effective on the date the Availability Test Certificate was delivered); or (z) give Contractor written notice stating that Owner rejects the Availability Test results and describing the non-conformity on which the rejection is based. Acceptance of the Availability Test Certificate by Owner shall not affect any rights Owner may have with respect to the Capacity Test (and Substantial Completion) or under a Warranty for any Facility Equipment or the Facility pursuant to Article 21. Once the Availability Test Certificate is accepted by Owner as provided in this Section 15.4, such acceptance shall constitute "Availability Completion" and the date of Contractor's submission of the corresponding Availability Test Certificate to Owner that was accepted shall constitute the "Availability Completion Date." With respect to the Capacity Test, Contractor shall, as soon as practicable following the completion of a Capacity Test in which the Final Test Results reveal that the Minimum Capacity Level for the Facility has been achieved, submit to Owner's Representative a Capacity Test Certificate, signed by Contractor's Representative and attaching the Final Test Results performed pursuant to Exhibit 14C. Subject to this Section 15.4, Owner shall, within forty-five (45) Business Days after Owner's receipt of a Capacity Test Certificate from Contractor, either: (a) approve the Capacity Test results by countersigning and delivering to Contractor the fully executed Capacity Test Certificate (which shall be deemed effective on the date the Capacity Test Certificate was delivered); or (b) give Contractor written notice stating that Owner rejects the Capacity Test results and describing the non-conformity on which the rejection is based. A Capacity Test Certificate signed by Owner is deemed conclusive evidence that the Facility has met the Minimum Capacity Level required under this Agreement. Acceptance of the Capacity Test Certificate by Owner shall not affect any rights Owner may have under a Warranty for any Facility Equipment or the Facility pursuant to Article 21.

**15.5 Capacity Test Rejection.** If the Final Test Results reveal that the Facility fails to meet the Minimum Capacity Level, Contractor shall repeat the Capacity Test as many times as necessary until the Minimum Capacity Level has been met. Contractor shall take all corrective actions so that the Facility successfully completes the Capacity Test and meets the Minimum Capacity Level, without prejudice to Owner's rights and remedies under this Agreement. If the Final Test Results reveal that the Facility has satisfied the Minimum Capacity Level but not the Guaranteed Capacity, Contractor may elect to perform additional Work (if it deems necessary) and repeat the Capacity Test. Any such additional Work shall be performed in compliance with the requirements of this Agreement. Prior to commencing any such additional Work, Contractor

shall provide to Owner a detailed plan and schedule to perform such additional Work and shall not commence any such additional Work without Owner's consent, not to be unreasonably withheld. The Capacity Test may be repeated pursuant to the previous sentence no more frequently than once per week; provided that in no event shall the Capacity Test continue beyond sixty (60) Days after the Substantial Completion Date.

**15.6 Correction of Defects.** Prior to Substantial Completion, Contractor shall promptly correct or cause the correction of any part of the Work that is Defective, deficient or is otherwise not in accordance with this Agreement, regardless of the stage of its completion or the time or place of discovery of such errors and regardless of whether Owner has previously reviewed or inspected or otherwise accepted such part of the Work in any way. Contractor shall bear the cost of re-performing any Defective, deficient or non-conforming Work. All internal and third party costs reasonably incurred by Owner in attending or in consequence of any re-testing or inspection necessitated by any Work that is Defective, deficient or is otherwise not in accordance with this Agreement shall be deducted from the Contract Price. In the event that any part of the Work is discovered to be in a Defective, deficient or non-conforming condition after Substantial Completion, correction of such Defective, deficient or non-conforming condition shall be governed by Article 21. Acceptance of any Facility Test, Facility Equipment or Work by Owner shall not affect any rights Owner may have under a Warranty pursuant to Article 21.

**15.7 Serial Defects.** Without limiting Section 15.6, if any Serial Defect arises at any time prior to Substantial Completion, Owner shall provide notice to Contractor of such Serial Defect or, if Contractor becomes aware of any such Serial Defect, Contractor shall provide written notice of the same to Owner. Contractor shall determine what changes, repairs or replacements to any affected items of Facility Equipment are necessary to correct such Serial Defect and to avoid further failures of the Facility Equipment at the Facility which may not have yet experienced such failures, and Contractor shall make such necessary changes, repairs or replacements to all the Facility Equipment installed at the Facility (whether or not such Facility Equipment is installed, has been tested or has experienced such failures) all at its own cost and expense. Contractor shall repeat such process on an iterative basis until such Serial Defect and the underlying cause thereof is corrected.

## ARTICLE 16

### SUBSTANTIAL COMPLETION

**16.1 Generally.** Subject to Article 17, Contractor shall perform the Work in accordance with the Construction Schedule, as may be amended from time to time in accordance with the terms of this Agreement, so as to achieve Availability Completion by the Guaranteed Availability Completion Date, Substantial Completion by the Guaranteed Substantial Completion Date and Final Completion by the Guaranteed Final Completion Date.

**16.2 Substantial Completion Defined.** Subject to Section 16.3, "Substantial Completion" means (excepting the completion of Punch List Items):

- (a) if required by the terms of Section 17.1, Contractor has paid any Facility Delay Liquidated Damages;
- (b) the design, engineering, procurement and construction of the Facility has been completed in accordance with this Agreement;
- (c) the Facility as a whole is capable of continuous operation in a safe manner (with respect to damage to any portion or component of the Facility or injury to any Person) in accordance with Applicable Law, Applicable Permits, Applicable Codes, the Interconnection Agreement, manufacturers' recommendations, Prudent Utility Practice, the Technical Specifications and the design criteria related to the Facility;
- (d) installation of a minimum of [\_\_\_\_] MW of inverters as determined by aggregating the nameplate of inverters;
- (e) the Facility is fully operational and can demonstrate that it produces power at the Delivery Point pursuant to the Capacity Test performed in accordance with Exhibit 14C;
- (f) the Facility is electrically interconnected to, has been synchronized with, and is capable of transmitting electric energy to, the Delivery Point, all in accordance with the Interconnection Agreement;
- (g) Contractor has certified by written notice to Owner that it has administered the training required by Section 3.32;
- (h) the most recent Functional Test has been completed in accordance with the requirements of Exhibit 25 and the Facility is ready to commence commercial operation;
- (i) Contractor shall have successfully completed the Availability Test in accordance with the requirements set out in Exhibit 14A and the Facility Power Plant Controller Test in accordance with the requirements set out in Exhibit 14B;
- (j) the Guaranteed Capacity for the Facility has been achieved, or, if not so achieved, the Facility Capacity is greater than the Minimum Capacity Level and Contractor has paid the applicable Final Capacity Liquidated Damages;
- (k) Contractor and Owner have agreed upon the list of Punch List Items;
- (l) Owner has received all Contractor Submittals as required to be delivered by the Substantial Completion Date in accordance with Exhibit 7;
- (m) all special tools and Spare Parts described on Exhibit 27 and required to be purchased and delivered to the Site by Contractor pursuant to Section 3.10 have been delivered to Owner at the Site free and clear of any liens;



(n) all construction and post-construction submittals required by the Contractor Acquired Permits for the Facility have been submitted to the appropriate Governmental Authorities; and

(o) Contractor has delivered the notice and certificate of Substantial Completion to Owner pursuant to Section 16.3.

**16.3 Notice and Certificate of Substantial Completion.** When Contractor considers that Substantial Completion has been achieved in accordance with Section 16.2, Contractor shall deliver to Owner a Certificate of Substantial Completion signed by Contractor, together with supporting documentation evidencing the satisfaction of the provisions in Section 16.2 and the corresponding Application for Payment. Contractor shall provide Owner with a Punch List Estimate at such time. Upon receipt of a Certificate of Substantial Completion from Contractor together with supporting documentation, Owner shall confirm whether Substantial Completion has been achieved and as soon as practicable, but in no event later than twenty (20) Days from the date of receipt of Contractor's notice, Owner shall either issue Contractor: (a) a countersignature to the Certificate of Substantial Completion, signed by Owner's Representative and stating that the Substantial Completion Date is the date on which Contractor delivered the Certificate of Substantial Completion to Owner under this Section 16.3; or (b) a written notice stating why Owner does not consider that Substantial Completion has been achieved. The "Substantial Completion Date" shall be the date on which Contractor delivered the Certificate of Substantial Completion that is accepted by Owner; provided, however, in the event Owner rejects a Certificate of Substantial Completion and any dispute arising from such rejection is resolved in favor of Contractor, such date shall be the date of Contractor's delivery of the Certificate of Substantial Completion or such later date as may be determined in connection with the resolution of such dispute under Article 28. If Contractor receives a notice under clause (b) above, Contractor shall take the necessary steps to achieve Substantial Completion and the procedures set forth under this Section 16.3 shall be repeated until such time as the Certificate of Substantial Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

#### **16.4 Punch List.**

(a) Creation of Punch List. Prior to Substantial Completion, Owner and Contractor shall agree upon the relevant Punch List Items to be completed by Contractor. Contractor and Owner shall jointly walk-down the Facility and confer together as to the items which should be included on the punch list for the Facility. As part of such walk-down, Contractor and Owner shall also confer as to any items of defective or deficient Work necessary for Substantial Completion and that do not constitute Punch List Items and which shall be included on a separate list (such items, "Critical Items" and, such list, the "Critical Items List"). Prior to Substantial Completion, Contractor shall correct or cause the correction of each Critical Item on the corresponding Critical Items List, if any. Contractor shall prepare a proposed punch list for the Facility to reflect the result of such joint walk down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the "Proposed Punch List" and shall set forth all Work remaining to be completed after the Substantial Completion Date. The Proposed Punch List may only contain Punch List Items, and shall

include a Punch List Estimate for the completion or repair of each such Punch List Item and Contractor's estimated schedule for completion therefor. The Proposed Punch List that is ultimately approved by Owner for the Facility shall be referred to as the "Punch List". If the Punch List is not finalized by the Substantial Completion Date, the Proposed Punch List as modified by Owner shall be deemed the Punch List for all purposes hereunder until the Parties resolve any disputes and otherwise finalize the Punch List. Contractor shall note on such Punch List the items under dispute. Any disputes regarding the existence or resolution of Punch List Items shall be resolved under Article 28.

(b) Completion of Punch List Items. Contractor shall proceed promptly to complete and correct the Punch List Items no later than thirty (30) Days after the Substantial Completion Date. On a weekly basis after the Substantial Completion Date, Contractor shall update the Punch List to include the date(s) that items listed on such Punch List are completed by Contractor and accepted by Owner. Notwithstanding the foregoing, the items listed on such Punch List shall not be considered complete until Owner shall have inspected such Punch List Items and acknowledged, by notation on the updated Punch List, that such item of Work is complete. Contractor shall use best efforts to complete the Punch List Items in such a manner as to prevent any loss of power production to the Facility and Contractor shall not curtail or interrupt operation of the Facility without Owner consent. Contractor will be responsible for all costs incurred during the completion of the Punch List Items.

(c) Access Following Substantial Completion. After Owner takes possession and control of the Facility upon Substantial Completion, Owner shall provide Contractor with reasonable access to the Facility in order to complete the Work, including the Punch List Items and, if applicable, to attempt to achieve one hundred percent (100%) of the Performance Guarantees pursuant to Section 15.5; provided, however, following Substantial Completion, Owner shall not be obligated hereunder to take an outage and/or de-rate, or otherwise interfere with its operation of the Facility as a direct or indirect result of allowing Contractor access pursuant to this Section 16.4(c). Any such access by Contractor shall be subject to Owner's processes and requirements relating to Site access, including safety, lock and tag out and confined space. Contractor shall complete the Work and shall perform its obligations using its reasonable efforts to minimize interference to the operations of the Facility and only as scheduled by mutual agreement of the Parties. Contractor shall, except to the extent otherwise agreed by the Parties, use all reasonable efforts to promptly complete all Punch List Items after the Substantial Completion Date. The Parties expect that Contractor will accomplish any necessary modifications, repairs and Punch List Items with minimal interference with the commercial operation of the Facility. Notwithstanding the provisions of Article 29, Contractor shall reimburse Owner for all costs, expenses or damages, including lost revenues incurred by or on behalf of Owner or any other Persons which result from Contractor's performance under this Section 16.4(c).

## **ARTICLE 17**

### **STAGES OF COMPLETION; DELAY AND CAPACITY LIQUIDATED DAMAGES; EITC AND DEPRECIATION LOSS**

**17.1 Guaranteed Substantial Completion Delay Liquidated Damages.** If Contractor has not achieved Substantial Completion by the Guaranteed Substantial Completion Date for reasons not excused under the terms of this Agreement, then Contractor shall pay to Owner delay liquidated damages in an amount equal to, for each Day (or partial Day) after the Guaranteed Substantial Completion Date that the Facility has not achieved Substantial Completion, \$1,500 per MW by which the Facility Capacity is less than the Guaranteed Capacity of the Facility (the “Facility Delay Liquidated Damages”).

**17.2 Final Capacity Liquidated Damages.**

(a) Contractor agrees that if based on the Final Test Results of the Facility Capacity calculation performed in accordance with Exhibit 14C, the Facility shall have failed to achieve the Guaranteed Capacity, Contractor shall pay to Owner upon Substantial Completion an amount equal to the Contract Price multiplied by a fraction, the numerator of which is the Capacity Shortfall and the denominator of which is the Guaranteed Capacity (the “Final Capacity Liquidated Damages”).

(b) In the event Contractor has paid Final Capacity Liquidated Damages pursuant to Section 17.2(a) and has elected to repeat the Capacity Test in compliance with the provisions set forth in Section 15.5, then if the Facility Capacity calculation resulting from the last such repeat of the Capacity Test (i) reduces the Capacity Shortfall, Owner shall reimburse Contractor the corresponding amount of Final Capacity Liquidated Damages resulting from such reduction or (ii) increases the Capacity Shortfall, Contractor shall pay to Owner additional Final Capacity Liquidated Damages calculated in accordance with Section 17.2(a).

**17.3 Payment.** Payment of Liquidated Damages shall be made payable within thirty (30) Days after Contractor’s receipt of Owner’s invoice. Liquidated Damages shall bear interest at the interest rate set forth in Section 8.6. Amounts payable by Contractor to Owner pursuant to this Article 17 may be set off by Owner against the payment due for Final Completion under the final Application for Payment. Any amounts that Contractor is obligated to pay to Owner under this Article 17 are subject to the limitations set forth in Article 29.

**17.4 Liquidated Damages Reasonable.** The Parties agree that the extent and amount of loss or damage to Owner as a result of Contractor’s failure (a) to achieve Availability Completion by the Guaranteed Availability Completion Date, (b) to achieve Substantial Completion by the Guaranteed Substantial Completion Date and (c) to achieve the Guaranteed Capacity for the Facility is impractical and difficult to determine with certainty. The Parties agree that Liquidated Damages are a genuine pre-estimate of the damages suffered by Owner by reason of Contractor’s failure to achieve, or failure to cause the Facility to satisfy, obtain or achieve, the Guaranteed Availability Completion Date, Guaranteed Substantial Completion Date or the Guaranteed Capacity for the Facility and are not intended as a penalty. The amounts payable by Contractor to Owner under this Article 17 shall be Contractor’s sole and exclusive liability to Owner, and Owner’s sole and exclusive remedy, with respect to Contractor’s failure (i) to achieve Availability Completion by the Guaranteed Availability Completion Date, (ii) to achieve Substantial Completion by the Guaranteed Substantial Completion Date or (iii) to achieve the Guaranteed Capacity for the Facility. If Contractor fails to pay any Liquidated

Damages owing under this Article 17, Owner may deduct the amount thereof from any payment due, or that may become due, to Contractor under this Agreement or, if no payment is due, Owner may invoice Contractor for such amount. Nothing in this Article 17 shall be construed as relieving Contractor of its obligation to achieve Availability Completion, Substantial Completion or the Guaranteed Capacity for the Facility.

**17.5 Energy and Revenues of the Facility.** Any energy, environmental attributes or revenues generated by the Facility at any time, including during the performance of any testing, shall be solely for the benefit of Owner.

**17.6 EITC and Depreciation Loss.**

(a) The Parties acknowledge that the Contract Price reflects, in part, the value to Owner of certain tax benefits (as specified below) and to obtain those tax benefits in accordance with the expected schedule for the construction and completion of the Facility.

(b) If Contractor fails to cause the Facility to achieve Availability Completion by the Guaranteed Availability Completion Date for any reason other than, subject to Section 17.6(f), an Owner-Caused Delay or an Owner Event of Default, then Contractor shall pay Owner, as a Contract Price adjustment and not as a penalty, the following amounts (collectively, the “EITC Liquidated Damages”):

(i) an amount equal to the difference, if any, between the Maximum EITCs for the Facility and the Expected EITCs for the Facility, and

(ii) an amount equal to the equivalent of interest (using the Wall Street Journal “prime rate” as of the dates specified below as an annual rate, compounded annually) on the following amounts, determined as follows: the sum of (A) interest on the amount paid pursuant to Section 17.6(b)(i) for the period from the applicable estimated tax installment payment dates on which Owner would have taken all or any part of the corresponding Maximum EITCs into account when paying its estimated taxes (assuming Owner will pay its estimated taxes based on the annualized income installment method of Section 6655(e)(2) of the Code (using the annualization periods set forth in Sections 6655(e)(2)(A) and (B) of the Code)) until such payment pursuant to Section 17.6(b)(i) is received by Owner, and using as the interest rate the Wall Street Journal “prime rate” as of the first Business Day preceding the date of such first estimated tax installment payment, plus (B) the time value of the deferred tax depreciation available to Owner with respect to the Facility based on the difference between the Depreciation Benefit that would have been available had Contractor achieved Availability Completion on the Guaranteed Availability Completion Date (assuming that the Facility is deemed Placed in Service upon achieving Availability Completion) and the available depreciation deductions (determined based on the same principles and tax rates specified in the definition of Depreciation Benefit (utilizing in the last sentence thereof “Expected EITCs” rather than “Maximum EITCs”)) given the applicable actual Availability Completion Date, assuming Owner pays estimated taxes when specified in Section 17.6(b)(ii)(A) and such time value is calculated based on the hypothetical estimated tax payments that

would be made on each estimated tax installment payment date given the actual Availability Completion Date, compared to the hypothetical payments that would have been made had Contractor achieved Availability Completion as specified above in this Section 17.6(b)(ii)(B) and using as the interest rate the Wall Street Journal “prime rate” as of the first Business Day preceding the date of such first estimated tax installment payment that is affected by such depreciation or EITC, plus (C) the EITC Timing Determinate. For the avoidance of doubt, there is to be no “double counting” of the interest factors calculated under Sections 17.6(b)(ii)(A) and 17.6(b)(ii)(C) with respect to EITCs, and in the event the interest factor determined under Section 17.6(b)(ii)(A) includes with respect to the reduced EITCs reimbursed under Section 17.6(b)(i) a portion of the time value captured under Section 17.6(b)(ii)(B) with respect to the deferral of EITCs, then the amount due under Section 17.6(b)(ii)(B) shall be reduced by the amount of such overlap.

(c) Any EITC Liquidated Damages required by Section 17.6(b) shall be paid within thirty (30) Days of Owner providing Contractor a written request therefor setting forth the calculations thereof in reasonable detail.

(d) Within ten (10) Days of receipt of such request, Contractor may request that a nationally recognized independent accounting firm selected by Owner and reasonably acceptable to Contractor verify the calculation of the EITC Liquidated Damages. The fees and expenses of such accounting firm shall be borne by Contractor. Absent manifest error, the determination of such accounting firm shall be final and binding upon the Parties.

(e) The calculation of the EITC Liquidated Damages due pursuant to Section 17.6(b) is intended to be hypothetical. Therefore, the amount shall not be altered based on (i) Owner’s actual federal income tax posture or liability, (ii) any audit or adjustment by the Internal Revenue Service or the results of any cost segregation analysis that allocates tax basis in a manner different than that set forth in Exhibit 23, (iii) any transfer, merger, sale, reorganization, lease, financing or other transaction entered into by Owner or any Affiliate thereof, (iv) any tax election made by Owner or any Affiliate thereof, (v) any penalties or interest payable to any tax authority, and (vi) all state tax items shall be disregarded.

(f) Notwithstanding the foregoing, Contractor agrees that it shall not be entitled to claim an Owner-Caused Delay or Owner Event of Default as a defense to liability for Contractor’s failure to achieve Availability Completion by the Guaranteed Available Completion Date, unless: (i) delays caused by such events exceed seventy-five (75) Days in the aggregate commencing on the Effective Date and (ii) Contractor demonstrates that such Owner-Caused Delay or Owner Event of Default had an actual and demonstrable adverse impact to the Contractor Critical Path Items set forth on the Construction Schedule and that Contractor has used reasonable efforts to minimize and mitigate the impacts of any such events

(g) Contractor’s liability for the EITC Liquidated Damages shall survive any termination of this Agreement due to a Contractor Default, in which case such liability shall be determined by reference to the date that Availability Completion is ultimately achieved by

Owner or any replacement EPC contractor, and any EITC Liquidated Damages owing from Contractor shall be included in the Termination Payment calculated pursuant to Section 20.5(b).

**17.7 Enforceability.** The Parties explicitly agree and intend that the provisions of this Article 17 shall be fully enforceable by any court exercising jurisdiction over any dispute between the Parties arising under this Agreement. Each Party hereby irrevocably waives any defenses available under law or equity relating to the enforceability of the liquidated damages provisions set forth in this Article 17 on the grounds that such liquidated damages provisions should not be enforced as constituting a penalty or forfeiture.

## ARTICLE 18

### FINAL COMPLETION

**18.1 Generally.** Contractor shall achieve Final Completion of the Facility within sixty (60) Days after the Substantial Completion Date (the “Guaranteed Final Completion Date”). Subject to Section 18.2 and Section 18.3, Final Completion of the Facility means that all of the following conditions have been met:

- (a) Substantial Completion has occurred;
- (b) the performance of the Work for the Facility is complete, including all Punch List Items or, pursuant to Section 8.1(c), Owner has withheld any remaining Punch List Holdback to complete any items on the Punch List not completed by Contractor in accordance with the terms hereof;
- (c) Contractor has delivered all Contractor Submittals, including the final record as-built drawings;
- (d) Contractor has paid all bills from its Subcontractors related to the Facility that are not in dispute;
- (e) no Contractor Liens shall be outstanding against the Facility and Owner shall have received all required final lien waivers under Section 8.4;
- (f) Contractor has complied with its clean-up obligations pursuant to Section 3.15;
- (g) Contractor has paid all Liquidated Damages, if any, to the extent required in accordance with this Agreement; and
- (h) Contractor shall have delivered the Certificate of Final Completion to Owner pursuant to Section 18.2.

**18.2 Certificate of Final Completion.** When Contractor considers that the Facility has achieved Final Completion in accordance with Section 18.1, it shall deliver to Owner notice thereof by delivering to Owner a Certificate of Final Completion signed by Contractor, together

with supporting documentation evidencing the satisfaction of the provisions in Section 18.1. Upon receipt of the Certificate of Final Completion from Contractor together with supporting documentation, Owner shall promptly, but in no event later than twenty (20) Business Days from the date of receipt of Contractor's notice, either issue Contractor: (a) a countersignature to the Certificate of Final Completion, signed by Owner's Representative and stating that the Final Completion Date for the Facility is the date on which Contractor gave its notice to Owner under this Section 18.2; or (b) a written notice stating why Owner does not consider that Final Completion of the Facility has been achieved.

**18.3 Failure to Achieve Final Completion.** If Contractor receives a notice under Section 18.2(b) above, Contractor shall take the necessary steps to achieve Final Completion of the Facility at Contractor's cost. Upon completion of such corrective action, Contractor shall provide a new Certificate of Final Completion and supporting documentation to Owner for approval and the procedures set forth under Section 18.2 and this Section 18.3 shall be repeated until such time as the Certificate of Final Completion has been accepted by Owner. Any disputes regarding the existence or correction of any alleged deficiencies shall be resolved under Article 28.

## ARTICLE 19

### SUSPENSION OF THE WORK

**19.1 Owner-Directed Suspension.** Owner may, upon five (5) Business Days' prior written notice to Contractor, direct Contractor to suspend its performance of all or any portion of the Work; provided that no prior written notice shall be required if such suspension is due to an Emergency or is otherwise required by Applicable Law. Upon the commencement of the suspension, Contractor shall stop the performance of the suspended Work except as may be necessary to carry out the suspension and protect and preserve the Work completed prior to the suspension. Contractor shall thereafter resume any suspended Work upon receipt of a written direction from Owner to resume the Work. Except as otherwise provided in Section 19.2, any period of Owner-directed suspension that extends beyond sixty (60) Days shall constitute an Owner-Caused Delay.

**19.2 Costs and Schedule Relief for Contractor-Caused Suspension.** Notwithstanding anything to the contrary, Contractor shall bear its own costs and delays incurred due to a suspension by Owner pursuant to Section 19.1 where such suspension is necessitated due to a breach of this Agreement by Contractor, any act or omission by any Contractor Party or Subcontractor, an Emergency or as otherwise required by Applicable Law, and Contractor shall not be entitled to a change to the Construction Schedule or an extension of time to the Guaranteed Dates in any of such cases.

## ARTICLE 20

### DEFAULTS AND REMEDIES

**20.1 Contractor Events of Default.** Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a “Contractor Event of Default”):

(a) Contractor fails to pay any amount due and owing to Owner under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of twenty (20) Business Days or more after receipt of notice from Owner stating that if Contractor does not pay such amount Owner may terminate in accordance with Section 20.2;

(b) an Insolvency Event occurs with respect to Contractor or, while the Contractor Performance Security is required to be in place, Contractor’s Guarantor;

(c) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23 and Contractor fails to remedy such breach within thirty (30) Days after the date on which Contractor first receives a notice from Owner with respect thereto;

(d) Contractor assigns or transfers this Agreement or any right or interest herein except in accordance with Article 26;

(e) prior to the Final Completion Date, Contractor or any Affiliate of Contractor defaults under any other Project Transaction Document, or any such document is invalid, no longer in effect or unenforceable for any reason;

(f) except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 10.3, Contractor fails to achieve Substantial Completion within sixty (60) Days of the Guaranteed Substantial Completion Date;

(g) except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 10.3, Contractor fails to achieve Final Completion within sixty (60) Days of the Guaranteed Final Completion Date;

(h) the total amount of Liquidated Damages or other damages owed by Contractor to Owner under this Agreement (including damages for any Losses incurred by Owner or Owner Parties pursuant to Article 24) exceed the applicable maximum liability thresholds set forth in Section 29.2;

(i) except as a result of an Owner Event of Default, a Force Majeure Event, an Owner-Caused Delay or such other event for which Contractor is entitled to schedule relief under Section 10.3, Contractor Abandons the Work and Contractor fails to remedy such breach within ten (10) Business Days after receipt of notice from Owner;



(j) Contractor violates in any material respect any of the provisions of this Agreement not otherwise addressed in this Section 20.1 (except for Sections 17.1 and 17.2, the exclusive remedy for which is provided in Article 17), which violation remains uncured for thirty (30) Days following Contractor's receipt of written notice thereof from Owner; provided, that if such violation is capable of cure but cannot reasonably be cured within such thirty (30) Day period, then Contractor's right to cure shall extend beyond for an additional period (not to exceed thirty (30) Days) so long as Contractor is diligently attempting to cure such violation;

(k) a representation or warranty made by Contractor in or pursuant to this Agreement was false or misleading in any material respect as of the date on which it was made and has not been cured within ten (10) Days after Contractor receives a notice from Owner with respect thereto; provided that such ten (10) Day limit shall be extended if: (i) such failure is reasonably capable of cure and curing such failure reasonably requires more than ten (10) Days; and (ii) Contractor commences such cure within such ten (10) Day period and diligently prosecutes and completes such cure within sixty (60) Days thereafter, in each case, after the date on which Contractor receives a notice from Owner with respect thereto;

(l) Contractor's Guarantor defaults in the performance of its obligations under the Contractor Performance Security or the Contractor Performance Security ceases to be in full force and effect as required by Section 8.8 and, in either case, Contractor has failed to deliver a comparable replacement therefor within five (5) Business Days after such failure;

(m) the Transmission Provider terminates the Interconnection Agreement due to an event of default or termination right thereunder resulting from (i) the negligence or willful misconduct of any Contractor Party or any Subcontractor in connection with this Agreement or (ii) the failure of any Contractor Party or any Subcontractor to comply with any of its obligations or a breach under this Agreement; or

(n) Contractor fails to comply with the requirements of Section 3.29.

**20.2 Owner Rights and Remedies.** If a Contractor Event of Default occurs, subject to Article 29 and without permitting double recovery, Owner shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) Owner may terminate this Agreement by giving notice of such termination to Contractor and, upon such termination:

(i) Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner such of Contractor's subcontracts or purchase orders (including any module supply agreement) as Owner may request (in which case Contractor shall execute all assignments or other reasonable documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to effect such assumption by Owner), and shall license, in the manner provided herein, to Owner all Intellectual Property Rights (to the extent not previously licensed in accordance with the terms hereof)

of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may reasonably direct, and Owner may take possession of any or all Contract Documents necessary for completion of the Work (whether or not such Contract Documents are complete); and

(ii) Contractor shall be liable to Owner for damages as provided in Section 20.5 or as otherwise provided herein;

(b) Owner may direct Contractor to turn over to Owner all Facility Equipment and other materials paid for by Owner;

(c) Owner may proceed against the Contractor Performance Security in accordance with its terms;

(d) Subject to the dispute resolution procedures set forth in Article 28, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement;

(e) Owner may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement;

(f) Subject to the dispute resolution procedures set forth in Article 28 and without permitting double recovery, Owner may seek actual damages subject to the limitations of liability set out in this Agreement;

(g) Owner may pursue remedies under Section 8.9;

(h) Owner may pursue remedies in accordance with Section 20.6; and

(i) Without limiting Contractor's right to assert any defenses with respect to such payment, Owner may make such payments, acting reasonably, that Contractor is failing to pay in connection with the relevant Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts to Owner.

**20.3 Owner Events of Default.** Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an "Owner Event of Default"):

(a) Owner fails to pay any amount of the Contract Price owing under this Agreement that is not disputed in good faith, and such failure remains outstanding for a period of twenty (20) Business Days after Owner has received a notice of such payment default from

Contractor stating that if Owner does not pay such amount Contractor may terminate this Agreement in accordance with Section 20.4; or

- (b) An Insolvency Event occurs with respect to Owner.

**20.4 Contractor Rights and Remedies.** If an Owner Event of Default occurs, subject to Article 29 and Section 20.5 and without permitting double recovery, Contractor shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Contractor hereunder:

- (a) Contractor may terminate this Agreement upon providing notice of such termination to Owner;

- (b) Subject to the dispute resolution procedures set forth in Article 28, Contractor may seek equitable relief to preserve its rights during the pendency of any dispute or to enforce its rights under this Agreement;

- (c) Contractor may suspend the Work by giving notice of such suspension to Owner concurrently with or at any time after Contractor gives Owner notice described in Section 20.3(a);

- (d) Contractor may pursue the dispute resolution procedures set forth in Article 28 to enforce the provisions of this Agreement; and

- (e) Contractor may pursue remedies in accordance with Section 20.6.

## **20.5 Termination Payment.**

- (a) Upon any termination of this Agreement by Contractor for an Owner Event of Default, Owner shall pay the applicable Termination Payment due to Contractor on the date that is thirty (30) Days after Owner's receipt from Contractor of an Application for Payment for such Termination Payment. Such Termination Payment shall be Contractor's sole and exclusive remedy with respect to an Owner Event of Default that results in termination of this Agreement.

- (b) In addition to the remedies provided in Section 20.2, upon termination of this Agreement for a Contractor Event of Default, subject to Article 29, Owner shall be entitled to recover from Contractor promptly upon notice to Contractor, as damages for loss of bargain and not as a penalty, (and in addition to all other amounts Owner is entitled to recover under this Agreement, including any liquidated damages or indemnification obligations owing from Contractor) an amount equal to the reasonable and direct costs of completing the Work (taking into account the requirements of the Construction Schedule and including compensation for obtaining a replacement contractor required as a consequence of such Contractor Event of Default) minus those costs that would have been payable to Contractor but for such Contractor Event of Default (and after considering all other amounts Owner is entitled to recover under this Agreement, including any liquidated damages or indemnification obligations owing from

Contractor). Upon determination of the total cost of such remaining Work, Owner shall notify Contractor in writing of the amount, if any, of the resulting Termination Payment that Contractor shall pay Owner.

**20.6 Termination Right Not Exclusive.** Except as otherwise set forth in Section 20.5(a), a Party's right to terminate this Agreement pursuant to this Article 20 is in addition to, and without derogation from, any other rights and remedies such Party may have against the other Party under this Agreement or any Applicable Law, and each Party expressly reserves all such rights and remedies it may have against the other Party, whether in contract, tort or otherwise.

**20.7 Intentionally Omitted.**

**20.8 Owner Termination for Convenience.** Owner may in its sole discretion terminate the Work and this Agreement for convenience and without cause at any time by giving notice of termination to Contractor to be effective upon the receipt of such notice by Contractor. In the event of such termination, as Contractor's sole and exclusive remedy, Owner shall, on the date that is thirty (30) Days after Owner's receipt of an Application for Payment therefor, pay the applicable Termination Payment due to Contractor.

**20.9 Contractor Conduct.** Upon issuance of a notice of termination pursuant to this Article 20, Contractor shall: (a) cease operations as directed by Owner in the notice; (b) take action necessary, or that Owner may reasonably direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in such notice, or except as expressly requested by Owner or under Section 20.2(a)(i), terminate all existing subcontracts and purchase orders that are terminable without premium, penalty or termination charges and enter into no further subcontracts and purchase orders with respect to the Work or the Facility.

## **ARTICLE 21**

### **WARRANTIES**

**21.1 Sole Warranty.** Except as set forth in Section 2.1, Section 3.31, Section 4.7, Section 13.3(a) and Section 14.3(a), the Warranties provided in this Article 21 shall be Contractor's sole warranties with respect to the Work and the Facility.

**21.2 No Liens or Encumbrances.** To the extent Owner's payments to Contractor are made in accordance with this Agreement, Contractor warrants that title to all Work, materials and Facility Equipment provided by Contractor and its Subcontractors hereunder shall pass to Owner free and clear of all Contractor Liens. Contractor shall diligently pursue the removal and discharge of any lien filings relating to Contractor Liens.

**21.3 Defect Warranty.** Contractor warrants to Owner:

(a) Defect Warranty. That the Facility, all Facility Equipment furnished by Contractor and any of the Subcontractors and other Work, including installation, shall, upon the Substantial Completion Date: (i) be free from defects in materials, construction, fabrication and workmanship; (ii) be new and unused (except for use as part of the Facility); (iii) be of good quality and in good condition and (iv) conform to the applicable requirements of the Scope of Work in effect as of the Substantial Completion Date (collectively, the “Defect Warranty”).

(b) Design Warranty. That the design services included as part of the Work shall conform to the terms and conditions of the Contract Documents, including the Technical Specifications, Prudent Utility Practices, Applicable Codes, Applicable Laws and Applicable Permits, in each case in effect as of the Substantial Completion Date (the “Design Warranty”).

## **21.4 Warranty Period.**

(a) Defect Warranty Period. With respect to the Facility, any Facility Equipment furnished by Contractor and any of the Subcontractors and all other Work including installation services, the Defect Warranty shall commence on the Substantial Completion Date and end on the second (2<sup>nd</sup>) year anniversary of the Substantial Completion Date (such period, the “Defect Warranty Period”) and Contractor shall have no liability under the Defect Warranty for any Defect Warranty claims submitted by Owner from and after the expiration of the Defect Warranty Period; provided that a claim may be made by Owner within thirty (30) Days after the end of a Defect Warranty Period for a matter which arose within such Defect Warranty Period; provided, further, however, that the Defect Warranty Period for any item or part required to be re-performed, repaired, corrected or replaced following discovery of a defect during the applicable Defect Warranty Period shall continue until the end of the later of (i) the expiration of such Defect Warranty Period and (ii) one (1) year from the date of completion of such repair, re-performance, correction or replacement.

(b) Design Warranty Period. With respect to the Facility, any Facility Equipment furnished by Contractor and any of the Subcontractors and all other Work including installation services, the Design Warranty shall commence on the Substantial Completion Date and end on the second (2<sup>nd</sup>) year anniversary of the Substantial Completion Date (such period, the “Design Warranty Period”) and Contractor shall have no liability under the Design Warranty for any Design Warranty claims submitted by Owner from and after the expiration of the Design Warranty Period; provided that a claim may be made by Owner within thirty (30) Days after the end of a Design Warranty Period for a matter which arose within such Design Warranty Period; provided, further, however, that the Design Warranty Period for any item or part required to be re-performed, repaired, corrected or replaced following discovery of a defect during the applicable Design Warranty Period shall continue until the end of the later of (i) the expiration of such Design Warranty Period and (ii) one (1) year from the date of completion of such repair, re-performance, correction or replacement.

(c) Serial Defect. If any Serial Defect arises during the Warranty Period, Contractor shall follow the procedures set forth in Section 15.7 with respect to such Serial Defect.

**21.5 Exclusions.** The Defect Warranty and the Design Warranty shall not apply to damage to or failure of any Work or Facility Equipment to the extent such damage or failure is caused by the following, provided that in no event shall the breach or fault of a Contractor Party or Subcontractor be the basis of an exclusion from the Defect Warranty or Design Warranty:

(a) a failure by Owner or its representatives, agents or contractors (other than any Contractor Party or Subcontractor) to maintain such Work or Facility Equipment in accordance with Prudent Utility Practice or in accordance with the recommendations set forth in the Required Manuals; or

(b) operation of such Work or Facility Equipment by Owner or its representatives, agents or contractors (other than any Contractor Party or Subcontractor) in excess of or outside of the operating parameters or specifications for such Work or Facility Equipment as set forth in the Required Manuals.

**21.6 Correction of Defects.**

(a) Notice of Warranty Claim. If, during the applicable Warranty Period or within thirty (30) Days thereafter, Owner provides notice to Contractor within a reasonable period after discovery that the applicable portion of the Facility has manifested a defect during the Defect Warranty Period or that the Work fails to satisfy the Design Warranty during the Design Warranty Period, then Contractor as promptly as practicable, but in no event later than five (5) Days following receipt of such notice, shall inspect such claimed warranty defect or nonconformance, and at Contractor's own cost and expense as promptly as practicable refinish, repair or replace, at its option, such non-conforming or defective part of the Facility or Work and resulting property damage to the Facility caused by such defective Work. Contractor shall pay the cost of removing any defective component, the costs of shipping and installation of replacement parts in respect of a defect, and the cost of re-performing, repairing, replacing or testing such item as shall be necessary to cause conformance with the Defect Warranty or Design Warranty. The timing of the work to be completed with respect to any such replacement or repair shall be subject to Owner's approval. Such replacement or repair shall be considered complete when the applicable defect has been corrected by the affected equipment or parts being restored to Technical Specifications and the other requirements of this Agreement and the Contract Documents, and compliance with Applicable Laws, Prudent Utility Practices and Applicable Permits. Notwithstanding the foregoing, if the Facility shall fail to satisfy the applicable Warranty during the applicable Warranty Period, and such failure endangers human health or property or materially and adversely affects the operation of the Facility, Contractor shall correct the failure as soon as is practicable or, if Contractor does not so correct such failure, Owner shall be permitted to correct such failure at Contractor's sole cost pursuant to Section 21.6(b). For the purposes of this Section 21.6(a), manifestation of a defect shall include failure to function and physical damage.

(b) Failure of Contractor to Perform Warranty Work. If after Substantial Completion, Contractor does not use its reasonable efforts to proceed to complete the applicable Warranty work, or cause any relevant Subcontractor to proceed to complete the Warranty work, required to satisfy any Warranty claim properly asserted under the terms of this Article 21 in

accordance with the terms hereof, Owner shall, after giving Contractor notice of Owner's intent to perform the remedial Warranty work itself at least three (3) Business Days prior to Owner's commencement of any such remedial Warranty work, have the right to perform the necessary Warranty work to remedy the Warranty claim, or have third parties perform the necessary Warranty work and Contractor shall bear the costs thereof. If Contractor (or the relevant Subcontractor) implements a plan to diligently perform the Warranty work to satisfy such Warranty claim during such three (3) Business Day period, and thereafter diligently prosecutes the execution of such plan, Owner shall not perform, or cause any third party to perform, such Warranty work. If a defect or other nonconformance to the applicable Warranty arises during the applicable Warranty Period and such defect or nonconformance occurs under circumstances where there is an immediate need for repairs due to the endangerment of human health or property, Owner may perform such Warranty work for Contractor's account. If Owner performs or causes third parties to perform such Warranty work as set forth above, Owner shall provide reasonable access to Contractor to the Facility to observe Owner's and its Affiliates' or any third party's performance of the Warranty work. The performance of Warranty work, either performed by Owner or performed by third parties engaged by Owner which was performed in accordance with the applicable provisions of this Agreement related to such Warranty work that Contractor, had it performed the Warranty work itself, would have observed to comply with this Agreement, shall be deemed covered by the Warranties, and Contractor shall reimburse Owner for all reasonable costs, charges and expenses incurred by Owner in connection therewith, which shall include a fifteen percent (15%) mark-up. For clarity, Contractor may not rely upon the failure of any Subcontractor to honor its warranty obligations to excuse or limit Contractor's Warranties. At Owner's election, it may apply any Retainage being held under Section 8.1(d) toward any costs for which Contractor is responsible hereunder.

(c) Enforcement by Owner.

(i) Major Facility Equipment Warranties. Contractor shall obtain or has obtained warranties for the Equipment supplied by the Major Subcontractors (the "Major Facility Equipment Warranties") including those set forth in Exhibit 30. Upon Owner's request, Contractor shall deliver to Owner copies of any other Major Facility Equipment Warranty.

(ii) Assignment. All Major Facility Equipment Warranties shall be assignable to Owner. If this Agreement has been terminated in accordance with Article 20 or otherwise, at the end of each Defect Warranty Period, Contractor shall assign to Owner (unless previously assigned), or otherwise hold in trust on behalf of Owner until such assignment shall occur, at the request and direction of Owner, all unexpired Major Facility Equipment Warranties, subject to the terms and conditions of any such warranties; provided that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty to the exclusion of Owner through the earlier of the termination of this Agreement in accordance with Article 20 and the end of the applicable Defect Warranty Period. Notwithstanding the foregoing, Contractor shall not be obligated to assign any claims of Contractor with respect to any Major Subcontractor then or thereafter existing so long as Contractor is performing its obligations under

this Article 21. At Owner's request, Contractor shall deliver to Owner, at the end of each Defect Warranty Period (unless previously provided), copies of all subcontracts containing such Major Facility Equipment Warranties.

**21.7 Limitations On Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN SECTION 2.1, SECTION 3.29, SECTION 3.31, SECTION 4.7, SECTION 13.3(a), SECTION 14.3(a) AND THIS ARTICLE 21, CONTRACTOR DOES NOT MAKE ANY EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. THE REMEDIES PROVIDED FOR IN THIS ARTICLE 21 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE DEFECT WARRANTY DURING THE APPLICABLE DEFECT WARRANTY PERIOD OR THE DESIGN WARRANTY DURING THE APPLICABLE DESIGN WARRANTY PERIOD (AS THE CASE MAY BE) SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER AS A RESULT OF SUCH FAILURE. Notwithstanding any other provision of this Agreement to the contrary, this Section 21.7 does not operate to limit any warranties or guarantees set forth in any other Project Transaction Document.

## ARTICLE 22

### PUBLICITY

**22.1 Press Releases.** Subject to Section 25.1, as applicable, the Parties shall jointly agree upon the necessity and content of any press release in connection with the matters contemplated by this Agreement. Contractor shall coordinate with Owner with respect to, and provide Owner advance copies of the text of, any proposed announcement or publication that may include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors or advisors of Contractor, in each case, who agree to keep such information confidential. Contractor shall not disseminate any such announcement or publication without Owner's consent, which may be withheld in Owner's sole and absolute discretion.

## ARTICLE 23

### INSURANCE

**23.1 Contractor's Insurance.** Contractor shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages specified in Part I of Exhibit 13 ("Contractor's Insurance"). Unless otherwise specified in Exhibit 13, Contractor's Insurance shall commence no later than the Effective Date and shall remain in full force and effect at all times from commencement of the Work until Final Completion, unless required for a longer or shorter period in accordance with Exhibit 13.

**23.2 Owner's Insurance.** Owner shall, at its expense, procure or cause to be procured, and maintain or cause to be maintained, the policies of insurance and corresponding coverages



specified in Part II of Exhibit 13 (“Owner’s Insurance”). Owner’s Insurance shall commence on the Effective Date and shall remain in full force and effect at all times until Substantial Completion, unless required for a longer or shorter period in accordance with Exhibit 13. Subject to the prior agreement of the Parties and the affected insurers, Owner’s Insurance may be included, at Owner’s cost and responsibility, under one or more policies of Contractor’s Insurance.

**23.3 Ratings.** All policies of insurances required or otherwise contemplated under this Agreement shall be provided by insurance companies having an A.M. Best Insurance Reports rating of A- X or better, and shall otherwise be in accordance with the requirements of this Article 23 and Exhibit 13.

**23.4 Policy Requirements.** Contractor’s Commercial General Liability and Worker’s Compensation insurance policies shall: (a) provide for a waiver of subrogation rights against Owner and all Owner Parties and any Financing Parties, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy; and (b) list Owner and the Owner Parties as “additional named insureds” with respect to liability arising out of or in connection with the Work by or on behalf of Contractor, excluding any contributory liability of Owner or any Owner Parties.

**23.5 No Limitation and Release.** Unless otherwise expressly provided in this Agreement, the insurance policy limits set forth in Exhibit 13 shall not be construed to limit the liability of the insured Party under this Agreement. Notwithstanding the foregoing sentence, each Party releases and waives any and all rights of recovery against the other Party and all of its Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters that the other Party may otherwise have or acquire in, or from, or in any way connected with, any loss covered by policies of insurance maintained or required to be maintained by that Party pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**23.6 Reduction or Ceasing to be Maintained.** If at any time the insurance to be provided by Owner or Contractor hereunder shall be reduced or cease to be maintained, then (without limiting any other rights of the other Party set forth in this Agreement that arises as a result of such failure) the other Party may at its option take out and maintain the insurance required hereby and, in such event, (a) Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments to Contractor, or (b) Owner shall promptly reimburse Contractor for the premium of any such replacement insurance, as applicable.

**23.7 Expiration.** With respect to any insurance carried by Contractor which may expire before the date specified in Section 23.1, Contractor shall, at least one (1) month prior to the relevant policy renewal date, submit to Owner certificates of insurance, insurer binders or other satisfactory evidence that coverage required by this Article 23 has been renewed.

## ARTICLE 24

### INDEMNITY

**24.1 Contractor Indemnity.** Contractor shall indemnify, hold harmless and defend Owner and all Owner Parties from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable during the performance of the Work or from performing or from a failure to perform any of its obligations under this Agreement, or any curative action under any Warranty following performance of the Work;

(b) all Losses associated with a take of a protected species if any are found on the Site during the performance of the Work;

(c) Losses sustained by Owner as a result of Contractor's breach of Section 3.29;

(d) all Losses incurred by Owner as a result of a claim under the Project Labor Agreement against Owner arising from the construction of the Facility and performance of the Work;

(e) all Losses that directly arise out of or result from all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanic's lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Owner Party in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;

(f) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of the Subcontractors, regardless of negligence of Owner or any Owner Party contributing to such Losses;

(g) all Losses arising from third-party claims, including by Subcontractors, for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of the Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;

(h) all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Facility (or any portion thereof), as designed, constructed and completed by Contractor or any Subcontractor, to be capable of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits;

(i) any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications to any such Governmental Authority at Contractor's request;

(j) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes (other than Owner Taxes), fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

(k) all Losses arising from claims by any Governmental Authority claiming Taxes (other than Owner Taxes) based on gross receipts or on income of Contractor, any of the Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of the Subcontractors, or any of their respective agents or employees under this Agreement;

(l) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Contractor, a Subcontractor or any of their respective agents or employees to comply with any Applicable Permit;

(m) all Losses arising from claims by any counterparties to the agreements setting forth the Real Property Rights arising out of or in connection with Contractor's performance of the Work;

(n) all Losses, including claims for property damage, personal injury or bodily injury or death, whether or not involving damage to the Facility or the Site, that arise out of or result from:

(i) the use of Hazardous Materials by Contractor or any of its Subcontractors in connection with the performance of the Work, which use includes the storage, transportation, processing or disposal of such Hazardous Materials by Contractor or any of its Subcontractors, whether lawful or unlawful;

(ii) any Release in connection with the performance of the Work by Contractor or any of its Subcontractors; or

(iii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Contractor or any of its Subcontractors with respect to Hazardous Materials in connection with the performance of the Work.

**24.2 Owner Indemnity.** Owner shall indemnify, hold harmless and defend Contractor and all Contractor Parties from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any grossly negligent or willful act or omission during the performance by Owner or any Affiliate, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, of their obligations or from a failure to perform any of their obligations under this Agreement;

(b) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Owner Taxes for which Owner is obligated to pay pursuant to the terms of this Agreement;

(c) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner, regardless of negligence of any Contractor Party or Subcontractor contributing to such Losses; and

(d) all fines or penalties issued by, and other similar amounts payable to, any Governmental Authority that arise out of or result from the failure of Owner, or any of its contractors, agents or employees, to comply with any Owner Acquired Permit.

### **24.3 Patent Infringement and Other Indemnification Rights.**

(a) Contractor shall defend, indemnify, and hold harmless the Owner Parties against all Losses arising from any Intellectual Property Claim. If Owner provides notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner. In addition to the indemnity set forth above, if Owner is enjoined from completing the Facility or any part thereof, or from the use, operation, or enjoyment of the Facility or any part thereof, as a result of a final, non-appealable judgment of a court of competent jurisdiction or as a result of injunctive relief provided by a court of competent jurisdiction, Contractor shall use its best efforts to have such injunction removed at no cost to Owner; and Contractor shall, at its own expense and without impairing the performance requirements set forth in this Agreement: (i) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Facility Equipment or other Work; (ii) if the obligation set forth in subclause (i) is not commercially feasible, modify the infringing service, Facility Equipment or other Work with service, Facility Equipment or other Work, as applicable, with substantially the same performance, quality and expected life, so that the same becomes non-infringing; or (iii) if the obligations set forth in subclauses (i) and (ii) are not commercially feasible, replace the infringing service, Facility Equipment or other Work with non-infringing service, Facility Equipment or other Work, as applicable, of comparable functionality and quality; provided that in no case shall Contractor take any action which adversely affects Owner's continued use and enjoyment of the applicable service, Facility Equipment, or other Work without the prior written consent of Owner.

(b) Notwithstanding anything set forth in Section 24.3(a) to the contrary, Contractor shall have no indemnity obligations under Section 24.3(a) for any Intellectual Property Claim to the extent arising from or in connection with (i) any modification of the Work by Owner or any third party (other than any Contractor Party or Subcontractor) of the Work, the Facility, any Module, the Equipment or other goods, materials, supplies, items or services provided by Contractor (or any of its Affiliates or Subcontractors) that was not, in either case, authorized by any Contractor Party or Subcontractor or (ii) Owner's material variation from Contractor's recommended written procedures for using the Work (unless otherwise authorized by any Contracting Party or Subcontractor).

(c) Owner's acceptance of the supplied materials and equipment or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder.

**24.4 Environmental Indemnification.** The scope of Contractor's and Owner's indemnification obligations with respect to environmental matters are addressed in Section 24.1(n), Section 12.6 and Section 12.7.

**24.5 Right to Defend.** An Indemnitee shall provide notice to the Indemnifying Party within thirty (30) Days after receiving notice of the commencement of any legal action or of any claims or threatened claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 24 or any other provision of this Agreement providing for an indemnity (such notice, a "Claim Notice"), and the Indemnifying Party shall thereafter promptly elect whether to assume such defense. The Indemnitee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the Indemnifying Party only by the amount of damages attributable and prejudicial to such failure or tardiness, but shall not otherwise relieve the Indemnifying Party from any liability that it may have under this Agreement. If the Indemnifying Party assumes the defense, (i) it shall retain counsel reasonably acceptable to the Indemnitee and (ii) the Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, and the fees and expenses of such special counsel shall be borne by the Indemnitee unless the Indemnifying Party agrees otherwise or except as set forth in the following sentence. If the Indemnifying Party does not assume the defense of the Indemnitee, does not diligently prosecute such defense, or if a conflict (including any actual or potential differing of interest between the Parties) precludes counsel for Indemnifying Party from providing the defense, then the Indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnitee's counsel, reasonable costs of investigation, court costs and other costs of suit, arbitration, dispute resolution or other proceeding, and any reasonable amount determined to be owed by Indemnitee pursuant to such claim, shall be borne by the Indemnifying Party, provided that the Indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense, and provided further that the Indemnifying Party shall reimburse the Indemnitee on a monthly basis for such costs and expenses. Subject to all of the foregoing provisions of this Section 24.5 as between the Parties, the Indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 23 as to which it has assumed the defense; provided that to the extent the Indemnifying Party, in relation to such insurer, controls settlement: (a) such settlement shall include a dismissal of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (b) the Indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; provided further that, except as provided in the preceding sentence concerning the Indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the Indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the

matter in question involves potential criminal liability against such Indemnitee. Other than as provided in this Section 24.5, the Indemnifying Party shall not settle any claim without the prior written approval of the Indemnitee, which approval shall not be unreasonably withheld, delayed or conditioned. The Indemnitee shall provide reasonable assistance to the Indemnifying Party when the Indemnifying Party so requests, at the Indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the Indemnifying Party with regard to the defense or indemnity obligations.

**24.6 Comparative Fault.** Except as expressly provided to the contrary herein, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any Losses attributable to such Party's fault.

**24.7 Survival of Indemnity Obligations.** The indemnities set forth in this Article 24 shall survive the Final Completion Date or the earlier termination of this Agreement for a period expiring five (5) years following the Final Completion Date or said termination, whichever first occurs; provided that (i) with respect to indemnities arising out of or related to the Warranties, the indemnities shall survive for a period of five (5) years after the last Day of the applicable Warranty Period; (ii) indemnities arising out of or related to environmental matters (including as set forth in Article 12) shall survive for a period equal to the applicable statute of limitations; (iii) the indemnities arising out of Section 24.3 shall survive for a period expiring fifteen (15) year following the Final Completion Date or the earlier termination of this Agreement; and (iv) indemnities arising out of or related to Tax shall survive for a period equal to the later of (A) five (5) years following the Final Completion Date and (B) the applicable statute of limitations plus one hundred twenty (120) Days (such period, as applicable, the "Survival Period"). All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such applicable Survival Period. If any Claim Notice is made within such Survival Period, then the indemnifying period with respect to all claims identified in such Claim Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of this Article 24 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

## ARTICLE 25

### CONFIDENTIALITY

**25.1 Dissemination of Confidential Information.** Neither Party (the "Receiving Party") shall (1) use for any purpose other than (i) performing its obligations under this Agreement or (ii) within the scope of the license and rights granted pursuant to Section 14.1 or (2) divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "Disclosing Party"), any Confidential Information of the Disclosing Party. "Confidential Information" means proprietary information concerning the business operations or assets of Owner or Contractor (as the case may be), and may include this Agreement and exhibits hereto, all information or materials prepared in connection with the Work performed under this

Agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party; (d) information approved for public release by express prior written consent of an authorized officer of the Disclosing Party or (e) information independently developed by the Receiving Party without use of the information provided by the Disclosing Party or in breach of this Article 25. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, but only to the extent, that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Laws and prior to making or permitting any such disclosure, Receiving Party shall, to the extent legally permitted, provide Disclosing Party with prompt notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if requested) may seek a protective order or other appropriate remedy, (ii) as otherwise required by Applicable Law, (iii) in connection with any government or regulatory filings, including without limitation, filings with any state energy regulatory commission, (iv) to any power purchaser, transmission provider, or an Owner contractor or prospective contractor (or advisors retained on their behalf) or their successors and permitted assigns, any Financing Parties, Independent Engineer, Owner's Engineer and its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (v) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations or (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations. The Parties acknowledge that the Public Utilities Commission of Nevada ("PUCN") and the Nevada Office of the Attorney General, Bureau of Consumer Protection (the "BCP") have the power to examine Owner's books, records, minutes, papers and property and may, from time to time, request or require Owner to disclose or report to the PUCN and/or BCP (or any representatives thereof), as the case may be, any Confidential Information so requested or required without any requirement of notice to or consultation with Contractor.

**25.2 SCADA System Information.** Notwithstanding any other provision of this Article 25, Contractor shall have the right to remotely access the SCADA System installed by Contractor in the Facility in order to collect all plant data for its own uses to the end of the Warranty Period; provided, however, that such access by Contractor shall be subject to any limitations Owner may impose that pertain to ensuring electric system reliability or infrastructure security. For the avoidance of doubt, this Agreement does not give Contractor any right to have

operational control of the Facility. Information shall not be distributed outside Contractor's organization without the express written consent of Owner.

### **25.3 Return of Confidential Information.**

(a) Except for Confidential Information necessary for Contractor to perform the Work and its obligations under this Agreement or as necessary for Owner in connection with the construction, operation or maintenance, use, modification, repair, disposal, removal or alteration of the Facility, and subject to and in accordance with Section 14.1, at any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy (as determined by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party's possession that contain any such Confidential Information; provided that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies and may retain such Confidential Information if required by Applicable Law; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

(b) Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to Confidential Information until the date that is two (2) years after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.

## **ARTICLE 26**

### **ASSIGNMENT**

**26.1 Prohibition on Assignment.** Except as set forth in Section 26.2, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

**26.2 Exceptions.** Notwithstanding the foregoing, (a) Owner shall be entitled to assign its right, title and interest in and to this Agreement to any Financing Parties by way of security for the performance of obligations to such Financing Parties without the consent of Contractor who, subject to any consent entered into by Contractor with the Financing Parties, may further assign such rights, title and interest under this Agreement upon exercise of remedies by a Financing Party following a default by Owner under the financing agreements entered into between Owner and the Financing Parties and (b) each Party shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its Affiliates or in connection with a merger or acquisition of substantially all of the assets of such Party, subject, with respect to any such assignment by Contractor, to the Contractor Performance Security and the continued validity thereof. Contractor shall execute any consent and agreement or similar documents with respect to such an assignment described in subclause (a) as the Financing Parties may reasonably request and acknowledges that such consent and agreement or similar document may, among



other things, require Contractor to give the Financing Parties notice of, and an opportunity to cure, any breach of this Agreement by Owner. Contractor shall reasonably cooperate with Owner in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Financing Parties. Contractor shall, at Owner's cost and subject to the confidentiality provisions set forth in Article 25, make available to any Financing Parties and other Persons involved in the financing or refinancing of the Facility who have a need-to-know (e.g., counsel to a lender or any such other Person, Governmental Authority, underwriters, rating agencies, independent reviewers and feasibility consultants) such information in the control of Contractor (including financial information concerning Contractor) as may reasonably be requested by Owner on behalf of the Financing Parties or the Financing Parties' engineer with respect to financing of the Facility. Contractor further agrees that, in connection with the financing or refinancing of the Facility, Contractor shall, at the request of Owner, provide an opinion of counsel as to the enforceability against Contractor of this Agreement until expiration of the last Warranty Period. Any authorized assignment of this Agreement by either Party shall relieve such Party of its obligations hereunder at such time as the authorized successor agrees in writing to be bound by such assigning Party's obligations hereunder.

**26.3 Indemnitees; Successors and Assigns.** Upon any assignment by either Party hereunder, with respect to indemnification obligations, the definition of "Owner Party" or "Contractor Party", as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and permitted assigns.

## ARTICLE 27

### NOTICES

**27.1 Notices.** Any notice, request, demand or other communication required or permitted under this Agreement shall be deemed to be properly given by the sender and received by the addressee if made in writing and sent: (a) by personal delivery; (b) in portable document format (PDF) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested; (c) by overnight or certified mail, postage prepaid, return receipt requested; or (d) by next day air courier service. Notices given pursuant to this Section 27.1 shall be addressed as follows to:

Owner: Nevada Power Company d/b/a NV Energy  
 6226 W. Sahara Avenue  
 Las Vegas, Nevada 89146  
 Attention: [\_\_\_\_\_]
   
 Email: [\_\_\_\_\_]

Contractor: [\_\_\_\_\_]
   
 [\_\_\_\_\_]
   
 [\_\_\_\_\_]

[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

A Party, the Financing Parties or the Independent Engineer, by giving notice as provided in this Section 27.1, may, as to itself, change any of the details for the service of notice hereunder or designate a reasonable number of additional "with a copy to" recipients.

27.2 Effective Time. Any notice or notification given personally, through overnight mail or through certified letter shall be deemed to have been received on delivery, any notice given by express courier service shall be deemed to have been received the next Business Day after the same shall have been delivered to the relevant courier, and any notice given by PDF transmission shall be deemed to have been received on the date of delivery (but only to the extent such transmission was promptly followed by mail as provided in Section 27.1) if delivered prior to 5:00 pm Pacific Time; provided, that if such date of delivery is not a Business Day or is delivered after 5:00 pm Pacific Time, then the date of delivery shall be the immediately following Business Day.

ARTICLE 28

DISPUTE RESOLUTION; GOVERNING LAW

28.1 Good faith negotiations. In the event that any question, dispute, difference or claim arises out of or is in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), which either Party has notified to the other Party in a written notice stating that it is a "Notice of Dispute", senior management personnel from both Contractor and Owner shall attempt to resolve the Dispute for a minimum period of thirty (30) Days following issuance of the Notice of Dispute, and such attempt shall include at least one in-person meeting between senior management personnel from both Contractor and Owner, each of whom has the authority to finally settle the Dispute on behalf of that Party. If the Dispute is not resolved by negotiation, the provisions of Section 28.2 and Section 28.3 below shall apply.

28.2 Technical Disputes; Optional Arbitration.

(a) Technical Disputes. If a Notice of Dispute relates to a Dispute that is technical in nature (a "Technical Dispute"), such Dispute shall be submitted to an Independent Expert for expedited dispute resolution pursuant to the following provisions of this Section 28.2(a). The Parties shall negotiate in good faith to select an Independent Expert. If the Parties cannot agree within five (5) Business Days then the Party initiating the dispute (the "Dispute Initiator") shall send notice to the other Party proposing two potential independent engineers set forth in the definition of "Independent Expert". The other Party shall then have two (2) Business Days after receipt of such notice to select an Independent Expert from such two (2) potential independent engineers identified in such notice. If the other Party does not make a selection within such two (2)-Business Day period, the Dispute Initiator shall select an

Independent Expert from such two (2) potential independent engineers identified in such notice. The Parties shall formalize their positions regarding the dispute in writing within four (4) Days of the submission of the Technical Dispute and submit such positions to the Independent Expert. The Parties and the Independent Expert shall meet at the Site within five (5) Business Days of the Independent Expert's receipt of the materials referenced in the immediately preceding sentence and the Independent Expert shall issue a binding ruling that both Parties will obey within five (5) Business Days thereof. The Party that will pay for the Independent Expert and all costs related thereto shall be the losing Party, as determined by the Independent Expert.

(b) Any Dispute other than a Technical Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or pursuant to Section 28.1, may proceed to court pursuant to Section 28.3 unless the Parties mutually agree in writing to resolve such Dispute by arbitration as provided herein.

(c) If the Parties elect to pursue arbitration, upon the expiration of the thirty (30) Day negotiation period set forth in Section 28.1, either Party may submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and such arbitration shall be conducted in accordance with the Rules of the AAA for the Resolution of Construction Industry Disputes (the "Arbitration Rules") in effect on the date that the submitting Party gives notice of its demand for arbitration under this Section 28.2. The arbitration shall be conducted at a location as agreed by the Parties, or if the Parties cannot so agree, the arbitration shall be conducted in Clark County, Nevada. Unless otherwise agreed by the Parties, discovery shall be conducted in accordance with the Federal Rules of Civil Procedure and the Parties shall be entitled to submit expert testimony or written documentation in the arbitration proceeding. The decision of the arbitrator(s) shall be final and binding upon Owner and Contractor and shall be set forth in a reasoned opinion, and any award may be enforced by Owner or Contractor, as applicable, in any court of competent jurisdiction. Any award of the arbitrator(s) shall include interest from the date of any damages incurred for breach of this Agreement, and from the date of the award until paid in full, at a rate equal to the lesser of (i) the rate published by the *Wall Street Journal* as the "prime rate" on the Business Day preceding the date on which such interest begins to accrue plus two percent (2%) and (ii) the maximum rate allowed under Applicable Law. Each of Owner and Contractor shall bear its own cost of preparing and presenting its case; however, the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the Dispute. The fees and expenses of the arbitrator(s), and other similar expenses, shall initially be shared equally by Owner and Contractor, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator(s) shall be instructed to establish procedures such that a decision can be rendered within ninety (90) Days after the appointment of the arbitrator(s). The arbitration may include, by consolidation or joinder or in any other manner, any additional persons or entities if (1) such persons or entities are materially involved in a common issue of law or fact in dispute and (2) such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration.

(d) Appointment of Arbitrator(s). All arbitrators appointed to hear a Dispute pursuant to paragraph (i) or paragraph (ii) below shall have significant construction contract

resolution experience and experience and understanding of the contemporary solar photovoltaic power industry and photovoltaic systems.

(i) Where the amount in dispute is less than One Million Dollars (\$1,000,000) the Dispute shall be heard by a single neutral arbitrator agreed by the Parties. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) Business Days after the written demand for arbitration is provided, then the arbitrator shall be selected pursuant to the Arbitration Rules.

(ii) Where the amount in dispute is for One Million Dollars (\$1,000,000) or more, the Dispute shall be heard by a panel of three (3) arbitrators. Each Party shall select one neutral arbitrator to sit on the panel. The arbitrators selected by the Parties shall in turn nominate a third neutral arbitrator from a list of arbitrators mutually satisfactory to the Parties.

(e) Arbitrator Confidentiality Obligation. The Parties shall ensure that any arbitrator appointed to act under this Article 28 will agree to be bound to comply with the provisions of Article 25 with respect to the terms of this Agreement and any information obtained during the course of the arbitration proceedings.

**28.3 Governing Law/Litigation/Choice of Forum/Waiver of Jury Trial.** THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEVADA, EXCLUDING ANY OF ITS CONFLICT OF LAW PROVISIONS THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. SUBJECT TO THE OTHER PROVISIONS OF THIS ARTICLE 28 AND THE ARBITRATION OPTION DESCRIBED IN SECTION 28.2, FOR PURPOSES OF RESOLVING ANY DISPUTE ARISING UNDER THIS AGREEMENT, THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS (AND IN THE ABSENCE OF JURISDICTION THEREIN THE NEVADA STATE COURTS IN CLARK COUNTY) LOCATED IN THE STATE OF NEVADA. THIS CONSENT TO JURISDICTION IS BEING GIVEN SOLELY FOR PURPOSES OF THIS AGREEMENT, AND IT IS NOT INTENDED TO, AND SHALL NOT, CONFER CONSENT TO JURISDICTION WITH RESPECT TO ANY OTHER DISPUTE IN WHICH A PARTY TO THIS AGREEMENT MAY BECOME INVOLVED. THE PARTIES ACKNOWLEDGE AND AGREE THAT TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED. EACH PARTY HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE VENUE OF SUCH ACTION, SUIT OR PROCEEDING IN SUCH COURT OR THAT SUCH SUIT, ACTION OR PROCEEDING IN SUCH COURT WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME. EACH PARTY FURTHER AGREES THAT SUCH COURT SHALL HAVE *IN PERSONAM* JURISDICTION OVER EACH OF THEM WITH RESPECT TO ANY SUCH DISPUTE, CONTROVERSY, OR PROCEEDING. THE PARTIES SUBMIT TO THE JURISDICTION OF SAID COURT AND WAIVE ANY DEFENSE OF *FORUM NON CONVENIENS*. EACH PARTY, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER

FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE RIGHTS OR OBLIGATIONS SET FORTH IN THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF CONTRACTOR OR OWNER OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES, AGENTS, ATTORNEYS, OR OTHER REPRESENTATIVES, OR ANY OTHER PERSONS AFFILIATED WITH OWNER OR CONTRACTOR, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 28.3. 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.

**28.4 Work to Continue.** During the pendency of any dispute proceedings, as required under the terms of this Agreement, Owner shall continue to make undisputed payments and each Party shall continue to perform its obligations under this Agreement.

## ARTICLE 29

### LIMITATION OF LIABILITY

**29.1 Consequential Damages.** Neither Contractor nor Owner shall be liable to the other for, nor shall a court or arbitrator assess, any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including losses of use, profits, business opportunity, reputation or financing, subject to the following exclusions which constitute amounts which shall not be deemed to be limited or waived by the foregoing restriction: (a) the Liquidated Damages; (b) claims made by, damages incurred by, or amounts payable pursuant to an indemnity given hereunder; (c) damages arising out of a breach of Article 25 by either Party; (d) claims arising out of fraud or willful misconduct; and (e) all Termination Payments.

**29.2 Overall Limitation of Liability.** Notwithstanding any other provision of this Agreement, the cumulative maximum liability of a Party to the other Party under this Agreement shall not exceed one hundred percent (100%) of the Contract Price. The foregoing limitation of liability shall not apply with respect to claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given hereunder or claims arising out of such Party's fraud or willful misconduct. To the extent any provision of this Agreement establishes a lower limit of liability of a Party with respect to a particular component or type of liability, such lower limit of liability shall control with respect to the relevant component or type of liability. Notwithstanding anything herein to the contrary, no liabilities of Contractor to Owner that are covered by insurance carried by Contractor pursuant to Article 23 (except deductibles paid by

Contractor) shall count towards Contractor's cumulative maximum liability to Owner pursuant to this Agreement.

## **ARTICLE 30**

### **SURVIVAL**

**30.1 Survival.** The provisions within the Articles with the following titles shall survive termination of this Agreement: Contract Interpretation and Effectiveness, Taxes, Force Majeure Event; Owner-Caused Delay, Hazardous Materials, Intellectual Property, Suspension of the Work, Defaults and Remedies, Warranties, Publicity, Indemnity, Confidentiality, Assignment, Dispute Resolution; Governing Law, Limitation of Liability, Miscellaneous and any other provision which expressly or by implication survives termination.

## **ARTICLE 31**

### **MISCELLANEOUS**

**31.1 Terms in Subcontracts.** All Subcontracts shall conform to the requirements of this Agreement, insofar as applicable. All Work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between Contractor and the Subcontractor which shall contain provisions that:

(a) reasonably preserve and protect all the rights of Owner under this Agreement and to the Work to be performed under the Subcontract, so that the subcontracting thereof will not prejudice such rights;

(b) require that such Work be performed in accordance with the applicable requirements of this Agreement;

(c) require such Subcontractor to make available a representative with whom the Owner may discuss questions regarding the progress of the Work being performed by the Subcontractor;

(d) require such Subcontractor to provide and maintain adequate insurance consistent with the insurance required pursuant to this Agreement;

(e) require such Subcontractor to remove any employee or independent contractor of such Subcontractor used in the Work or in such Subcontractor's warranty obligations within two (2) Business Days after receiving notice from Owner to remove such employee or independent contractor if: (i) such employee or independent contractor, in Owner's reasonable judgment, creates a safety or security hazard or a material risk of either: (A) non-achievement of Substantial Completion or Final Completion; or (B) material non-performance by Contractor in accordance with this Agreement; and (ii) Contractor has not corrected such safety or security hazard or other non-performance identified in clause (i) to the reasonable satisfaction of Owner during such two (2) Business Day period;

(f) provide that, if following any termination of this Agreement, the Subcontract shall be assigned from the Contractor to the Owner, the Owner shall not be liable for obligations that accrue under the Subcontract before the date of such assignment; and

(g) such other provisions as required by other provisions of this Agreement (including the exhibits hereto).

**31.2 Third Party Beneficiaries.** The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (except as expressly set forth herein).

**31.3 Further Assurances.** Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Facility by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Agreement.

**31.4 No Waiver.** A Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 31.5.

**31.5 Amendments in Writing.** Without limiting any provision of Article 10 with respect to mandatory Change Orders, no oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

**31.6 Books and Record; Retention.** Contractor agrees to retain for ten (10) years (or any longer Warranty Period) all material records relating to its performance of the Work or Contractor's warranty obligations herein.

**31.7 Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, the prevailing Party shall be entitled to be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with such action or proceeding.

**31.8 Inspection, Review and Approval.** Notwithstanding Owner's inspection, review, monitoring, observation, acknowledgement, comment or Owner's approval of any items reviewed, inspected, monitored or observed in accordance with this Agreement, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's Engineer,

shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work in accordance with this Agreement. Owner's or its representative's inspection, review, monitoring, observation, acknowledgement, comment or approval of any items shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Unless otherwise expressly provided herein, Owner shall not unreasonably delay its review of any item submitted by Contractor for review or approval for review or approval; provided, however, the foregoing shall not be used to decrease any express time limitation for such review or approval set forth herein. Any review, inspection, monitoring or observation by Owner or its representatives in accordance with this Agreement shall not constitute any approval of the Work undertaken by such Person, cause Owner to have any responsibility for the actions, the Work or payment of such Person (other than in respect of Owner's obligations to pay Contractor in accordance with Article 8) or to be deemed to be in an employer-employee relationship with Contractor or any Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement or be deemed to be acceptance by Owner with respect to such Work.

**31.9 Independent Engineer.** Contractor acknowledges that an independent engineer or engineering firm (the "Independent Engineer") may be engaged by Owner for the purpose of providing to Owner or Financing Parties a neutral, third party overview of the Work. The Independent Engineer shall provide independent opinions and determinations, arrived at reasonably and in good faith, with respect to: (a) the status of the Work; (b) the performance of the Facility and equipment and the Facility Tests and the results and procedures related thereto; (c) invoices submitted by Contractor; (d) Contractor's quality control procedures for the Work and major components thereof; and (e) the approval of Change Orders. Owner undertakes that it will use reasonable efforts to ensure that the Independent Engineer gives its countersignature or indicates that it is not willing to do so in relation to the relevant matter within the time specified in this Agreement for Owner to respond in relation to such matter; provided that any such unwillingness on the part of the Independent Engineer shall not affect or limit Owner's obligations hereunder. The Independent Engineer may, at its option, attend any meetings between Owner and Contractor related to the progress of the Facility and shall approve all Contractor's Applications for Payments prior to any payment being made by Owner thereunder; provided that any failure by the Independent Engineer to approve a Contractor's Application for Payment shall not affect or limit Owner's obligations hereunder. Notwithstanding anything else to the contrary contained herein, the Independent Engineer shall have no right to direct Contractor or any portion of the Work or to make any Change Order. Contractor shall maintain a complete, accurate and up-to-date log of all Change Orders and, upon request of the Independent Engineer, shall furnish copies of such log to the Independent Engineer. Contractor shall afford the Independent Engineer the same rights as Owner with respect to access to the Site.

**31.10 Financing Matters.** In connection with any collateral assignment by Owner of its rights, title and interest under this Agreement to any Financing Party in accordance with Section 26.2, Contractor shall execute and deliver any usual and customary consent in accordance with Section 26.2 and use commercially reasonable efforts to cause Major



Subcontractors to execute subordination agreements. Contractor agrees to make available, or to use commercially reasonable efforts to cause its Subcontractors to make available, to the Financing Parties and the Independent Engineer, subject to an appropriate confidentiality agreement, independent reviewers, feasibility consultants, and other financial institutions or parties involved in the financing process, such information in the control of Contractor, its Affiliates and Subcontractors (including financial information concerning Contractor, its Affiliates and the Subcontractors) as may be reasonably requested by Owner. Contractor acknowledges that the Financing Parties and the Independent Engineer may monitor, inspect and review the Work as permitted by Article 6.

**31.11 Fees and Expenses.** Except as specifically set forth herein, each Party shall be responsible for any legal fees and expenses, financial advisory fees, accountant fees and any other fees and expenses incurred by such Party in connection with the negotiation, preparation and enforcement of this Agreement and the transactions contemplated hereby.

**31.12 Related Contracts.** Services and work performed at any time by Contractor or its Affiliates under any other Project Transaction Document shall not constitute Work hereunder. Owner shall use reasonable efforts to make claims against Contractor and its Affiliates under the appropriate Project Transaction Document. Notwithstanding the foregoing, Contractor shall not contend that it is not liable for any claim of Owner under or arising out of this Agreement on the grounds that the loss or damage suffered by Owner was caused by an act or omission, or the failure to comply with the terms of any other Project Transaction Document by, any Contractor Party or Subcontractor, and Contractor irrevocably waives any such defense in any Dispute. Contractor shall inform Owner if it believes that Owner made a claim under the wrong Project Transaction Document. If Contractor and Owner do not agree that such claim should have been made under a different Project Transaction Document, Contractor and Owner shall resolve any such dispute regarding which Project Transaction Document a claim should have been made under by submitting such dispute to resolution in accordance with Article 28.

**31.13 Audit Rights.** With respect to any Change Order which adjusts the Contract Price by compensating Contractor on a reimbursable cost or time and materials basis, Contractor shall maintain, in accordance with Prudent Utility Practice and generally accepted accounting principles consistently applied, records and books of account as may be necessary for substantiation of all Contractor claims for additional compensation. Owner, Owner's Engineer, the Financing Parties, if any, and their authorized representatives shall be entitled to inspect and audit such records and books of account during normal business hours and upon reasonable advanced notice during the course of the Work and for a period of five (5) years after the Final Completion Date (or such longer period, where required by Applicable Law); provided, however, that the purpose of any such audit shall be only for verification of such costs, and Contractor shall not be required to keep records of or provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs. Contractor shall retain all such records and books of account for a period of at least five (5) years after the Final Completion Date (or such longer period, where required by Applicable Law). Contractor shall use commercially reasonable efforts to cause all Major Subcontractors engaged in connection with the Work or the performance by Contractor of

its warranty obligations herein to retain for the same period all their records relating to the Work for the same purposes and subject to the same limitations set forth in this Section 31.13. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees and agents in connection with any such audit, subject to the provisions of Article 25. If, as a result of any audit conducted pursuant to this Section 31.13, the results of such audit indicate that Contractor received more or less than the amount to which it was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within ten (10) Days of a written request therefor. Owner shall be responsible for all costs and expenses of such audit unless an overpayment by Owner of more than three percent (3%) of the subject payment is discovered, in which case Contractor shall be responsible for such costs and expenses.

**[THE SIGNATURE PAGES IMMEDIATELY FOLLOW]**

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**Nevada Power Company [or Sierra Pacific Power Company], a Nevada corporation doing business as NV Energy**

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

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

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